

Nisqually Indian Tribe
Tribal Council Resolution No. 134-2021

**A RESOLUTION ADOPTING TITLE 54 (BUILDING AND CONSTRUCTION) OF THE
NISQUALLY TRIBAL CODE**

WHEREAS, the Nisqually Indian Tribe is the successor descendent entity of the Nisqually Nation signatory to the Treaty of Medicine Creek of 1854 (10 Stat. 1132), and unto this day has retained and maintained its Tribal identity, its governing body, and its sovereign powers; and

WHEREAS, the Nisqually Indian Tribe is a federally recognized American Indian Tribe organized under its governing Constitution and Bylaws approved by the U.S. Secretary of the Interior on September 9, 1946 and amended on October 28, 1994, pursuant to Section 16 of the Indian Reorganization Act, 25 U.S.C. 476; and

WHEREAS, the Nisqually General Council is the duly constituted governing body of the Nisqually Tribe, and the Tribal Council is the duly elected representative body of the General Council by the authority of the Tribe's Constitution and Bylaws, as amended; and

WHEREAS, the Tribe is not limited by its Constitution and Bylaws in the exercise of its inherent sovereignty; and

WHEREAS, the Tribal Council has adopted the Nisqually Tribal Code; and

WHEREAS, the Tribal Council now desires to amend the Tribal Code so as to add a new Title 54 (Building and Construction), consisting of Sections 54.01.100 through 54.01.502.

NOW, THEREFORE, BE IT RESOLVED, that the Nisqually Tribal Council does hereby amend the Nisqually Tribal Code so as to make a part thereof Title 54 (Building and Construction), which Title 54 is hereby approved, authorized and adopted in the form attached hereto and incorporated herein.

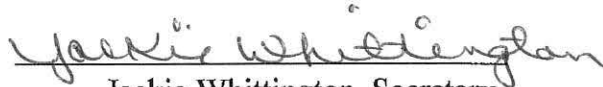
Certification

The undersigned certify that the above Resolution was adopted at a regular meeting of the Nisqually Tribal Council held on the 2nd day of Dec 2021, at the Nisqually Administration Building, at which time a quorum was present and voting 6 FOR 0 AGAINST 0 ABSTENTIONS.

ATTEST:



William Frank III, Chairman
Nisqually Indian Tribe



Jackie Whittington, Secretary
Nisqually Indian Tribe

NISQUALLY BUILDING CODES



NISQUALLY BUILDING CODES



TITLE 54 – BUILDING AND CONSTRUCTION

Chapter 1 – Nisqually Building Codes

SUBCHAPTER I – GENERAL PROVISIONS

54.01.100 TITLE..... 1
54.01.101 PURPOSE..... 1
54.01.102 AUTHORITY..... 1
54.01.103 JURISDICTION..... 1
54.01.104 CONSTRUCTION; APPLICABILITY..... 1
54.01.105 DEFINITIONS..... 2

SUBCHAPTER II – CODES AND AMENDMENTS

54.01.200 ADOPTION OF NISQUALLY BUILDING CODES..... 2
54.01.201 AMENDMENTS TO THE NISQUALLY BUILDING CODE..... 5
54.01.202 AMENDMENTS TO THE NISQUALLY RESIDENTIAL CODE..... 5
54.01.203 AMENDMENTS TO THE NISQUALLY BUILDING CODES GENERALLY..... 6
54.01.204 PUBLIC INSPECTION..... 7

SUBCHAPTER III – IMPLEMENTATION AND ENFORCEMENT

54.01.300 PERMIT FEES..... 7
54.01.301 SITE INSPECTION..... 7
54.01.302 ENFORCEMENT ORDERS..... 7
54.01.303 PENALTIES..... 8
54.01.304 STATUTORY DAMAGES..... 8
54.01.305 PETITION BY BUILDING DEPARTMENT FOR CIVIL ENFORCEMENT OF RULE OR
ORDER..... 8

SUBCHAPTER IV – JUDICIAL REVIEW

54.01.400 JUDICIAL REVIEW OF FINAL BUILDING DEPARTMENT ACTION..... 9

SUBCHAPTER V – SOVEREIGN IMMUNITY; MISCELLANEOUS

54.01.500 SOVEREIGN IMMUNITY..... 12
54.01.501 SEVERABILITY..... 12
54.01.502 EFFECTIVE DATE..... 12

Subchapter I – General Provisions

54.01.100 Title.

This Chapter shall be known as the “Nisqually Building Codes.”

54.01.101 Purpose.

The purpose of the Nisqually Building Codes is to:

- (1) regulate the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area, and maintenance of all buildings and/or structures on the Reservation;
- (2) provide for the issuance of permits and collection of fees therefor; and
- (3) provide penalties for violations of the Nisqually Building Codes.

54.01.102 Authority.

This Chapter is enacted by the Tribal Council pursuant to Article VI, Section 1(f), of the Nisqually Constitution.

54.01.103 Jurisdiction.

Tribal jurisdiction over the activities subject to this Chapter shall extend to all lands and waters within the Reservation to the maximum extent permitted by law.

54.01.104 Construction; Applicability.

- (A) In the event of a conflict between the provisions of this Chapter and the provisions of the International, Uniform, National and/or Washington codes, statutes and regulations adopted pursuant to Section 54.01.200 hereinbelow, the provisions of this Chapter shall prevail.
- (B) The provisions of this Chapter do not apply to:
 - (1) Construction work conducted by a public utility operating under a franchise with the Tribe;
 - (2) Public utility towers and poles;
 - (3) Hydraulic flood control and drainage structures;
 - (4) Installations used by electricity supply or communication agencies in the generation, transmission, or distribution of electricity or for the transmission of signals, operating under a franchise agreement with the

Tribe; and

- (5) Electrical equipment used for radio and television transmission, provided that this exception does not exempt equipment used for the power supply to the transmitting equipment or the installation of towers and antennas.

54.01.105 Definitions.

(A) Unless explicitly stated otherwise, the following words and phrases, as they are used in this Chapter, shall have the following meanings:

- (1) **“Building Official”** means the Director of the Nisqually Building Department or his or her designee.
- (2) **“Department”** means the Nisqually Building Department.
- (3) **“IBC”** means the International Building Code.
- (4) **“IRC”** means the International Residential Code.
- (5) **“Reservation”** means all lands and waters within the exterior boundaries of the Nisqually Indian Reservation, as well as all lands held in trust or restricted fee status by the United States for the Tribe or its Tribal Members.
- (6) **“Tribal Council”** means the Nisqually Tribal Council.
- (7) **“Tribal Court” or “Court”** means the Nisqually Tribal Court.
- (8) **“Tribe” or “Tribal”** means or refers to the Nisqually Indian Tribe.

(B) All other words and phrases shall have their ordinary and customary meanings.

Subchapter II – Codes and Amendments

54.01.200 Adoption of Nisqually Building Codes.

(A) Except as otherwise provided in Section 54.01.200 (B), the following are hereby adopted and incorporated as Tribal law as if fully set out herein:

- (1) The International Building Code, 2018 Edition, published by the International Code Council, together with the following:
 - (a) Appendix E, Supplementary Accessibility Requirements (Sections 101 through 107 only); Appendix G, Flood-Resistant Construction; and Appendix J, Grading.

- (b) Washington State amendments to the IBC, codified at RCW 19.27.042 (emergency exemptions for housing of indigent persons); RCW19.27.065 (temporary growing structures); RCW 19.27.067 (temporary worker housing); RCW19.27.120 (buildings with special historic or architectural significance); RCW19.27.530 (carbon monoxide alarms exemptions).

Collectively, the foregoing shall be known as the “Nisqually Building Code.”

- (2) The International Residential Code, 2018 Edition, published by the International Code Council, together with the following:
 - (a) Appendix A, Gas Piping; Appendix E, Manufactured Housing Used as Dwellings (Sections 101 through 106 only); Appendix G, Piping Standards for Various Applications; and Appendix J, Existing Buildings and Structures.
 - (b) Washington State amendments to the IRC, codified at Chapter 51-51 WAC.
 - (c) The 2017 Edition of ICC A117.1, approved by the American National Standard Institute on March 28, 2017.

Collectively, the foregoing shall be known as the “Nisqually Residential Code.”

- (3) The International Fire Code, 2018 Edition, published by the International Code Council, together with the following:
 - (a) Appendices B, C, E and F to the International Fire Code; and
 - (b) Washington State amendments to the International Fire Code, codified at Chapter 54-54A WAC.

Collectively, the foregoing shall be known as the “Nisqually Fire Code.” The Building Official shall serve as the Tribal Fire Code Official.

- (4) The International Mechanical Code, 2018 Edition, published by the International Code Council, together with the following:
 - (a) Appendix A to the International Mechanical Code; and
 - (b) Washington State amendments to the International Mechanical Code, codified at Chapter 51-52 of the WAC.

Collectively, the foregoing shall be known as the "Nisqually Mechanical Code."

- (5) The International Energy Conservation Code, 2018 Edition, published by the International Code Council. The foregoing shall be known as the "Nisqually Energy Conservation Code."
 - (6) The International Existing Building Code, 2018 Edition, published by the International Code Council, together with the Washington State amendments thereto codified at Chapter 51-50 WAC. Collectively, the foregoing shall be known as the "Nisqually Existing Building Code."
 - (7) The International Property Maintenance Code, 2018 Edition, published by the International Code Council. The foregoing shall be known as the "Nisqually Property Maintenance Code."
 - (8) Uniform Plumbing Code, 2018 Edition, published by the International Association of Plumbing and Mechanical Officials, together with the Washington State amendments thereto codified at Chapter 51-56 WAC. Collectively, the foregoing shall be known as the "Nisqually Plumbing Code."
 - (9) National Electrical Code (NFPA 70), 2020 Edition, published by the Fire Protection Council, together with the Washington State amendments thereto codified at Chapter 296-46B WAC. Collectively, the foregoing shall be known as the "Nisqually Electrical Code."
 - (10) Liquefied Petroleum Gas Code (NFPA 58), 2017 Edition, published by the Fire Protection Council, together with the Washington State amendments thereto codified at Chapter 51-52 WAC. Collectively, the foregoing shall be known as the "Nisqually Liquefied Petroleum Gas Code."
 - (11) National Fuel Gas Code for LP Gas (NFPA 54), 2018 Edition, published by the Fire Protection Council, together with the Washington State amendments thereto codified at Chapter 51-52 WAC. Collectively, the foregoing shall be known as the "Nisqually Fuel Gas Code for LP Gas."
- (B) The Nisqually Building Code, Nisqually Residential Code, Nisqually Fire Code, Nisqually Mechanical Code, Nisqually Energy Conservation Code, Nisqually Existing Building Code, the Nisqually Property Maintenance Code, the Nisqually Plumbing Code, the Nisqually Electrical Code, the Nisqually Liquefied Petroleum Gas Code and the Nisqually Fuel Gas Code for LP Gas shall, collectively, be known as the "Nisqually Building Codes." The Nisqually Building Codes are adopted pursuant to Section 54.01.200(A) subject to the corresponding amendments set forth in Sections 54.01.201 through 54.01.203 hereinbelow.

54.01.201 Amendments to the Nisqually Building Code.

- (A) IBC Section 101.1 is amended to insert "Nisqually Indian Tribe" for name of jurisdiction.
- (B) IBC Section 101.4.1 (Gas) and Section 101.4.3 (Plumbing) are deleted in their entirety. Also, IBC Sections 101.4.2 (Mechanical), 101.4.4 (Property Maintenance), 101.4.5 (Fire Prevention), 101.4.6 (Energy) and 101.4.7 (Existing Buildings) are applicable as and to the extent provided in Sections 54.01.200 through 54.01.203.
- (C) IBC Section 102.2 is amended to delete the words "local" and "state."
- (D) IBC Section 103.1 is amended to replace "Department of Building Safety" with "Nisqually Building Department."
- (E) IBC Section 103.2 is amended to replace "chief appointing authority of the jurisdiction" with "Nisqually Tribal Council."
- (F) IBC Section 105.2 (Work Exempt from Permit) is amended so as to exempt from permit the following:
 - (1) One story detached accessory building used as a tool or storage shed, playhouse or similar use, provided that:
 - (a) the building is not used for sleeping purposes;
 - (b) the building's floor area does not exceed two hundred (200) square feet; and
 - (c) the building is separated from all other structures by not less than eight feet.
 - (2) The following are exempted from permit: firework stands, vendor trailers, temporary sweat lodges and smoke houses.
- (G) IBC Section 113, consisting of Sections 113.1 through 113.3, is deleted in its entirety.

54.01.202 Amendments to the Nisqually Residential Code.

- (A) IRC Section R101.1 is amended to insert "Nisqually Indian Tribe" for name of jurisdiction.
- (B) IRC Sections R103.1 through R103.3 are deleted and replaced with a new Section R103 to read as follows:
 - (1) "The Building Official shall be the primary Tribal Official responsible for

implementation and enforcement of this Code.”

- (C) IRC Section R105.2 (Work Exempt from Permit) is amended so as to exempt from permit the following:
- (1) One story detached accessory building used as a tool or storage shed, playhouse or similar use, provided that
 - (a) the building is not used for sleeping purposes;
 - (b) the building’s floor area does not exceed two hundred (200) square feet; and
 - (c) the building is separated from all other structures by not less than eight feet.
 - (2) The following are exempted from permit: firework stands, vendor trailers, temporary sweat lodges and smoke houses.
- (D) IRC Section R108.2 (Schedule of Permit Fees) is amended as follows:

Fees for permits shall be as set forth in the most current fee schedule adopted by resolution of the Nisqually Tribal Council.

- (E) IRC Table R301.2(1) is amended so as to insert therein the following climatic and geographic design criteria:

Ground Snow Load: 25 psf
Wind Speed (mph): 85
Seismic Design Category: D1
Subject to Damage from Weathering: Moderate
Frost Line Depth: 12”
Termite: Slight to Moderate
Decay: Slight to Moderate
Winter Design Temp: 17° F
Ice Shield Underlayment Req.: No
Air Freezing Index: N/A
Mean Annual Temperature: 50° F

54.01.203 Amendments to the Nisqually Building Codes Generally.

Within the International, Uniform, National and/or Washington codes, statutes and regulations adopted as and constituting the Nisqually Building Codes pursuant to Section 54.01.200, (i) the Nisqually Indian Tribe is the applicable jurisdiction, (ii) the Nisqually Tribal Council is the chief appointing authority of the jurisdiction, (iii) the Nisqually Building Department is

the primary Tribal government agency responsible for implementation and enforcement and (iv) the Building Official is the primary Tribal official responsible for implementation and enforcement. All such references within said International, Uniform, National and/or Washington codes, statutes and regulations, and similar references, are amended so as to refer to the "Nisqually Indian Tribe," "Nisqually Tribal Council," "Nisqually Building Department" and "Nisqually Building Official."

54.01.204 Public Inspection.

A copy of the Nisqually Building Codes shall be placed on file in the Nisqually Building Department Office, where it shall be available for public review and copying during regular business hours subject to reasonable administrative costs and restrictions.

Subchapter III – Implementation and Enforcement

54.01.300 Permit Fees.

The 2021 Building Permit Fees for Thurston County, Washington, as published at <https://co.thurston.wa.us/permitting/fees/fees-home.html>, are hereby adopted by reference as the Nisqually Tribal Building Permit Fees. The Nisqually Tribal Permit Fees shall be automatically increased or decreased in an amount corresponding with any future increases or decreases in the Thurston County Building Permit Fees.

54.01.301 Site Inspection.

- (A) The Building Official shall inspect all projects subject to this Chapter to ensure compliance with the terms and provisions of this Chapter and the terms and provisions of the permit.
- (B) When it is necessary to make an inspection to enforce the provisions of this Chapter, the Building Official may enter the premises at reasonable times to inspect or perform the duties established by the terms and provisions of this Chapter. The Building Official shall make a reasonable effort to locate the owner or a person with authority over the premises to request entry. If such entry is refused, the official shall have recourse to the remedies provided by law to secure entry.

54.01.302 Enforcement Orders.

In the event of any violation of any provision of this Chapter or any violation of a permit condition or mitigation requirement pursuant to this Chapter, the Building Official may issue an administrative order requiring the land-interest holder or other responsible party to perform any or all of the following:

- (1) Cease the activity, use or work causing the violation;
- (2) Abate the work, development or structure in violation;

- (3) Remediate, restore or mitigate for any adverse environmental effects of such activity, use, work, development or structure in violation;
- (4) Pay a civil fine or penalty pursuant to Section 54.01.303; and
- (5) Pay statutory damages pursuant to Section 54.01.304.

54.01.303 Penalties.

- (A) The maximum civil penalty that may be imposed for a violation of any provision of this Chapter, or any violation of a permit condition or mitigation requirement pursuant to this Chapter, is \$500 per violation.
- (B) The fine amount for a violation may be reduced by up to fifty percent (50%) by the Building Official based on the following:
 - (1) Immediate compliance with an order to cease an ongoing violation;
 - (2) Actions taken to correct the violation as quickly as feasible;
 - (3) Full cooperation with investigations related to the violation; and
 - (4) The violation was fully rectified within 30 days of notice.
- (C) For the purpose of assessing a fine, each day the project or person remains in violation is considered a separate violation.

54.01.304 Statutory Damages.

- (A) In addition to any other remedies for violations of this Chapter, the Building Official is authorized to assess and to recover, on behalf of the Tribe, statutory damages in the following amounts:
 - (1) Double the economic benefit the violator gained by non-compliance, as determined by the Building Official;
 - (2) Double the amount of money the Tribe lost due to the person's violation of this Chapter, as determined by the Building Official; and/or
 - (3) Double the amount of money the Tribe expended in mitigating the environmental effects of the violation of this Chapter, as determined by the Building Official.

54.01.305 Petition by Building Department for Civil Enforcement of Rule or Order.

- (A) In addition to other remedies provided by law, the Building Department may seek enforcement of its rules or orders by the filing of a petition for civil enforcement by

the Tribe in the Tribal Court.

- (B) The petition must name, as defendants, each alleged violator against whom the agency seeks to obtain civil enforcement.
- (C) A petition for civil enforcement filed by the Tribe may request, and the Court may grant, a civil fine, statutory damages, declaratory relief, temporary or permanent injunctive relief, and/or any other civil remedy provided by law or in equity, or any combination of the foregoing, including, but not limited to, recovery of all costs, fees (including attorneys fees) and expenses in connection with any enforcement action as damages against the violator.

Subchapter IV – Judicial Review

54.01.400 Judicial Review of Final Building Department Action.

- (A) For purposes of this Chapter, the Building Department shall constitute a governmental agency of the Tribe.
- (B) An aggrieved person who qualifies under this Chapter regarding (i) standing (paragraph (F) of this Section 54.01.400), (ii) exhaustion of administrative remedies (paragraph (G) of this Section 54.01.400) and (iii) time for filing petition for review (paragraph (H) of this Section 54.01.400), and under other applicable provisions of Tribal law, is entitled to judicial review of final agency action.
- (C) For purposes of this Chapter:
 - (1) “Aggrieved” means having suffered actual loss or injury or being exposed to potential loss or injury to legitimate interests including, but not limited to, business, economic, aesthetic, governmental, cultural, recreational or conservation interests.
 - (2) “Final agency action” means the whole or a part of any agency action other than non-final agency action.
 - (3) “Non-final agency action” means the whole or a part of an agency determination, investigation, proceeding, hearing, conference, or other process that the agency intends or is reasonably believed to intend to be preliminary, preparatory, procedural, or intermediate with regard to subsequent agency action of that agency or another agency.

(D) **Jurisdiction.**

The Nisqually Tribal Courts may conduct judicial and/or appellate review of, and shall have exclusive jurisdiction over, all matters arising under or in connection with this Chapter.

(E) Form of Action.

Judicial review is initiated by filing a petition for review in Tribal Court.

(F) Standing.

An aggrieved person may file a petition for judicial review under this Chapter only upon proper showing that such person has standing under Tribal law.

(G) Exhaustion of Administrative Remedies.

An aggrieved person may file a petition for judicial review under this Title only after exhausting all administrative remedies available within the Building Department and within any other Tribal agency authorized to exercise administrative review.

(H) Time for Filing Petition for Review; Filing.

- (1) A petition for judicial review must be filed within 30 days of final agency action.
- (2) A petition for judicial review must be filed with the Clerk of the Tribal Court.

(I) Petition for Review; Service and Notification.

A petitioner for judicial review shall serve a copy of the petition upon the Tribe in the manner provided by Tribal Court Rules and shall otherwise comply with applicable Tribal Court Rules with respect to service, notice and other process.

(J) Scope of Review; Grounds for Invalidity.

- (1) In all cases:
 - (a) The burden of demonstrating the invalidity of agency action by a preponderance of evidence is on the party asserting invalidity; and
 - (b) The validity of agency action must be determined in accordance with the standards of review provided in this Section 54.01.400(J), as applied to the agency action at the time it was taken.
- (2) The Court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by any one or more of the following:
 - (a) The agency has acted beyond the jurisdiction conferred by any provision of law.
 - (b) The agency has erroneously interpreted or applied the law.

- (c) The agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure.
- (d) The person(s) taking the agency action were improperly constituted as a decision-making body, motivated by an improper purpose, or subject to disqualification.
- (e) The agency action is based on a determination of fact, made or implied by the agency, that is not supported by evidence that is substantial when viewed in light of the whole record before the Court, which includes the agency record for judicial review, supplemented by any additional evidence received by the Court under this Chapter.
- (f) The agency action is:
 - (i) outside the range of discretion delegated to the agency by any provision of law;
 - (ii) agency action other than a rule, that is inconsistent with a rule of the agency, or
 - (iii) otherwise unreasonable, arbitrary or capricious.

(K) Type of Relief.

- (1) The Court may not award money damages or any other monetary relief whatsoever (including, but not limited to, attorneys fees and court costs) against the Tribe, Tribal Council, Building Official, Building Department or any other Tribal employee, officer, official, agent, agency, department, subdivision or entity.
- (2) The Court may grant only equitable and non-monetary relief against the Tribe, Tribal Council, Building Official, Building Department or any other Tribal employee, officer, official, agent, agency, department, subdivision or entity, whether, injunctive or declaratory; preliminary or final; temporary or permanent.

(L) Review by Higher Court.

A final decision by the Tribal Court on a petition for review of agency action is reviewable by the Tribal Appellate Court. The decision of the Tribal Appellate Court shall be final, binding and non-appealable.

Subchapter V – Sovereign Immunity; Miscellaneous

54.01.500 Sovereign Immunity.

Except with respect to judicial review of final Building Department action that is conducted in accordance with the provisions of Section 54.01.400, including but not limited to Section 54.01.400(K), the sovereign immunity of the Tribe is not in any way waived or limited by this Chapter, and nothing in this Chapter shall constitute or be construed as a waiver of the sovereign immunity of the Tribe. Such sovereign immunity shall extend to the Tribe, the Tribal Council, the Building Official and the Building Department, as well as to all other Tribal officials, officers, employees, agents, agencies, departments, subdivisions and entities, to the fullest extent provided for under applicable law as to all actions taken in, or concerning, the administration or enforcement of this Chapter.

54.01.501 Severability.

If any section, subsection, sentence, clause, or phrase of this Chapter is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this Chapter.

54.01.502 Effective Date.

This Chapter shall be effective immediately upon approval by resolution of the Tribal Council.

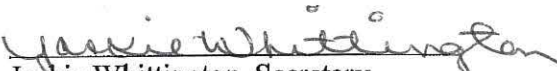
CERTIFICATION

The undersigned hereby certify that the foregoing Title 54 (Building and Construction) to the Nisqually Tribal Code was approved and adopted by the Nisqually Tribal Council pursuant to Resolution No. 134 dated Dec 2nd, 2021.

NISQUALLY TRIBAL COUNCIL



William Frank III, Chairman



Jackie Whittington, Secretary