

CIVIL FORFEITURE

TABLE OF CONTENTS

GENERAL PROVISIONS

- 3.09.101 Purpose
- 3.09.102 Liberal Construction
- 3.09.103 Severability
- 3.09.104 Jurisdiction
- 3.09.105 Definitions

CIVIL FORFEITURE PROCEDURES

- 3.09.201 Application
- 3.09.202 Nature of Forfeiture
- 3.09.203 Police Officer to Seize Property
- 3.09.204 Inventory of Property
- 3.09.205 Police Officer to File Notice of Seizure
- 3.09.206 Answer to Notice
- 3.09.207 Defenses Available
- 3.09.208 Procedure for Hearing
- 3.09.209 Burden of Proof – Liabilities
- 3.09.210 Disposition of Property

GENERAL PROVISIONS

3.09.101 Purpose

The purpose of this Ordinance is to provide procedures for civil seizure and forfeiture of property.

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

3.09.102 Liberal Construction

This Ordinance shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

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

3.09.103 Severability

If any provision of this Ordinance, or its application to any person, legal entity, or circumstance is held invalid, the remainder of the Ordinance, or the application of the provision to other persons, legal entities, or circumstances, shall not be affected.

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

3.09.104 Jurisdiction

The provisions of this Ordinance shall apply to the fullest extent of the sovereign jurisdiction of the Skokomish Indian Tribe authorized by the Constitution of the Skokomish Indian Tribe, the Treaty of Point No Point and applicable federal law. The provisions of this Ordinance shall apply to and be in conformity with all agreements and other cooperative arrangements entered into by the Skokomish Indian Tribe.

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

3.09.105 Definitions

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

- (a) "Claimant" means a person or entity with a legal interest in the subject property. A Claimant does not have actual ownership of the subject property but does have an interest in it due to a prior financial arrangement with the property owner, a prior court judgment against the property owner, or due to other commonly recognized principles of law. Example of claimants include (1) secured interest creditors; (2) non-secured creditors; (3) mortgagors; (4) lienholders; (5) trust companies; (6) licensed pawnbrokers; and (7) a person or entity who/which has given the property owner partial or full payment for the property.
- (b) "Contraband" means property which was or is (1) being used to violate or possessed in violation of any law, Ordinance or regulation of the Skokomish Indian Tribe; or (2) obtained by violation of any law, Ordinance or regulation of the Skokomish Indian Tribe.
- (c) "Controlled Substance" shall be guided by the definitions of the Uniform Controlled Substances Act (21 U.S.C. § 801 *et seq.*) as it currently exists or is hereafter amended.
- (d) "Knowingly" means a person is aware of a fact or facts; or he has information which would lead a reasonable person in the same situation to believe the facts exist.
- (e) "Owner" means one who is recognized and held responsible by the law as the owner of the property.
- (f) "Property" includes but is not limited to aircraft, vehicles, vessels, monies, negotiable instruments, illegal or counterfeit illegal substances and their raw materials, products or byproducts. Trust property is exempt from forfeiture under this Ordinance.
- (g) "Territorial Jurisdiction" is given the meaning found in the Constitution of the Skokomish Indian Tribe, Article I.

- (h) "Tribal Court" means the court of the Skokomish Indian Tribe, located on the Skokomish Indian Reservation.
- (i) "Tribal Member" means an enrolled member of the Skokomish Indian Tribe.
- (j) "Tribe" means the Skokomish Indian Tribe.

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

CIVIL FORFEITURE PROCEDURES

3.09.201 Application

The Tribal Court may order forfeiture of the following kinds of Property located within its jurisdiction:

- (a) Property which is made Contraband by Tribal law;
- (b) Property being used to violate or in violation of Skokomish Tribal ordinance or regulation;
- (c) Property otherwise subject to forfeiture by specific Tribal law. If a specific provision of the Code sets forth its own forfeiture proceedings, it shall be controlling and the Tribal Court may rely on such additional provisions as justice may require.

No property right exists in Property subject to seizure and forfeiture under this Ordinance.

This Ordinance does not permit the seizure of land, and the Tribal Court shall not order the forfeiture of land.

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

3.09.202 Nature of Forfeiture

Forfeiture proceedings shall be in the nature of a civil suit against the Property to be forfeited.

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

3.09.203 Police Officer to Seize Property

Property subject to forfeiture under this Ordinance may be seized by any Tribal law enforcement officer upon process issued by any court having jurisdiction over the Property. Seizure of Property without process may be made if:

- (a) The seizure is incident to an arrest or search under a search warrant or during a routine administrative inspection;

- (b) The Property subject to seizure has been the subject of a prior judgment in favor of the Tribe in a criminal injunction or forfeiture proceeding;
- (c) A law enforcement officer has probable cause to believe that the Property is directly or indirectly dangerous to health or safety; or
- (d) A law enforcement officer has probable cause to believe that the Property was used or is intended to be used in violation of the controlled substances provisions of the Skokomish Tribal Code or other Controlled Substances regulation.

All Property seized under this Ordinance shall immediately be delivered to the Tribal Police Chief to be held as evidence until a final forfeiture is declared or a release ordered.

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

3.09.204 Inventory of Property

The Tribal Officer who seizes Property pursuant to this Ordinance shall prepare a complete list of all items seized. The list shall include the identity of the Owner, if known, a description of the Property, the disposition of the Property, the value of the Property at the time of seizure, and the amount of proceeds realized from disposition of the Property, once determined.

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

3.09.205 Police Officer to File Notice of Seizure

A law enforcement officer who seizes Property under this Ordinance shall file, within five (5) business days of the seizure, notice of seizure and intention to institute forfeiture proceedings with the clerk of the Tribal Court.

- (a) The clerk shall serve notice thereof on all Owners of any seized vehicle, vessel, or aircraft within fifteen (15) days following the seizure, by one of the following methods:
 - (1) Upon an Owner or Claimant whose right, title or interest is of record in the division of motor vehicles or department of licensing of the state in which a conveyance is licensed, by mailing a copy of the notice by certified mail with return receipt requested to the address on the records of the division of motor vehicles or department of licensing of said state.
 - (2) Upon an Owner or Claimant whose name and address are known, by mailing a copy of the notice by certified mail with return receipt requested to his or her last known address.
 - (3) Upon an Owner or Claimant, whose address is unknown but who is believed to have an interest in the property, by publication in one

issue of a newspaper of general circulation in Mason County, State of Washington.

- (b) The clerk shall serve notice thereof on all Owners of any property other than any seized vehicle, vessel, or aircraft within fifteen (15) days following the seizure, by publication in one issue of a newspaper of general circulation in Mason County, State of Washington and, upon an Owner or Claimant whose name and address are known, by mailing a copy of the notice by certified mail with return receipt requested to his or her last known address.

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

3.09.206 Answer to Notice

Within thirty (30) days after the mailing or publication of a notice of seizure as provided under Section 3.09.014, the Owner or Claimant of the seized Property may file a verified answer to the allegation of the use of the Property contained in the notice of seizure and of the intended forfeiture proceedings.

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

3.09.207 Defenses Available

Defenses available under this Ordinance are:

- (a) At the hearing, any Owner or Claimant who has a verified answer on file may show by a preponderance of the evidence that the Property was not used as a vehicle, depository or place of concealment for a Controlled Substance and/or that the Property was not used to violate or in violation of Skokomish Tribal ordinance and/or regulation.
- (b) At the hearing, any Owner or Claimant who has filed a verified answer may establish by a preponderance of the evidence that the act or omission was not committed or was committed without the party's knowledge or consent.
- (c) An Owner/Claimant of any right, title, or interest in the Property may prove his lien, mortgage or conditional sales contract to be bona fide, and that his right, title or interest was created after he undertook a reasonable investigation of the moral responsibility, character and reputation of the purchaser, and without knowledge that the Property was being or was to be used for the purpose charged.
- (d) The defense of entrapment may be established by a showing that the design for violation of this Ordinance originated in the mind of law enforcement officials or any person acting under their direction; and, that the actor was lured or induced to commit a violation under this Ordinance which the actor had not otherwise intended to commit. The defense of entrapment is not established by a showing that law enforcement officials merely afforded the actor an opportunity to commit a violation under this Ordinance.

- (e) Where the Claimant before the Tribal Court

- (1) has a lien on the Property, and he is entitled to having the lien because he has performed labor upon the Property, made repairs upon it, or has incurred costs for the storage, repairs, or safekeeping of any Property; or
- (2) does business under any law of the Tribe, State, or the United States relating to banks, trust companies, credit unions, licensed pawnbrokers or money lenders; or
- (3) sells Property, such as the kind of Property confiscated, in the Claimant's ordinary course of business

then the Claimant is not required to prove, as a defense to forfeiture, that right, title or interest in the Property was created after a reasonable investigation of the moral responsibility, character and reputation of the Owner, purchaser, or person in possession of the Property.

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

3.09.208 Procedure for Hearing

- (a) If a verified answer to the notice is not filed within thirty (30) days after the mailing or publication thereof, the Tribal Court shall hear evidence upon the charge of unlawful use of the Property, and upon motion for a default judgment, shall order the Property forfeited to the Skokomish Indian Tribe.
- (b) If a verified answer is filed, the forfeiture proceedings shall be set for a hearing on the next available court date, and the proceedings shall have priority over other civil cases. The Owner or Claimant may voluntarily waive this right to a speedy trial. Notice of the hearing shall be given in the same manner provided for service of the notice of seizure as provided in Section 3.09.014.

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

3.09.209 Burden of Proof – Liabilities

- (a) It is not necessary for the Tribe to negate any exemption or exception in this Ordinance in any complaint, answer, information, indictment, or other pleading or in any trial, hearing, or other proceeding. The burden of proof of any exception is upon the person claiming it and must be established by a preponderance of the evidence.
- (b) In the absence of evidence that a person is the lawful Owner or has a claim in the Property, the person is presumed not to be the Owner or Claimant. The burden of proof is upon the person to rebut the presumption by a preponderance of the evidence.

- (c) No liability is imposed by this Ordinance upon the Tribe or any authorized law enforcement officer while engaged in the lawful performance of his or her duties.

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

3.09.210 Disposition of Property

If it is established by a preponderance of the evidence that the subject Property was used by the Property's Owner or that the Property Owner Knowingly permitted such use in violation of Skokomish Tribal law or regulation, and the Owner thereafter fails to rebut or disprove this, the Tribal Court shall determine whether any Claimants are entitled to the Property or any proceeds therefrom. This determination shall be made by examining evidence which indicates how and to what extent the Claimant acquired an interest in the Property. The Tribal Court shall further determine whether it has been established by a preponderance of the evidence that the Claimant acted in such a manner as to require forfeiture of her interest under this Ordinance.

- (a) If proof by a preponderance of the evidence does not establish that the Property was Knowingly used or permitted to be used by the Property Owner/Claimant, the Tribal Court shall order the Property released to the bona fide Owner/Claimant if the amount which the Owner/Claimant is entitled to (through the transaction from which she acquired an interest in the Property) is equal to, or more than, the value of the Property as of the date of seizure.
- (b) If the monetary amount owed to a Claimant or Claimants is less than the value of the Property, the Property may be sold at a public auction by the Tribal police chief after due and proper notice has been given, and the amount owing the Claimant shall be paid from proceeds of the sale. Any remaining proceeds shall be forwarded to the Skokomish Indian Tribe.
- (c) If no such Claimant exists, and the confiscating agency wishes to retain the Property for its official use, it may do so if so authorized by the Skokomish Indian Tribe. If such Property is not to be retained, it shall be disposed of by sale, with proceeds tendered to the Skokomish Indian Tribe, except that illegal substances or counterfeit illegal substances shall be destroyed unless needed for evidentiary purposes, and thereafter shall be destroyed.

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

Legislative History prior to July 5, 2017

Adopted by Resolution No. 10-112 (November 3, 2010)

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

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