

## TITLE 6 – CORPORATIONS

### CHAPTER 6-4 BUSINESS LICENSING

#### 6-4-0 LEGISLATIVE FINDINGS AND PURPOSE

##### 6-4-1 Sovereign Power to Regulate Business, Impose Taxes and License Fees

The power to regulate business conducted within the Reservation by all persons, Indian and non-Indian, is an inherent and an essential part of the authority of tribal government. Business regulatory power is an aspect of retained sovereignty of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians (Tribes) except where it has been limited or withdrawn by applicable laws of the United States. This Title is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Tribal Council in the Tribal Constitution. The primary responsibility to determine the meaning of the Tribal Constitution and Bylaws lies with the Tribal Council. The Council finds that the Tribal Constitution sufficiently empowers the Tribal Council to regulate the conduct of trade on the Reservation by both members and non-members alike.

##### 6-4-2 Purpose

The Tribal Council finds that the regulation of persons engaged in trade and business on the Reservation is necessary to safeguard and promote the peace, safety, morals and general welfare of the Tribes. Accordingly, the Council declares that the Tribes have the sole and exclusive authority to grant, deny or withdraw the privilege of doing business within the Reservation, except where such authority is limited or withdrawn from the Tribes by the applicable laws of the United States.

##### 6-4-3 Pre-Existing Businesses, Special Purpose Projects, Benefits

(a) Any business that is pre-existing as of the date of enactment of this Code is not effected by this Code unless such business elected to utilize the provisions of the Code, except as prescribed in (c) below.

(b) Any business that elects not to utilize the Tribal Code shall not be entitled to any of its protections and benefits except as may be directed by the Tribal Council on a case-by-case basis, except as prescribed in (d) below.

(c) The business license requirements contained in this Title shall not apply to special purpose fund raising projects, such as educational field trips or recreational projects.

(d) Nothing in this section may be construed as a waiver of sovereign authority over any business activities within the Tribes' jurisdiction when the exercise of Tribal powers is necessary to safeguard and promote the peace, safety, morals and general welfare of the Tribes and Reservation as prescribed by law.

#### 6-4-4 Definitions

The following terms, whenever used or referred to in this Title, shall have the following meanings, unless a different meaning clearly appears from the context:

- (a) "Agent" - the individual or individuals designated by any licensee to receive and accept service of process.
- (b) "Applicant" - any person who submits an application to the Tribes for a business license and who has not yet received such license.
- (c) "Business" - any regular or temporary business activity engaged in by any person for the purpose of conducting a trade, profession or commercial activity involving the sale of any property or services; provided, however, that an isolated sale of property or services shall not be considered to be business under this Title. Business does not include special projects as defined in 6-4-3(c).
- (d) "Title" - the Business Licensing Title as enacted and amended by the Council.
- (e) "Company" - any person or group of people engaged in business.
- (f) "Council" - the Tribal Council of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians.
- (g) "Governmental Entity" - the United States, the Tribes, a state or any political subdivision, agency or any subordinate organization of the foregoing, including economic enterprises or other entities owned or controlled by the Tribes.
- (h) "Licensee" - any person who is granted a business license by the Tribes.
- (i) "Notice" - actual notice by hand delivery or by certified mail. For time computations as provided for in this Title, which are to begin upon notice, such notice shall be at delivery except that where delivery is not possible after three (3) consecutive postal days due to the inaction of the agent, notice shall be at the time of the first (1<sup>st</sup>) attempted delivery. Upon return of the forms of notice to the Tribal Administrator, the forms shall be mailed by regular mail.
- (j) "Person" - any individual, receiver, assignee, trustee in bankruptcy, trust, estate, partnership, joint venture, public utility, club, business trust, nonprofit corporation, corporation, association, society or any group of individuals acting

as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, and includes any instrumentality thereof. The term includes members and nonmembers of the Tribes, but excludes any governmental entity.

(k) "Property" - any existing and identified real or personal property.

(l) "Sale" - the transfer, exchange or barter, conditional or otherwise, of the ownership of, title to, or possession of real or personal property for consideration. The term shall also include leases, conditional sales contracts, leases with the option to purchase, and any other contract under which possession of the property is given to the purchaser but title is retained by the seller as security. It shall also include the furnishing of food, drink or meals for compensation, whether or not consumed on the premises. It shall also include any conditional or unconditional provision of services for consideration.

(m) "Service of Process" - includes the delivery of show-cause orders, cease and desist orders, summonses, complaints and other documents.

(n) "Services" - the performance of labor for the benefit of another for consideration. It excludes labor performed by an employee for the benefit of his or her employer.

(o) "Tribal member" or "member of the Tribes" - an enrolled member of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians. A corporation, partnership or other entity shall be considered a Tribal member, for purposes of this Title only, if 51% or more of the entity is owned by Tribal members.

#### 6-4-5 Administration of Title

The Tribal Administrator is hereby delegated the responsibility to administer the provisions of this Title. The Tribal Administrator is hereby delegated all powers of which are specifically provided for in this Title, or impliedly necessary to implement its provisions, subject to Council review of any action taken by virtue of such delegated powers.

#### 6-4-6 Administrative Actions

The Tribal Administrator shall promulgate regulations pursuant to this Title, formulate recommendations to submit to the Council for revisions of or amendments to this Title, and take other actions necessary for the administration of the provisions of this Title.

#### 6-4-7 Agreements with Federal, State and Local Governments

In the event it is deemed appropriate to effectuate the provisions of this Title, the Tribal Council may negotiate Memoranda of Agreement or other instruments concerning this Title with federal, state and local governments.

#### 6-4-10 BUSINESS LICENSES

##### 6-4-11 Applicability

This Title shall be applicable to all persons engaged in business within the exterior boundaries of the jurisdiction of the Tribes. No person shall engage in business upon the Reservation without a valid business license issued by the Tribes, except as provided in Section 6-4-14(a).

##### 6-4-12 Application and Issuance

An application for a business license shall be submitted in writing to the Tribal Administrator, using forms which it shall provide. Any person engaged in business at the time this Title is enacted shall have thirty (30) days in which to obtain and submit to the Tribes an application for a license. All applications shall include:

- (a) A description of the type of business;
- (b) The name and address of the owner or owners of the business;
- (c) The trade name, if any, to be used by the company;
- (d) The locations on the Reservation at which the business will be conducted;
- (e) A sworn statement that the applicant will comply with all Tribal law applicable to the applicant's business;
- (f) A statement that the applicant possesses or does not possess an Indian Traders' License;
- (g) The name, address and signature of the agent who will accept service of process on behalf of the company.

The Tribal Administrator shall notify the applicant by regular mail within fourteen (14) days after receipt of the application whether a license shall be issued. If a license is issued, the licensee shall post the license in a conspicuous manner at its primary business location.

#### 6-4-13 Denial of License and Appeal

If it is determined that:

- (a) the applicant has materially misrepresented facts contained in the application,
- (b) the applicant presently is in non-compliance with tribal law, or
- (c) the business will threaten the peace, safety, morals or general welfare of the Tribes.

The Tribal Administrator shall issue an order of denial to the applicant by certified mail, return receipt requested, within fourteen (14) days after receipt of the application. The order of denial shall set forth the reasons for such denial and shall state that the applicant has three (3) days from receipt of the order of denial to file a notice of appeal with the Tribal Administrator for an expedited administrative hearing under Section 6-4-24(a) of this Title, or thirty (30) days from receipt of the order of denial to file a notice of appeal with the Tribal Court under Section 6-4-24(b) of this Title.

#### 6-4-14 Exemptions

- (a) The following shall not be required to obtain a license under this Title:
  - (1) governmental entities;
  - (2) tribal members engaged in the creation of traditional Indian art or handicrafts in their home;
  - (3) tribal members engaged in the traditional practice of medicine;
  - (4) any church engaged in raising funds for religious or charitable purposes;
  - (5) any school, club or athletic organization engaged in staging athletic events for which an admission fee is charged, provided such admission fees do not accrue to the personal benefit of any individual; and
  - (6) any accredited school, no part of the income of which accrues to the personal benefit of any individual.
- (b) A business that is pre-existing as of the date of enactment of this Code that elects not take advantage of these provisions, provided, however, nothing in this section may be construed as a waiver of sovereign authority over any business activities within the Tribes' jurisdiction when the exercise of Tribal powers is

necessary to safeguard and promote the peace, safety, morals, and general welfare of the Tribes and Reservation as prescribed by law.

#### 6-4-15 Classes of Licenses

- (a) Temporary Business License: All persons engaged in business on the Reservation for a period of seven (7) days or less shall have a temporary business license. The fee for a temporary business license is ten dollars (\$10.00).
- (b) Seasonal Business License: All persons engaged in business on the Reservation for a period of three (3) months or less shall have a seasonal business license. The fee for a seasonal business license is twenty-five dollars (\$25.00).
- (c) Permanent Business License: All persons engaged in business for a period exceeding three (3) months shall have a permanent business license. The fee for a permanent business license is fifty dollars (\$50.00). A licensee holding a permanent business license need not apply for renewal each year, but the licensee must notify the Tribal Administrator of any change in the licensee's business activities, which render inaccurate the information previously provided to the Tribal Administrator under Section 6-4-12 of this Title.

#### 6-4-16 Conditions of License

Each licensee shall comply with all applicable tribal laws, including but not limited to: Indian employment and contracting preference laws, health and sanitation laws and consumer protection laws. The Tribes may, but need not, notify each licensee by regular mail of any additional tribal laws with which the licensee must comply as such laws are enacted by the Council.

Each licensee shall respond in a timely manner to requests by the Tribal Administrator for information about the licensee's business for the purpose of establishing whether the licensee is in compliance with the terms of this Title.

#### 6-4-20 SANCTIONS

#### 6-4-21 Revocation of License; Failure to Obtain License; Show Cause Hearing

- (a) Whenever it is brought to the attention of the Tribal Administrator that any person is in noncompliance with any condition of his license or has failed to obtain a license within the time requirements of this Title, the Tribal Administrator may serve upon such person or any agent of such person an order to show-cause why his or her license should not be revoked or why he should not be enjoined from doing business on the Reservation without a license. Such notice

shall state the reason for the order, the time and place for the show cause hearing before the Tribal Court, and that the person shall have an opportunity to present testimony and cross examine opposing witnesses and to present any other evidence which he or she shall deem appropriate as to why a revocation order or an injunction should not be issued. The hearing shall be set for a time not exceeding thirty (30) days and not less than fifteen (15) days from the date of the notice. The hearing shall be governed in all respects in accordance with the Rules of Procedure of the Tribal Court.

(b) In the event it is determined that any person's non-compliance with this Title is a direct and immediate threat to the peace, safety, morals or general welfare of the residents of the Reservation, the Administrator shall issue a cease and desist order which shall be served upon the person or any agent of the person. The person shall cease and desist business immediately upon service of the order and may file a notice of appeal with the Tribal Court, within three (3) days for an expedited appeal under Section 6-4-24 (c) of this Title, or within thirty (30) days for a regular appeal to Tribal Court under Section 6-4-24(b) of this Title.

#### 6-4-22 Civil Penalties and Restitution

(a) If it is determined that any person failed to comply with the conditions of his license or failed to secure a license within the time requirements of this Title, the Tribal Administrator may bring an action in Tribal Court for an order requiring the person to appear and show cause why a monetary penalty should not be imposed and restitution should not be ordered; provided, the amount of the penalty shall not exceed one thousand dollars (\$1,000.00) for each violation.

(b) The Tribal Administrator may submit a recommendation to the Tribal Court regarding any restitution which the person should pay to any person or persons injured by his or her failure to comply with the conditions of his or her license or his failure to secure a license within the time requirements of this Title.

(c) The Tribal Administrator may submit a recommendation to the Tribal Court regarding the amount of any civil penalty which the person should pay for failure to comply with the conditions of his or her license or failure to secure a license within the time requirements of this Title.

If the Tribal Administrator submits a suggested penalty amount, the Tribal Administrator shall expressly address in writing each and all of the following criteria:

- (1) the good or bad faith of the violator;
- (2) the injury to the public resulting from the violation;
- (3) the benefits derived by the violator from the violation;

- (4) the violator's ability to pay;
- (5) the administrative costs of prosecution; and
- (6) the need to deter similar behavior by the violator and others and to vindicate the Tribes' authority and the integrity of the Tribal Administrator's orders.

The purpose of the civil penalty provided for herein shall be primarily to defray the costs of administration and enforcement of this Title, and secondarily, to deter continued violations of this Title by the violator or others; provided, however, that all funds collected by the Tribal Court under this section shall be subject to disposition by the Tribal Council.

#### 6-4-23 Other Remedies

The Tribal Administrator may petition the Tribal Court for other remedies provided for in this Code which are necessary to enforce the provisions of this Title, including but not limited to temporary restraining orders and preliminary and permanent injunctions. The Tribal Administrator may also petition a court of competent jurisdiction for a writ of execution to enforce an order, judgment or decree of Tribal Court off-Reservation. The order, judgment or decree must include findings showing:

- (a) the basis for the Tribal Court's jurisdiction over the subject matter and the parties;
- (b) the order, judgment or decree was not obtained fraudulently; and
- (c) the defendant was afforded due process.

#### 6-4-24 Appeals

##### (a) Expedited Administrative Appeal

(1) If an applicant for a business license seeks an administrative hearing, the Tribal Administrator, upon receipt of the notice of appeal, shall notify the applicant in person or by telephone, telegram or other electronic means, of the time set for the expedited hearing which shall be not less than three (3) nor more than five (5) working, days thereafter.

(2) At the hearing, the applicant shall be entitled to present testimony and cross-examine opposing witnesses, and present any other evidence which the applicant shall deem appropriate. All oral testimony shall be recorded and retained until expiration of the time within which the applicant could

appeal to Tribal Court. In the event of such an appeal, the Tribal Administrator shall immediately certify the record and deliver the recordings and all other evidence in the record to the Tribal Court. If no appeal is filed, all evidence, except recordings, submitted by the applicant shall be returned.

(3) The Tribal Administrator shall rule upon the appeal within three (3) working days after the hearing, and shall set forth in writing the factual findings and the reasons for his or her decision. If the appeal is denied, the ruling shall state that the applicant has thirty (30) days from receipt thereof to file a notice of appeal with the Tribal Court under this subsection. The notice shall state in a conspicuous manner that the appeal sought is an expedited appeal pursuant to this subsection.

(4) Upon receipt of a notice of appeal from an expedited administrative hearing, the Tribal Court shall notify the applicant in person or by telephone, telegraph or other electronic means, of the time set for the expedited hearing which shall be not less than five (5) nor more than ten (10) working days thereafter.

(5) The appeal shall be decided by the Tribal Court sitting without a jury, and shall be heard solely on the record established at the hearing as certified by the Tribal Administrator. No new or additional evidence may be introduced during the appeal.

(6) The Tribal Court shall uphold all factual findings of the Tribal Administrator unless the Court determines that such findings are not supported by substantial evidence in the record established before the Tribal Administrator. In reviewing reasons for denial of the license by the Tribal Administrator, the Court shall give proper weight to the Tribal Administrator's interpretation of this Title and any regulations promulgated hereunder.

(b) Direct Appeal to the Tribal Court

If any person entitled to an appeal pursuant to this Title seeks a direct appeal to the Tribal Court, the appellant shall be deemed to have waived any right he may otherwise have to an expedited administrative hearing or an expedited appeal to the Tribal Court, and the appeal shall be governed in all respects in accordance with the Rules of Procedure of the Tribal Court.

(c) Expedited Direct Appeal to the Tribal Court

(1) Any person seeking an expedited appeal pursuant to Section 6-4-21(b) of this Title shall file a notice of appeal which states in a conspicuous manner that the appeal sought is an expedited appeal pursuant to this subsection. Upon receipt of the notice of appeal, the Tribal Court shall notify the appellant in person or by telephone or other electronic means, of the time set

for the expedited hearing which shall be held no later than ten (10) working days after receipt by the Tribal Court of the notice of appeal.

(2) The expedited appeal hearing by the Tribal Court shall be by trial de novo and shall be governed in all respects in accordance with the rules of procedures of the Tribal Court, except that the Tribal Court shall rule upon the expedited appeal within five (5) working days after completion of the hearing.

#### 6-4-30 BUSINESS STANDARDS

##### 6-4-31 In-Home Sales

(a) Every door-to-door salesperson is obligated to inform each prospective consumer of the following information at the beginning of any sales visit:

- (1) The salesperson's name;
- (2) The name of the company that the salesperson represents;
- (3) The salesperson's business address and the address of the company that the salesperson represents;
- (4) The salesperson's business license number;
- (5) An address or phone number where a consumer may inform the salesperson of a decision to reconsider a sale, address questions and concerns regarding sale products, and any other information that is of interest to the consumer and salesperson.

(b) Consumers of merchandise purchased at their residence from salespersons are entitled to reconsideration of any purchase within three (3) workdays from the date of purchase. Reconsideration of sales will be fully credited or reimbursed to the consumer by the salesperson within five (5) working days after the date such salesperson is informed of such reconsideration of the purchase.

(c) No door-to-door sales person may misrepresent any product to a prospective consumer in any manner that an ordinary person of reasonable aptitude, capability and instruction will not be able to perform the product in a like manner.

##### 6-4-32 Food Sanitation

(a) Every person involved with the sale of products to be consumed shall take reasonable care to ensure that such food products are prepared and sold in a sanitary environment.

(b) The business licensee is responsible for the preparation and sale of any food product that is sold under the authority of his or her license, regardless of whether the licensee prepared such food products.

#### 6-4-33 Non-Consumer Property Damage Protections

(a) Any business, whether or not licensed by the Tribes, that damages to private property of any individual is responsible for replace or repair of such property at the actual cost of repair and replacement of such property.

(b) Any business, whether or not licensed by the Tribes, shall make prompt payment or repair of damaged property within thirty (30) days from the date the damage occurred unless another agreement is made between the business and the property owner.

(c) A property owner may file an appeal of in accordance with Section 6-4-24 of this Code for failure of the business to repair or replace damage property within thirty (30) days, as prescribed in this Section.

#### 6-4-34 Informal Complaint Procedures

(a) A person may file a written complaint with the Tribal Administrator regarding alleged violations of Business License and/or Standards.

(b) Upon receipt of a complaint, the Tribal Administrator shall conduct an investigation of the alleged violation within five (5) days. The Tribal Administrator shall report any findings to the person filing the complaint no later than ten (10) days from the date the complaint was filed.

(c) Based in information received as a result of the complaint, subsequent investigation, and from other sources, the Tribal Administrator may take whatever action that he or she deems appropriate to address the situation.

(d) The action or inaction by the Tribal Administrator with respect to any formal complaints may be subject to review by the Tribal Court.

#### 6-4-40 SAVINGS CLAUSE

#### 6-4-41 Savings Clause

In the event that any provision of this Title shall be found or declared to be invalid, the remaining provisions of this Title shall be unaffected thereby, and shall remain in full force and effect.

APPENDIX A

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

BUSINESS LICENSING CODE

**LEGISLATIVE HISTORY AND EDITORIAL CHANGES**

The Tribal Council of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians enacted the Business Licensing Code in Resolution \_\_\_\_, Ordinance No. \_\_\_\_, on June 9, 2002.