

TITLE 5 - REGULATORY PROVISIONS

CHAPTER 5-4 TOBACCO

5-4-1 Authority and Purpose

(a) The authority for this Code is found in the Constitution of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (Tribes) under Article I - Section 1 and Article VI - Section 2.

(b) This Code is for the purpose of regulating the sale and distribution of cigarettes and other tobacco products within the jurisdiction of the Tribes.

5-4-2 Definitions

Unless defined elsewhere in this Code or the context clearly requires otherwise, the definitions in this Section shall apply throughout this Code.

(a) Cigarette shall mean any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated or mixed with an other ingredient, where such roll has a wrapper or cover made of paper or any other material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco.

(b) Council shall mean the Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians.

(c) Operator shall mean any person licensed by the Tribes to operate a tobacco outlet within tribal jurisdiction.

(d) Outlet shall mean any store, shop, building or place where tobacco products are sold within tribal jurisdiction and includes a cigarette vending machine.

(e) Person shall include any individual, firm, partnership, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, trustee, syndicate, the Tribes itself, or any other group or combination acting as a unit.

(f) Indian Lands shall mean all lands held in trust by the United States for the Tribes or its members.

(g) Tobacco Products shall include cigarettes, cigars, smoking tobacco, snuff, chewing tobacco and all other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking.

(h) Tribal Court shall mean the Tribal Court of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians.

(i) Tribes or Tribal shall mean or refer to the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians of Oregon.

5-4-3 Tobacco Sales License

(a) Any person that shall engage in the sale of tobacco products Indian lands shall first obtain a license for such sales, provided that any outlet engaging in such sales prior to the adoption of this Code shall obtain a license within thirty (30) days from the date of its adoption by the Council.

(b) A tobacco sales license shall be valid for a period of one (1) year from the date of its issuance and shall expire automatically without notice on the expiration date stated in the license.

(c) No tobacco sales license shall be transferable.

5-4-4 Procedure for License Application and Renewal

(a) Application for a tobacco sales license shall be on a form approved by the Council, which shall be fully completed by the applicant or a duly authorized representative. The application shall state the name and address of the applicant, the location of the proposed tobacco outlet, the beginning date for which the license is requested, a description of any other retail or commercial business conducted or to be conducted by the applicant at the location of the proposed tobacco outlet, such other information as the Council may require, and shall be signed by the applicant under oath. The application shall be submitted to the Council with the required license fee.

(b) Council action on a license application must be taken at a regular or special meeting. Upon the denial of any application for a tobacco sales license, the applicant may request a hearing before the Council by submitting a written request to the Council not later than seven (7) days after receipt of the Council's decision. The Council shall provide reasonable notice to the applicant of the hearing date, time and location, as well as the procedures to be followed. If the Council upholds its decision to deny the license, the applicant may appeal the decision to the Tribal Court, but only on the grounds that the decision was arbitrary and capricious or a violation of Tribal Constitutional rights. Such appeal must be filed with the Tribal Court in writing on or before the fourteenth (14th) day following receipt of the Council's written decision. The Tribal Court shall review without jury, on the record, the decision of the Council. The applicant has the burden of persuading the Tribal Court that the Council's decision is arbitrary or capricious or a violation of Tribal Constitutional rights. The Court shall have the power to reverse the holding of the Tribal Council and return the application to the Tribal Council only.

(c) An operator may apply for renewal of a tobacco sales license by filing a renewal application with the Council not less than thirty (30) days prior to the license expiration date. Renewal applications shall be subject to all conditions and requirements applicable to an initial application, including a fee for the issuance of a renewal license, and any additional conditions and requirements deemed necessary by the Council.

5-4-5 Conditions for Application and Approval of License

(a) No application for a tobacco sales license shall be granted unless:

- (1) The applicant has paid the required license fee, initially established at fifty dollars (\$50.00), as may be changed from time to time by resolution of Council.
- (2) The applicant has submitted a completed application form.
- (3) The applicant is at least twenty-one (21) years of age.
- (4) The proposed location for the tobacco outlet complies with all applicable building codes and zoning codes.
- (5) The Council determines that there is adequate demand for a tobacco outlet at the proposed location.
- (6) The Council determines that the applicant is of good moral character.

(b) The conditions described in this Section are not exclusive and the Council may impose any other conditions which it deems necessary to safeguard and promote the safety, health and general welfare of members of the Tribes.

5-4-6 Revenue Stamp Requirement

No cigarette package shall be sold which does not bear a revenue stamp of the State of Oregon. Upon the determination by the Tribes to provide for a tribal cigarette tax, no cigarette package shall be sold which does not bear a revenue stamp of the Tribes and State of Oregon.

5-4-7 Tribal Sovereign Immunity/Liability

No operator shall attempt or be authorized to waive the sovereign immunity of the Tribes from suit. Nor shall any operator attempt or be authorized to create any liability on behalf of the Tribes.

5-4-8 Operating without a License

No person shall engage in the business of selling or distributing tobacco products on Indian lands without having in effect a valid tobacco sales license issued pursuant to this Code.

5-4-9 Revocation of License

(a) Failure of an operator to abide by any provision of this Code and any conditions set forth herein or imposed by Council may result in revocation of the operator's tobacco sales license by the Council, as well as the assessment of civil penalties in accordance with Section 5-4-10 of this Code.

(b) Prior to revocation of a tobacco sales license, the operator shall have the right to a hearing before the Council. The Council shall provide reasonable notice to the operator of the hearing date, time and location, as well as the procedures to be followed. An operator may appeal a revocation decision by the Council to the Tribal Court but only on the grounds that the decision was arbitrary and capricious or a violation of Tribal Constitutional rights. Such appeal must be filed with the Tribal Court in writing on or before the fourteenth (14th) day following receipt of the Council's written decision. The Tribal Court shall review, on the record, the decision of the Council. The operator has the burden of persuading the Tribal Court that the Council's decision is arbitrary or capricious or a violation of Tribal Constitutional rights. The Court shall have the power to reverse the holding of the Tribal Council and return the revocation issue to the Tribal Council only.

5-4-10 Civil Penalties

(a) The Tribal Council may assess a penalty, in an amount not to exceed one thousand dollars (\$1,000) for each violation, against any person who engages in the business of selling or distributing tobacco products on the Reservation in violation of this Code.

(b) Upon the assessment of a penalty, the person against whom the penalty was assessed may request a hearing before the Council by submitting a written request to the Council not later than seven (7) days after receipt of assessment. The Council shall provide reasonable notice to the person against whom the penalty was assessed of the hearing date, time and location, as well as the procedures to be followed. If the Council upholds its decision to assess a penalty, the person against whom the penalty was assessed may appeal the decision to the Tribal Court, but only on the grounds that the decision was arbitrary and capricious or a violation of Tribal Constitutional rights. Such appeal must be filed with the Tribal Court in writing on or before the fourteenth (14th) day following receipt of the Council's written decision. The Tribal Court shall review without jury, on the record, the decision of the Council. The person against whom the penalty was assessed has the burden of persuading the Tribal Court that the Council's

decision is arbitrary or capricious or a violation of Tribal Constitutional rights. The Court shall have the power to reverse the holding of the Tribal Council and return the penalty issue to the Tribal Council only.

(c) The Council hereby specifically finds that such penalties are reasonably necessary and are related to the expense of governmental administration necessary in maintaining law and order and public safety on Indian lands and in managing, protecting and developing the natural resources on Indian lands. It is the legislative intent of the Council that all violations of this Code, whether committed by tribal members, non-member Indians, or non-Indians, be considered civil in nature rather than criminal.

5-4-11 Enforcement

(a) The Council, through the Tribal Attorney, may seek enforcement of this Code in Tribal Court against any person who engages in the business of selling or distributing tobacco products on Indian lands in violation of this Code.

(b) The Tribal Court, upon presentation of an affidavit or other evidence showing probable cause to believe that a tobacco outlet is being operated in violation of this Code, may issue an order directing the seizure of all tobacco products from wherever purchased and by whomever owned from such tobacco outlet. Within three (3) days of such seizure, and after adequate notice to the person operating such outlet, a hearing shall be held in Tribal Court at which time such person shall be given an opportunity to present evidence in defense of his or her activities. If the Tribal Court shall determine by a preponderance of the evidence that such tobacco outlet was being operated in violation of this Code, the Court may do any of the following or combination of the following:

(1) Declare a forfeiture to the Tribes of all or any part of the tobacco products seized as described above.

(2) Order such other relief as the Tribal Court deems appropriate and consistent with this Code.

5-4-12 Severability

If a court of competent jurisdiction finds any provision of this Code to be invalid or illegal under applicable Federal or Tribal law, such provision shall be severed from this Code and the remainder of this Code shall remain in full force and effect.

APPENDIX A

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

TOBACCO

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians amended the "Tobacco" Code with Resolution 04-073, in a regular Tribal Council meeting on November 14, 2004. Ordinance number was changed to 034B. Vote was 7 (for), 0 (against) and 0 (abstaining). Change as follows:

No cigarette package shall be sold which does not bear a revenue stamp of the ~~Tribes and the~~ State of Oregon. Upon the determination by the Tribes to provide for a tribal cigarette tax, no cigarette package shall be sold which does not bear a revenue stamp of the Tribes and State of Oregon.

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians amended the "Tobacco" Code, with Resolution No. 03-058, in a business Tribal Council meeting on October 27, 2003. Vote was 7 (for), 0 (against), and 0 (abstaining). Change is as follows:

"5-4-6 Revenue Stamp Requirement

No cigarette package shall be sold which does not bear a revenue stamp of either the Tribes **and** or the State of Oregon."

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the "Tobacco" Code, Resolution No. 01-098, Ordinance No. 034, in a special Tribal Council meeting on December 17, 2001. Vote was 6 (for), 0 (against) and 0 (abstaining).