

SKOKOMISH TRIBAL CIVIL TRESPASS ORDINANCE

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AUTHORITY AND PURPOSE

3.07.001 Constitution of the Skokomish Indian Tribe

The Constitution of the Skokomish Indian Tribe provides that the Skokomish Tribal Council is the governing body of the Skokomish Indian Tribe with the authority to enact laws and ordinances governing the conduct of individuals and defining offenses against the tribe; to maintain order and to protect the safety and welfare of all persons within the Skokomish Tribe's jurisdiction; to provide for the enforcement of laws and ordinances of the Skokomish Tribe; and to provide for the jurisdiction and procedures of the Skokomish Tribal Court.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.07.002 Purpose

It is the duty and obligation of the Skokomish Tribal Council to safeguard, protect, manage, administer and develop the natural resources of Tribal lands for the sole economic, cultural,

and social benefit of the members of the Tribal Community. The peace, property, and public safety of all persons, both Indian and non-Indian, may be threatened by disruptive, destructive, negligent, or malicious acts. The Tribal Council possesses the inherent and constitutional authority and obligation, subject to the limitations of applicable Federal law, to protect the people; property; natural, historic and archeological resources; culture; land; water; riparian rights; livestock; and wildlife from any threat or conduct by any person which might diminish, degrade, damage, injure, destroy or threaten Tribal Community members, their natural resources, or the social, cultural, religious, political or economic well-being of the Tribal Community in any manner. It is the purpose of this ordinance to regulate such threats or conduct, and to provide relief to the Tribal Community and its individual members for damages which result therefrom, and to provide for remedies in the nature of civil sanctions.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

GENERAL PROVISIONS

3.07.010 Definitions

As used in this Ordinance:

- (a) "Defendant" means the person against whom an action is file under this ordinance.
- (b) "Infraction" means a civil offense against the Skokomish Tribe for which the remedy involved is monetary damages. An infraction is not a crime and the punishment shall not affect or impair the rights or credibility of any person convicted thereof.
- (c) "Public place" means a location, exclusive of a private residence, to which the members of the tribal community have general access or a location in which three or more members of the tribal community have gathered. Public places include, but are not limited to, tribal buildings; parks; highways and roads; beaches, shorelines, river banks and waterways; transport facilities; schools; jails and prisons; the common areas of apartment buildings; places of business or amusement; and the common areas of any neighborhood.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.07.011 Duties and Authority of Officers; Warrants Not Required

- (a) It shall be the duty of tribal law enforcement officers to enforce the provisions of this Ordinance without the necessity of procuring a warrant.
- (b) A tribal law enforcement officer is authorized to arrest any person who resists, delays, prevents or obstructs any such officer, in the discharge, or attempt to discharge, of any duty under this Ordinance or gives a false report to any peace officer. Any person who is subject to the criminal laws of the tribe and who is arrested under this section shall be guilty of a Class C offense and may be prosecuted pursuant to the criminal provisions of the Skokomish Tribal Code. To the extent authorized by law, any person who is not subject to the criminal laws

of the Tribe and who is detained under this section may be held for a reasonable time until a State or Federal law enforcement officer takes the defendant into custody or transported without unnecessary delay to the nearest authority for the state of Washington or the United States.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

OFFENSES

3.07.020 Trespass

A person commits the infraction of trespass if he:

- (a) Enters upon the real property of the Skokomish Tribe or members of the Skokomish Tribe that is posted to prohibit trespassing, is fenced, or contains obvious outward signs of habitability without permission of the owner or the owner's agent;
- (b) Enters tribal lands that are not specifically posted as open to the public;
- (c) Is a non-tribal member and enters or remains on lands of the Skokomish Tribe and its members that lie within the boundaries of the Skokomish Reservation the banks of such portion of the Skokomish River and any of its tributaries or any fish bearing stream that lie within the boundaries of the Skokomish Indian Reservation unless s/he has the authority of the Skokomish Tribal Council or s/he is the spouse or minor child of a tribal member;
- (d) Refuses to depart from or reenters the Skokomish Reservation in violation of an order of exclusion issued by the Tribal Court as provided by the Skokomish Tribal Code.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.07.021 Vandalism

A person commits the infraction of vandalism if he:

- (a) Injures, defaces, damages or destroys:
 - (1) Private property in which any other person has an interest without the consent of such other person;
 - (2) Tribal or other public property without the lawful consent of the appropriate governing body; or
 - (3) An obvious place of burial or established archaeological site.
- (b) Deposits, throws, or propels any garbage or waste material, including but not limited to disposable packaging or containers, upon any highway, roadway, runway, waterway or railroad track, or from any boat or vehicle while such boat or vehicle is either in motion or stationary, or upon any public or private property,

UNLESS such garbage or waste material is deposited for purposes of storage, disposal or collection in accordance with any valid and lawful contract for the storage, disposal, or collection of garbage, recyclables, or other waste material.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.07.022 Use or Possession of Alcohol at a Public Facility or Public Event

A person commits the infraction of use or possession of alcohol at a public facility or a public event if s/he consumes any kind of alcohol beverage or has any kind of alcoholic beverage in his or her possession or under his or her control at a public place as defined in section 3.07.010(d) above, except that the transport of alcoholic beverages in closed containers in a vehicle on the public highways by a person over twenty-one (21) years of age is not a violation of this section.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.07.023 Harassment

A person commits the infraction of harassment if:

- (a) Without lawful authority, s/he, by words or conduct directed at another within the Skokomish Indian Reservation, threatens to:
 - (1) Cause bodily injury in the future to any person;
 - (2) Cause physical damage to the property of a person other than the actor;
 - (3) Subject any person to physical confinement or restraint
 - (4) Do any other act which is intended to substantially harm any person with respect to his or her physical or mental health or safety;
 - (5) The person by words or conduct places the person threatened in reasonable fear that the treat will be carried out; and
 - (6) Prevents or substantially interferes with members of the Skokomish Tribe lawfully engaged in hunting, fishing or trapping activities, including but not limited to possession of legally taken fish and wildlife.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.07.025 False Reporting

A person commits the infraction of false reporting if s/he initiates a false alarm or report which is transmitted to a fire department, law enforcement agency or other organization that responds to emergencies involving danger to life or property.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

ENFORCEMENT

3.07.030 Liquidated Damages

- (a) As directed by the Tribal Council, the directors of the appropriate tribal department(s) shall prepare for the approval of the council, and from time to time shall review and, as necessary, propose revisions to a schedule of Liquidated Damages consisting of a dollar determination or dollar determinations calculated to closely approximate the cost of providing equitable restitution to the Tribe for the damage or loss which would be caused by any infraction(s) of this ordinance or regulation adopted thereunder. In calculating Liquidated Damages, the Tribal Council may consider, in addition to any other factors they reasonably deem relevant:
 - (1) The cost to the Tribe of producing and/or protecting the tribal property or interest affected;
 - (2) The cost of replacing or restoring the tribal property or interest affected;
 - (3) The costs of enforcement including the general overall costs and costs particularized to individual infractions where appropriate;
 - (4) The loss to the Tribe of any revenue affected by the infraction;
 - (5) Damages for trespass;
 - (6) The costs incurred in representing the Tribe in an action under this subchapter.
- (b) The director of the tribal department preparing or updating the Liquidated Damages schedule shall post notice of the adoption of the schedule at all public buildings on the Skokomish Reservation. Such notice shall provide that schedules will be available at the Skokomish Tribal Department of Public Safety and the Skokomish Fisheries Department.
- (c) The following Interim Liquidated Damages schedule shall apply to infractions set forth in the Civil Trespass Ordinance 3.07.001 et. seq. of the Skokomish Tribal Code. Copies of the Liquidated Damages schedule are available at the Skokomish Department of Public Safety and the Skokomish Fisheries Department in accordance with 3.07.030(b).

3.07.020	Trespass	\$500.00
3.07.021	Vandalism	\$500.00
3.07.022	Use or Possession of Alcohol	\$200.00
3.07.023	Harassment	\$1,000.00
3.07.024	False Reporting	\$250.00

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.07.031 Liquidated Damages Presumption

- (a) Since in most instances the exact amount of damages caused to the Tribe by a particular infraction of this ordinance or regulation adopted hereunder will be difficult or impossible to determine, it shall be presumed by the court adjudicating an infraction of this ordinance that the amount fixed by the schedule of Liquidated Damage Amount represents the damages owed to the Tribe as restitution if the defendant is found to be liable. This presumption may be rebutted by evidence which shows that the amount indicated by the schedule of Liquidated Damages is inadequate or excessive, or special circumstances warrant a reduction of the Liquidated Damage amount in a particular case. In any case in which the presumption is successfully rebutted, the parties may introduce evidence to prove the actual damages as in any other civil case.
- (b) All persons shall be deemed to have consented to the Liquidated Damages provision of this ordinance by their entry onto the Reservation, and where applicable, by their signature on a tribal permit or permits.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.07.032 Default Judgment

- (a) Unless otherwise provided by this part, the Tribal Court shall enter a default judgment against any defendant who is cited for an infraction of any provision of this ordinance or regulations promulgated under this ordinance and does not appear at the hearing or otherwise respond to the notice of infraction as provided in this subchapter. If a default judgment is entered, the court clerk shall, if feasible, issue notice of judgment to the defendant advising him that he must pay the judgment by a date certain which shall not be less than fifteen (15) days after the date of the notice. The notice shall state that failure to pay the judgment may result in forfeiture of a bond held pursuant to this ordinance, if any, and/or a civil proceeding in Tribal Court to collect the Liquidated Damage amount, and an additional fee of one hundred and fifty dollars (\$150.00). Before ordering collection of the Liquidated Damage amount and additional civil penalty, the Tribal Court shall find:
 - (1) The notice of infraction was issued;
 - (2) The defendant was informed of his duty to either pay the Liquidated Damage amount or enter an appearance; and
 - (3) The defendant did not appear at the hearing or otherwise respond to the notice of infraction as provided by this subchapter.
- (b) Any defendant shall be deemed to have conceded to the correctness of the determination of the infraction and the Liquidated Damage amount imposed on the notice if s/he has:
 - (1) Requested a hearing to contest the determination that an infraction was committed or requested a hearing to explain mitigating

circumstances, and without good cause fails to appear at the hearing scheduled; or

(2) Fails to respond to the notice.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.07.033 Burden of Proof—Preponderance of the Evidence

- (a) The burden of proving that an infraction under this ordinance has been committed shall be on the TRIBE.
- (b) The TRIBE shall be considered to have met the burden of proof if the TRIBE's evidence shows it is more likely than not the infraction was committed.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.07.034 Expulsion

Nothing in this ordinance shall be deemed to preclude the use of the remedy of expulsion of nonmembers for violation of this ordinance and any enforcement officer or other appropriate official may follow the procedure provided by tribal law to initiate an action for expulsion in addition to or in lieu of any other enforcement procedure provided for by this Chapter.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.07.035 Federal Prosecution

- (a) Nothing in this Chapter shall be deemed to preclude the federal prosecution under 18 U.S.C. 1165 of nonmembers who trespass on the Reservation. Any enforcement officer or attorney representing the Tribe may initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided for by this ordinance.
- (b) This ordinance has been enacted to protect the resources of the Skokomish Tribe, and the taking or using of tribal property or services contrary to the terms of this ordinance constitutes theft of tribal assets. Nothing in this ordinance shall be deemed to preclude federal prosecution of violators under 18 U.S.C. 1163 for theft of tribal assets or any other federal law designed to protect tribal wildlife or other natural resources. Any conservation officer may initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided for by this Chapter.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.07.040 Severability

Should a court of competent jurisdiction declare any provision of this ordinance invalid, such decision shall not affect the validity of any other part of the ordinance which can be given effect without the invalid part.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

Legislative History prior to July 5, 2017

Adopted by Resolution No. 04-106 (September 1, 2004)
Reaffirmed by Resolution No. 17-100 (July 5, 2017)

+Ordinance and/or amendments not attached to the resolution in the Skokomish Tribal Archives