

SKOKOMISH LIQUOR ORDINANCE

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General Provisions

4.05.001 Title

This ordinance shall be known as the Skokomish Liquor Ordinance.

4.05.002 Findings and Purpose

- (a) The introduction, possession and sale of liquor on Indian reservations have, since Treaty time, been clearly recognized as matters of special concern of Indian tribes and the United States Federal Government. The control of liquor on reservations remains exclusively subject to their legislative enactments.
- (b) Federal law currently prohibits the introduction of liquor into Indian Country (18 U.S.C. §1154), and expressly delegates to tribes the decision regarding when and to what

extent liquor transactions shall be permitted (18 U.S.C. §1161).

(c) Present day circumstances make a complete ban on liquor within the Skokomish Indian Reservation ineffective and unrealistic. However, a need still exists for strict regulation and control over liquor transactions within the Reservation because of the many potential problems associated with the unregulated or inadequately regulated sale, possession and consumption of liquor. The Tribal Council finds that exclusive tribal control and regulation of liquor is necessary to achieve maximum economic benefit to the Tribe, to protect the health and welfare of the tribal members, and to address specific tribal concerns relating to alcohol use on the Reservation.

(d) The enactment of a tribal ordinance governing liquor sales on the Skokomish Indian Reservation and providing for exclusive purchase and sale through a tribally owned and operated establishment will enhance the ability of the tribal government to control Reservation liquor distribution and possession, and, at the same time, will provide an important source of revenue for the continued operation of the tribal government and the delivery of essential tribal social services.

(e) Tribal regulation of the sale, possession, and consumption of liquor on the Skokomish Indian Reservation is necessary to protect the health, security, and general welfare of the Skokomish Indian Tribe. In order to further these goals and to provide for an urgently needed additional source of governmental revenue, the Skokomish Tribal Council adopts this liquor ordinance to be known as the "Skokomish Liquor Ordinance." This ordinance shall be liberally construed to fulfill the purposes for which it has been adopted.

4.05.003 Definitions

(a) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses or sugar, or other substances including all dilutions and mixtures of this substance.

(b) "Alcoholic Beverage" is synonymous with the term liquor as defined in Section 4.05.003(e) of this ordinance.

(c) "Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than four percent of alcohol by volume. For the purposes of this title, any such beverage, including ale, stout, and porter, containing more than four percent of alcohol by weight shall be referred to as "strong beer."

(d) "Board" means the Skokomish Indian Liquor Board as constituted under this ordinance.

(e) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous, or malt liquor, or otherwise intoxicating; and every liquid or solid or semi-solid or other substance,

patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semi-solid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

(f) "Malt Liquor" means beer, strong beer, ale, stout, and porter.

(g) "Package" means any container or receptacle used for holding liquor.

(h) "Sale" and "Sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor, or of wine, by any person to any person.

(i) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(j) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during, or after fermentation, and containing not more than seventeen percent alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding seventeen percent of alcohol by weight.

Section One

4.05.010 Liquor Agency Created

(REPEALED)

4.05.011 Skokomish Indian Liquor Board

(a) Liquor Board Established - Composition.

There is hereby established a Skokomish Indian Liquor Board. The members of the Skokomish Tribal Council shall serve as the Skokomish Indian Liquor Board. The Board is empowered to:

(1) Administer this ordinance by exercising general control, management, and supervision of all liquor sales, places of sale, and sales outlets as well as exercising all powers necessary to accomplish the purposes of this ordinance;

(2) Adopt and enforce rules and regulations in furtherance of the purposes of this ordinance and the performance of its administrative functions;

(3)

(REPEALED)

(4) Bring suit in the appropriate court to enforce the provisions of this ordinance

with the consent of the Skokomish Tribal Council. The Board shall not, without the specific consent of the Council, waive the Board's or the Tribe's immunity from suit.

4.05.012 Liquor Business Manager

(REPEALED)

4.05.013 Sovereign Immunity Preserved

Nothing in this ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Skokomish Indian Tribe. No manager or employee of the Liquor Agency shall be authorized, nor shall he attempt, to waive the immunity of the Tribe.

Section Two

4.05.020 Sales

(a) Only Tribal Sales Allowed.

No sales of alcoholic beverages shall be made within the exterior boundaries of the Skokomish Indian Reservation, except at a tribal liquor store.

(b) All Sales Cash.

All sales at tribal liquor stores shall be on a cash only basis and no credit shall be extended to any person, organization, or entity.

(c) All Sales for Personal Use.

All sales shall be for the personal use of the purchaser, and resale for profit of an alcoholic beverage purchased at a tribal liquor store is prohibited within the Skokomish Indian Reservation. The purchase of an alcoholic beverage at a tribal store and subsequent resale of that beverage for profit, whether in the original container or not, shall be a violation of this ordinance and the violator shall be subject to the penalties prescribed in Section 4.05.030(c).

(d) Tribal Property.

The entire stock of liquor and alcoholic beverages referred to under this ordinance shall remain tribal property, owned and possessed by the Skokomish Indian Tribe until sold.

5.05.021 Taxation

(a) Tax Imposed.

There is hereby levied and shall be collected the following taxes:

- (1) On each retail sale of spirits on the Skokomish Indian Reservation, a tax at

the rate of 5% of the retail sales price; and

(2) On each retail sale of beer and wine on the Skokomish Indian Reservation, a tax at the rate of 1%.

(b) Distribution of Taxes.

All taxes from the sale of alcoholic beverages on the Skokomish Indian Reservation by or through the Board shall be paid over to the tax fund of the Skokomish Indian Tribe and be subject to distribution by the Skokomish Council in accordance with its usual appropriation procedures for essential governmental and social services. Provided, however, that priority in funding shall be given to those tribal programs which demonstrate greatest need and past successful performance in providing community services to tribal members.

Section Three

4.05.030 Illegal Activities

(a) Violations.

(1) Liquor Stamp - Contraband.

It shall be a violation of this ordinance for any person to sell alcoholic beverages on the Skokomish Indian Reservation without a stamp of the Board affixed to the package. All alcoholic beverages not so stamped which are sold or held for sale on the Skokomish Indian Reservation are hereby declared contraband and, in addition to any penalties or fines imposed by the Court for violation of this section, shall be confiscated and forfeited in accordance with the procedures set out in Rule 3.01.065 of the Skokomish Tribal Court Rules of Civil Procedure (S.T.C. 3.01.065)

(2) Use of Seal.

It shall be a violation of this ordinance for any person, other than an employee of the Board, to willfully keep or have in his possession, any legal seal prescribed under this ordinance unless the same is attached to a package which has been purchased from a tribal liquor store, or to willfully keep or have in his possession any design in imitation of any official seal prescribed under this ordinance or calculated to deceive by its resemblance to any official seal, or any paper upon which such design is stamped, engraved, lithographed, printed or otherwise marked.

(3) Illegal Sale of Liquor by Drink or Bottle.

It shall be a violation of this ordinance for any person to sell by the drink or bottle any liquor, except as otherwise provided in this ordinance.

(4) Illegal Transportation, Still, or Sale Without Permit.

It shall be a violation of this ordinance for any person to sell or offer for sale or transport in any manner, any liquor in violation of this ordinance, or to operate or have in his possession without a permit, any mash capable of being distilled into liquor.

(5) Illegal Purchase of Liquor.

It shall be a violation of this ordinance for any person within the boundaries of the Skokomish Indian Reservation to buy liquor from any person other than at a properly authorized tribal liquor store.

(6) Illegal Possession of Liquor - Intent to Sell.

It shall be a violation of this ordinance for any person to keep or possess liquor upon his person or in any place or on premises conducted or maintained by him as a principal or agent with the intent to sell it contrary to the provisions of this ordinance.

(7) Sales to Persons Apparently Intoxicated. It shall be a violation of this ordinance for any person to sell liquor to a person apparently under the influence of liquor.

(8) Possession and Use of Liquor by Minors.

Except in the case of liquor given or permitted to be given to a person under the age of twenty-one (21) years by his parent or guardian, for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, it shall be a violation of this ordinance for any person under the age of twenty-one (21) to consume, acquire, or have in his possession any alcoholic beverages except when such beverage is being used in connection with religious services.

(9) Furnishing Liquor to Minors.

It shall be a violation of this ordinance for any person to permit any other person under the age of twenty-one (21) to consume liquor on his premises or on any premises under his control, except in those special situations set forth in Section 4.05.030(a)(8) above.

(10) Sales of Liquor to Minors.

It shall be a violation of this ordinance for any person to sell any liquor to any person under the age of twenty-one (21) years.

(11) Unlawful Transfer of Identification.

It shall be a violation of this ordinance for any person to transfer in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor. Provided, that corroborative testimony of a witness other than the

minor shall be a requirement for conviction.

(12) Possession of False or Altered Identification.

It shall be a violation of this ordinance for any person to attempt to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of twenty-one (21) years.

(a) Proof of Unlawful Sale - Intent.

In any proceeding under this ordinance, proof of one unlawful sale of liquor shall suffice to establish prima facie the intent or purpose of unlawfully keeping liquor for sale in violation of this ordinance.

(b) General Penalties.

Any person adjudged to be in violation of this ordinance shall be subject to a civil penalty of not more than Five Hundred Dollars (\$500.00) for each such violation. The Board may adopt by separate rule or regulation a schedule of fines for each type of violation, taking into account its seriousness and the threat it may pose to the general health and welfare of tribal members. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the Five Hundred Dollar (\$500.00) limitation set forth above. The penalties provided for herein shall be in addition to any criminal penalties which may hereafter be imposed by separate chapter or provision of the Skokomish Tribal Code.

(c) Identification - Proof of Minimum Age.

Where there may be a question of a person's right to purchase liquor by reason of his age, such person shall be required to present any one of the following officially issued cards of identification which shows correct age and bears his signature and photograph:

- (1) Liquor control authority card of identification of any state.
- (2) Driver's license of any state or an identification card issued by any State Department of Motor Vehicles.
- (3) United States Active Duty Military identification.
- (4) Passport.
- (5) Point-No-Point or other treaty area identification cards.

(d) Illegal Items Declared Contraband.

Alcoholic beverages which are possessed contrary to the terms of this section are declared to be contraband. Any tribal law enforcement officer who issues a citation under this section shall seize all contraband which he shall have the authority to seize all contraband which he shall have the authority to seize consistent with the Skokomish Constitution and the applicable provisions of 25 U.S.C. §1302.

(e) Preservation and Forfeiture.

Any tribal law enforcement officer seizing contraband shall preserve the contraband by placing it in a secured area provided for storage of impounded property and shall promptly prepare an inventory in accordance with Rule 3.01.065 of the Skokomish Tribal Court Rules. Upon entry of judgment, the person adjudged to be in violation of this ordinance shall forfeit all right, title, and interest in the items seized, which shall be disposed of in accordance with Rule 3.01.065(h) of the Skokomish Tribal Court Rules of Civil Procedure. Provided, however, that the items so forfeited shall not be sold to any person not entitled to possess them under applicable law.'

4.05.031 Abatement

(a) Declaration of Nuisance.

Any room, house, building, boat, vessel, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, and all property kept in and used in maintaining such place, are hereby declared to be a common nuisance.

(b) Institution of Action.

The Chairman of the Board shall institute and maintain an action in the Tribal Court in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this title. The plaintiff shall not be required to give bond in the action, and restraining orders, temporary injunctions, and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant, the court may also order the room, house, building, boat, vessel, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient surety to be approved by the Court in the sum of not less than One Thousand Dollars (\$1,000.00), payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of thereof in violation of the provisions of this ordinance or other tribal liquor laws. If any condition of the bond be violated, the whole amount may be recovered as a penalty for the use of the tribe. Any action taken under this section shall be in addition to any other penalties provided for in this ordinance.

(c) In all cases where any person has been adjudged to be in violation of this ordinance or tribal laws relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought in Tribal Court to abate as a nuisance any real estate or other property involved in the commission of the offense, and in any such action a certified copy of the record of such judgment shall be admissible in evidence as prima facie evidence that the room, house, vessel, boat, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Section Four

4.05.040 Profits

(a) Distribution of Profits. The gross proceeds collected by the Board for all sales of alcoholic beverages on the Skokomish Indian Reservation shall be distributed as follows:

- (1) for the cost of goods;
- (2) for the payment of taxes provided in Section 4.05.021 of this ordinance;
- (3) for the payment of all necessary personnel, administrative costs, and legal fees for the Board and its activities;
- (4) the remainder shall be turned over to the General Fund of the Skokomish Indian Tribe on a monthly or other periodic payment schedule established by the Board and shall be expended by the Skokomish Tribal Council for the general governmental services of the Tribe.

Section Five

4.05.050 Severability and Effective Date

(a) If any provision or application of this ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this ordinance or to render such provisions inapplicable to other persons or circumstances.

(b) Effective Date.

This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance and publishes the same in the Federal Register.

(c) Inconsistent Enactments Rescinded.

Any and all prior enactments of the Skokomish Tribal Council which are inconsistent with the provisions of this ordinance are hereby rescinded.

(d) Disclaimer.

Nothing in this ordinance shall be construed to require or authorize the criminal trial and punishment by the Skokomish Tribal Court of any non-Indian except to the extent allowed by any applicable present or future Act of Congress or any applicable decision of the United States Supreme Court.

(e) Application of 18 U.S.C. §1161.

All acts and transactions under this ordinance shall be in conformity with this ordinance and in conformity with the laws of the State of Washington as that term is used in 18 U.S.C. §1161.