

TITLE 19
LUMMI NATION CODE OF LAWS
FIREWORKS CODE

Enacted: Resolution 77-48 (4/7/1977)

Amended Resolution 80-74 (6/10/1980)
Resolution 89-78 (6/6/1989)
Resolution 90-60 (6/5/1990)
Resolution 91-35 (5/20/1991)
Resolution 93-101 (6/15/1993)
Resolution 96-100 (7/2/1996)
Resolution 97-109 (6/24/1997)
Resolution 2008-071 (5/6/2008)
Resolution 2014-091 (5/13/2014)
Resolution 2014-109 (7/1/2014)
Resolution 2016-014 (1/5/2016)

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**TITLE 19
LUMMI NATION CODE OF LAWS
FIREWORKS CODE**

Chapter 19.01 Jurisdiction and Purpose

19.01.001 Jurisdiction

The provisions of this Title and all rules and regulations under it shall apply within the exterior boundaries of the Lummi Reservation and within the exterior boundaries all lands held in trust for the Lummi Nation by the United States regardless of location.

19.01.010 Purpose

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

Chapter 19.02 Definitions

For the purpose of this Code, unless otherwise provided in this Code:

19.02.010 Assignment

Assignment means the process in LCL §19.05.110 by which a site on tribal property is assigned to a retail or wholesale firework licensee to sell fireworks.

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 two (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 (LIBC) 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 LIBC 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 had a retail license or wholesale license in the previous year, provided that the wholesaler is an enrolled member of the Lummi Nation and wishes to participate at the Fireworks Committee Annual Meeting or any subsequent meeting. The Committee may recommend amendments to this Code and to other procedures associated with the regulation of fireworks sales.

19.02.040 Fireworks Committee Annual Meeting

The Fireworks Committee Annual Meeting will be called by the LIBC or its designee during the first week in April each year. The Committee should discuss the creation of a fresh

advertising campaign each year, identification of preferred locations and recommendations for improved enforcement and governmental services for the coming season.

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 Immediate Family Member

For purposes of LCL §19.05.025 an Immediate Family Member is defined as the legal spouse, child, sibling or parent.

19.02.090 Retail Fireworks License

A Retail Fireworks License is the license issued by the LIBC or designee pursuant to LCL §19.04.020.

19.02.100 Retail Licensee

Retail Licensee means the enrolled member of the Lummi Nation to whom a fireworks license has been issued under this Code.

19.02.110 Retail Sale

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

19.02.120 Retailer

Retailer is the person that engages in the retail sale of fireworks.

19.02.125 Trust Land

Trust Land means all lands held in trust for the Lummi Nation by the United States regardless of location.

19.02.130 Wholesale

Wholesale means the sale of fireworks to a retailer.

19.02.140 Wholesaler

Wholesaler is the person that offers for sale or sells fireworks to retailers. Owners of licensed retail fireworks businesses may also purchase fireworks from wholesalers not located on the Lummi Reservation or trust lands or licensed by the Lummi Nation.

19.02.150 Wholesale License

A Wholesale License is a license issued by the LIBC or designee pursuant to LCL §19.04.070.

Chapter 19.04 Licensing

19.04.010 Fireworks License Required

No person may offer for sale or sell fireworks on the Lummi Reservation or trust lands without first obtaining a license from the LIBC or its designee.

It is a violation of this Section for any person to sell or offer to sell fireworks on the Lummi Reservation or trust lands without having a valid fireworks license. Violations of this Section are punishable in accordance with Chapter 19.08.

The LIBC or its designee is authorized to issue Retail Fireworks Licenses and Wholesale Fireworks Licenses. The LIBC or its designee may issue to an eligible individual either one retail fireworks license or one wholesale fireworks license, but not both.

The LIBC or its designee will prepare the retail fireworks license or the wholesale fireworks license applications and make them available by May 15th of each year, issue the necessary retail fireworks or wholesale fireworks 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 an application fee to cover administrative handling, processing of application and issuance of a license, fire and police safety, and maintenance of tribal property. The retail fireworks license application fee is:

- 1) \$150 per site on privately owned property; and

- 2) \$250 per site on tribal property.

The increased fee for businesses on tribal property is intended to diminish the costs incurred by LIBC to create the business opportunity.

Each retail fireworks license application to locate a fireworks stand on tribal property shall be accompanied by an additional \$250 refundable deposit fee. The deposit fee shall be refunded only if the fireworks stand is removed by July 11th of the license year and the assigned site is restored to satisfactory condition. The clean up deposit provisions of LCL §24.02.020 of Title 24 of the Lummi Code of Laws do not apply to retail fireworks licenses.

The LIBC may increase or decrease the fees from time to time to offset the above listed costs.

19.04.030 Licenses--Eligibility

The LIBC or its designee may only issue a retail fireworks license if:

- 1) The applicant is an enrolled member of the Lummi Nation, 18 years of age or older;
- 2) The applicant does not have a wholesale fireworks license;
- 3) The applicant has paid the appropriate fees (LCL §19.04.020) and all fines, penalties and court costs associated with violations of this Code; and
- 4) A judgment has not been entered by the Lummi Tribal Court finding the applicant responsible for a violation of this Code in the preceding 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, except licenses issued for tribal property which are valid only from June 1st until July 11th at 5:00 p.m.

19.04.050 Transferability of Licenses

Licenses are personal to the licensee and may not be transferred to another person. Licenses issued for sites on tribal property may be transferred to another site, after July 11th, so

long as the licensee notifies the proper LIBC Department and the new site passes inspection.

19.04.060 Licensee Use of Fireworks

Licenses shall not ignite fireworks within one hundred (100) feet of their fireworks stand.

19.04.070 Wholesale Licenses

All persons that sell fireworks on the Lummi Reservation or trust lands to a retailer must have a valid wholesale fireworks license issued by the LIBC or its designee.

Each wholesale license application must be accompanied by an application fee to cover administrative handling, processing, issuance of license, fire and police safety, and maintenance of tribal property. The wholesale license application fee is:

- 1) \$250 for mobile vendors and sites on private property; and
- 2) \$500 for sites on tribal property.

This fee is subject to increase from time to time by the LIBC to offset the above listed costs. The temporary business requirements of LCL §24.02.020 of Title 24 and land use requirements of Title 15 of the Lummi Code of Laws do not apply to wholesale businesses temporarily located on tribal property. Wholesalers with a permanent place of business on the Lummi Reservation or trust lands, or a temporary place of business on private property, 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 two hundred (200) feet away from the nearest retail stand. All wholesalers must store their product in containers constructed of steel or other metal. To maximize the use of tribal property, and increase the variety available to the retailer, wholesalers located on tribal property are limited to two (2) steel containers per license. Wholesale vendors wishing to use more than two (2) containers on tribal property will be required to pay one hundred dollars (\$100) per each additional container.

Wholesalers on the Lummi Reservation or trust lands are permitted to sell only to retailers

licensed under this Code. 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 of at least eighteen (18) years of age or older present in each fireworks stand at all times during operation.

19.05.025 Person Allowed to Participate in the Retail Sale of Fireworks

1) Retail Sales on Tribal Property

Only enrolled members of the Lummi Nation may participate in the retail sale of fireworks on the Lummi Reservation or trust lands on tribal property, except that the immediate family members of the licensee may participate provided that the immediate family member is listed on the retail fireworks license.

Each licensee may list up to two (2) immediate family members that are not enrolled members of the Lummi Nation that may participate in the retail sale of fireworks under the retail fireworks license. Enrolled members of the Lummi Nation participating in the retail sale of fireworks do not need to be listed on the retail fireworks license. All persons participating in the retail sale or suspected of participating in the retail sale of fireworks may be asked for proof of enrollment in the Lummi Nation or proof that he/she is listed on the license.

2) Retail Sales on Private Property

Only enrolled members of the Lummi Nation may participate in the retail sale of fireworks on the Lummi Reservation or trust lands on privately owned land, except persons listed on the retail fireworks license may participate in the retail sale of fireworks.

Each licensee may name up to two (2) persons who are not enrolled members of the Lummi Nation, provided that at least one (1) must be an

immediate family member. All persons participating in the retail sale or suspected of participating in the retail sale of fireworks may be asked for proof of enrollment in the Lummi Nation or proof that he/she is listed on the license.

19.05.030 Fireworks Stands--Mandatory Displays

Each retail fireworks license shall be displayed at each fireworks stand. The licensee shall also display a copy of 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 (2) certified, operable fire extinguishers of a minimum of ten (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 (100) feet 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 (24) feet in length. All stands on tribal property shall be separated by at least a three (3) foot clear area.

19.05.070 Sales Out of Motor Vehicles Prohibited

No retail fireworks sales shall be made out of any motor vehicle. For the purpose of this Section, fireworks stands on trailers are not considered a motor vehicle, even if properly licensed for towing on public roadways.

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).

19.05.090 Inspection of Fireworks Stands

Each stand shall be inspected by the Lummi Nation Police Department or duly authorized person prior to receiving a license. The Lummi Nation 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 Nation 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 wholesale and retail sale sites on tribal properties. Each property shall include at least one (1) area designated for igniting fireworks, including area(s) for wholesalers and retailers to demonstrate their products. This map will be used for the assignment of wholesale and retail sites. The LIBC or its delegate shall designate the areas in which fireworks should not be ignited and designate those areas as “prohibited areas” on the map.

Notwithstanding the Lummi Code of Laws Chapter 10.18, igniting fireworks during a burn ban declared pursuant to the Lummi Code of Laws Chapter 10.18 is also a violation of this Code. It is a violation of this Section to ignite fireworks in a prohibited area. Igniting fireworks in a prohibited area or igniting fireworks during a burn ban is a civil infraction punishable by up to a one hundred dollars (\$100) fine.

19.05.110 Tribal Property Site Assignments

Each person who wants to engage in the retail sale of fireworks 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 or its designee pursuant to LCL §19.05.100. To recognize long-standing custom and usage in the assignment of sites, the licensee who was assigned to a site in the previous year may specify that site on the retail fireworks license application before May 31st. After May 31st any remaining sites will be assigned on a first come, first served basis. In an effort to consolidate all retail sales on tribal property, starting in 2014, only members who were assigned a site at the Nooksack River location in 2013 may be assigned a site there.

Chapter 19.06 Prohibitions

19.06.010 Prohibited Fireworks

Fireworks which do not fall under the definition of “Fireworks--Class ‘C’ Fireworks” in LCL §19.02.020, above, are prohibited under this Ordinance, unless otherwise approved by the LIBC 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 subject to a civil penalty as set forth in Chapter 19.08.

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 one hundred (100) feet of a fireworks stand; or
- (d) For an adult to permit a juvenile, age eleven

(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 LCL §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 engage in the retail sale of fireworks, wholesalers are prohibited from selling to retail customers.

(a) A first offense under this Section is punishable by a fine of five hundred dollars (\$500) to one thousand dollars (\$1,000) and a one (1) year suspension of the licensee's eligibility for a fireworks license.

(b) A second offense under this Section, within a three (3) year period, is punishable by a one thousand dollar (\$1,000) fine and a one (1) to two (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 fifty (50) feet of a fireworks stand. A licensee shall not allow a sales person from his or her stand to smoke within fifty (50) feet of the licensee's stand. A violation of this Section is subject to civil fines of up to one hundred dollars (\$100) per offense and suspension of license for a minimum of one (1) year.

19.06.045 Dangerous Substances Prohibited

The possession or consumption of alcohol or illegal drugs in any fireworks stand or other area where fireworks are being sold is prohibited. Persons selling may not be under the influence of alcohol or illegal drugs. A violation of this Section is punishable by a fine of up to one hundred dollars (\$100) per offense.

19.06.050 Prohibited Times

Use of fireworks shall be prohibited between the hours of 1:00 a.m. and 8:00 a.m., 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) 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 (3rd) time in any one (1) year, that licensee's license may be administratively revoked. The Lummi Nation Police Department shall send a notice to the licensing entity informing it that a person has received a third (3rd) 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).

(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 April, as arranged by the LIBC or its designee. The Committee may hold additional meetings as necessary.