

SKOKOMISH INDIAN TRIBAL TOBACCO CONTROL AND TAX ORDINANCE

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GENERAL PROVISIONS

4.06.001 Title

This ordinance shall be known as the Skokomish Indian Tribal Tobacco Control and Tax Ordinance.

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

4.06.002 Definitions

In this ordinance, unless otherwise specifically stated:

- (a) "Agent" means the Skokomish Indian Tobacco Tax Agent.
- (b) "Auditor" means an independent third party auditor selected according to the terms of the Compact.
- (c) "Cigarette" means any roll for smoking made wholly or in part of tobacco,

irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

- (d) "Commercial sale" means any transfer, exchange, or barter in any manner or by any means whatsoever for a consideration by any person, association, partnership, or corporation, of cigarettes or other tobacco products. It includes a gift made as a means of evading the provisions of this ordinance.
- (e) "Commission" means the Skokomish Indian Tribal Tobacco Control and Tax Commission.
- (f) "Compact" means the Cigarette Tax Compact between the Skokomish Indian Tribe and the State of Washington.
- (g) "Council" means the Skokomish Indian Tribal Council, as constituted by Article IV of the Constitution of the Skokomish Indian Tribe.
- (h) "Department" means the Washington State Department of Revenue.
- (i) "Indian country," consistent with the meaning given in 18 United States Code (U.S.C.) section 1151, includes:
 - (1) All land within the limits of the Skokomish Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation.
 - (2) All lands placed in trust or restricted status for individual member Indians or for the Tribe, and such other lands as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.
 - (3) All Indian allotments or other lands held in trust for a tribal member or the Tribe, the Indian titles to which have not been extinguished, including rights of way running through the same.
- (j) "Reservation" means land lying within the boundaries of the Skokomish Indian Reservation, Washington.
- (k) "Skokomish Indian tobacco tax" means any tax imposed by the Commission on the commercial sale of tobacco products sold within Indian Country.
- (l) "State" means the State of Washington.
- (m) "State Cigarette Tax" means the state tax imposed on each cigarette, which is expressed in cents per cigarette.

- (n) "State and Local Retail Sales and Use Taxes" means taxes levied by the State or by local units of government and expressed as a percentage of the sales price (which includes the State Cigarette Tax) of a unit of cigarettes.
- (o) "State Taxes," for purposes of this ordinance only, means a combination of the "State Cigarette Tax" and the "state and local retail sales and use taxes."
- (p) "Tobacco products" means cigars, cheroots; stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared .in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. "Tobacco products" does not include cigarettes.
- (q) "Tribe" or "Tribal" means the Skokomish Indian Tribe of the Skokomish Reservation, Washington, a federally recognized Tribe.
- (r) "Tribal cigarette tax" means the tax or taxes enacted as a provision of Tribal law on the units of cigarettes sold and on the purchase of cigarettes by retail buyers.
- (s) "Tribal member" or "member" means an enrolled member of the Skokomish Tribe.
- (t) "Tribal retailer" means a cigarette retailer wholly owned by the Skokomish Tribe and located in Indian country or a member-owned smokeshop located in Indian country and licensed by the Tribe.
- (u) "Wholesale sales price" means the established price for which cigarettes and tobacco products are sold to the Commission or its Agent by a manufacturer or distributor, exclusive of any discount or other reduction.

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

4.06.003 Scope

- (a) Application. This ordinance shall apply to the full extent of the sovereign jurisdiction of the Skokomish Tribe in Indian Country.
- (b) Compliance. Compliance with this ordinance is hereby made a condition of the use of any land or premises in Indian Country.
- (c) Deemed to Consent. Any person who resides within the jurisdiction of the Skokomish Tribe; conducts business or engages in a business transaction with the Skokomish Tribe or in Indian Country; receives benefits from the Skokomish Tribal government, including police, fire or emergency services; acts under Skokomish Tribal authority, or enters Indian Country shall be deemed thereby to have consented to the following:

- (1) To be bound by the terms of this ordinance;
- (2) To the exercise of civil jurisdiction by the Skokomish Tribal Court over said person in legal actions arising pursuant to this ordinance; and
- (3) To detainment, service of summons and process, and search and seizure, in conjunction with legal actions arising pursuant to this ordinance.

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

SECTION ONE

4.06.010 Tobacco Control and Tax Commission

- (a) There shall be established the Skokomish Indian Tribal Tobacco Control and Tax Commission. Authority and responsibility for administration of this ordinance, including the control, management and supervision of all commercial cigarette and tobacco product sales and all commission employees shall be vested in the commission, except as specifically provided in this ordinance.
- (b) The Commission shall consist of seven (7) members. Persons elected to the Skokomish Tribal Council shall become members of the commission upon election to the Tribal Council and shall serve on the commission until their respective council terms expire.
- (c) A majority of the members of the Commission shall constitute a quorum. No vacancy in the membership of the Commission shall impair the right of the remaining members to act.
- (d) The principal office of the Commission shall be at the Skokomish tribal office.
- (e) The Commission shall conduct all business pursuant to this ordinance at the regularly scheduled Tribal Council meetings at the tribal office. It shall keep accurate records of all proceedings of the Commission.
- (f) The Commission may employ such employees as in its judgment are required.
- (g) Actions taken by the Commission pursuant to this ordinance shall be a matter of public record.

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

4.06.011 Sales and Taxation of Tobacco Products

- (a) The Commission shall determine and impose the Skokomish Indian tobacco tax on the commercial sale of all tobacco products sold within Indian Country. The commission may impose, eliminate, raise or lower the tax whenever it considers it necessary to do so.

- (b) No commercial sale of tobacco products may be made within Indian Country except those tobacco products which have been purchased by a tribal retailer and sold by a tribal retailer and upon which the full amount of any Skokomish Indian tobacco tax is levied.
- (c) No sale of cigarettes or any tobacco product shall be made to any person under the age of 18 years old within Indian Country.

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

4.06.012 Tobacco Tax Agent

- (a) The Commission may employ or appoint one or more Tobacco Tax Agents. The Commission shall establish the salary and duties of the Agent so that they are consistent with the provisions of this ordinance.
- (b) The Agent shall be responsible for the purchase of cigarettes and other tobacco products at wholesale price from a wholesaler; for the sale of cigarettes and other tobacco products as provided in this ordinance; for collection of the Skokomish Indian tobacco tax on each commercial sale made pursuant to this ordinance; for the reporting and disbursement of revenues from the Skokomish Tobacco Tax in as provided in this ordinance.
- (c) The Agent shall be bonded for such amount and for such purposes as the Commission shall require.
- (d) The Agent shall be required to report and account to the Commission, or its authorized representative, at least twice a year regarding the operation and financial status of the Commission's business. The Commission shall establish the dates on which such accounting shall take place and may require more frequent accounting if it considers them necessary.

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

SECTION TWO

4.06.020 Cigarette Tax—Compact with Washington State

On November 23, 2004, the Tribe entered into a compact with the State of Washington regarding the sale and taxation of cigarettes within Indian Country (the "Compact"). In accordance with the terms of the Compact and during its term:

- (a) The Tribe shall impose taxes on all sales by tribal retailers of cigarettes to purchasers within Indian country. The Tribe may allow for an exemption from such taxes for sales to Tribal members.
- (b) Beginning January 1, 2005, the Tribe shall impose and maintain in effect a tax on retail sales of cigarettes equal to 80% of the state taxes.

- (c) No later than 36 months after the initial imposition of the tax under the Compact, and subject to the phase-in reduction under S.T.C. 4.06.020(d), the Tribe shall impose and maintain in effect a tax on the retail sale of cigarettes equal to 100% of the state taxes.
- (d) If during any quarter, the number of cartons of cigarettes, excluding those manufactured by the Tribe or its enterprises, that are sold at retail exceeds by at least 10 percent the quarterly average sales of the six months preceding the imposition of the Tribal cigarette tax, the 36 month period noted above shall be reduced by three months. These reductions will be cumulative. The quarterly average sales baseline shall be determined by the Tribe's auditor in accordance with the terms of the Compact.
- (e) During the term of the Compact and upon any future increase in the state cigarette tax, the tribal tax on cigarettes shall increase by no less than 100 percent of the increase in the combined state taxes. Notwithstanding the foregoing sentence, so long as the Tribe is entitled to apply the 80 percent formula set forth above to cigarette sales, the increase in State taxes shall trigger an increase in the corresponding Tribal cigarette tax of 100 percent of the 80 percent of the increased amount.
- (f) Upon any future decrease in the state cigarette tax, the tribal tax on cigarettes may decrease to a minimum of no less than 100 percent of the combined State taxes.

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

4.06.021 Purchase of Cigarettes by Tribal Retailers

- (a) Tribal retailers shall purchase cigarettes only from:
 - (1) Wholesalers or manufacturers licensed to do business in the State;
 - (2) Self-certified wholesalers who meet the requirements of Part VI section 2 of the Compact;
 - (3) Self-certified tribal wholesalers who meet the requirements of Part VI section 3 of the Compact; or
 - (4) The Tribe or its enterprises as a tribal manufacturer or wholesaler.
- (b) Delivery of Cigarettes to the Tribal Retailer Outside of Indian Country:
Cigarettes bearing the tax stamp required by the Compact or cigarettes purchased by the Tribe for stamping may be delivered or transferred within or outside Indian country by a wholesaler to the Tribe or a tribal retailer, subject to meeting any notification requirements of the Compact. Commercial carriers may make deliveries. Invoices identifying the delivery as cigarettes for the Skokomish Tribe must accompany such cigarettes.

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

4.06.022 Tax Stamps

(a) Tax Stamp Required

- (1) All cigarettes sold by tribal retailers shall bear either a Washington State Tribal Compact Stamp or a Skokomish Tribe tax stamp.
- (2) The Tribe may allow for an exemption from this tax for enrolled members who are over the age of 18 years. If the Tribe chooses to exempt its members from tax, the Tribe will keep exact records of such sales as required by the Compact. If the Tribe chooses to tax its members, the allocation allowance described in WAC 458-20-192 will be used as an approximation of sales to members and the Tribe will not be required to keep exact records of such sales. This allocation figure will be used to distinguish funds subject to the requirements of section 4.06.023 of this ordinance, from funds that are not.

(b) Creation and Supply of Tax Stamps

- (1) The Tribe will use either Washington State Tribal Compact tax stamps, which are provided by the State through its stamp vendor, or tribal tax stamps. If the Tribe elects to institute its own stamp, the Tribe and State shall negotiate a memorandum of understanding concerning the use of such stamps.
- (2) If the Tribe elects to use the state tribal compact tax stamps it will purchase cigarettes with the stamp affixed after the effective date of the tribal cigarette tax, until such time as the Tribe arranges for the use of a tribal stamp. If the Tribe makes this election, the wholesaler shall obtain the stamps from the State's stamp vendor. The wholesaler shall affix the stamps to the cigarettes, sell the cigarettes to the Tribe without tax included in the price, and the Tribe in turn shall institute an accounting and pricing protocol that assures the cigarette tax is included in the price of the cigarettes. The State and the Tribe may agree to an alternative method of obtaining the stamps and accounting for tax revenue, such method to be agreed to by both parties and memorialized in writing.
- (3) If the Tribe elects to use the tribal tax stamps, the stamps will have a serial number or some other discrete identification. The Tribe will purchase stamps from a nationally recognized stamp manufacturer.

- (c) Requirements for Affixation of Stamps by Wholesalers Wholesalers or the Tribe shall be responsible for affixing the tax stamps to the smallest container of cigarettes that will be sold or distributed by the tribal retailer. Stamps shall be affixed so that the stamps may not be removed from the package without destroying the stamp. Stamps shall be affixed so that they may be readily viewed by inspection.

- (d) Wholesalers shall only possess unstamped cigarettes for as long as is reasonably necessary to affix tax stamps to the packages for sale or to ship to the Tribe.

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

4.06.023 Essential Government Services

- (a) Tribal cigarette tax revenue shall be used for essential government services. The Auditor shall certify the use of revenue under the process set forth in Part VIII of the Compact.
- (b) Tribal cigarette tax revenue shall not be used to subsidize tribal cigarette and food retailers. "Subsidize" means that proceeds from the tribal cigarette tax cannot be expended on the direct business activities of the Tribal retail cigarette business. In addition, where the cigarette business is collocated with a retail food business, the proceeds cannot be expended on the direct business activities of the tribal retail cigarette business.
- (c) The following definitions shall apply to this section:
 - (1) "Direct business activities" include paying wages, benefits, bonuses, or expenses, related to the maintenance and operation of the retail facility or typically considered to be part of a business's operating expenses and overhead;
 - (2) "Essential governmental services" include, but are not limited to government services to provide and maintain infrastructure such as sidewalks, roads, and utilities; services such as fire protection and law enforcement; the costs of administering the Tribal cigarette tax stamp program under the Compact, including all deductions and exemptions similar to those available to retailers, wholesalers, and others under state law, further including transportation vehicles and related costs; Tribal administration activities such as tax functions, contracting for health benefits, economic development, natural resources, and the provision of job services; and distribution of moneys related to trust funds, education, general assistance, such activities as land and building acquisitions, and building development and construction.

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

4.06.024 Other Retail Sales within Indian Country by Tribal Members

- (a) Only tribal retailers are permitted to make retail cigarette sales within Indian country.
- (b) Any tribal retailer that is not wholly owned by the Tribe must obtain a license from the Commission or the Commission's Agent to make retail cigarette sales in Indian country.

- (c) Tribal retailer licenses shall require that tribal retailers comply with the terms of this ordinance and the Compact, including but not limited to permitting the Department to observe sales pursuant to section 1 of Part X of the Compact and providing the Auditor access to such records as are necessary for full compliance with Part VIII of the Compact.
- (d) Failure to comply with the requirements of S.T.C. 4.06.024(c) shall result in revocation of the non-compliant tribal retailer's license to make cigarette sales in Indian Country. Prior to revocation, the tribal retailer shall be given notice of its failure to comply and a reasonable opportunity to comply. Notice shall be provided in writing by the Commission or the Commission's Agent and shall clearly state the nature of the violation, the steps that must be taken to correct the violation, and the time within which the violation must be corrected. The revocation of the tribal retailer's license to make cigarette sales within Indian Country shall be in addition to any penalties imposed under Section Three of this ordinance.

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

SECTION THREE

4.06.030 Penalties

Sale of tobacco products or cigarettes in violation of this Skokomish Indian Tribal Tobacco Control and Tax Ordinance is a civil infraction, subject to a civil fine of no less than \$500 and no more than \$1,000, and a class C criminal offense. In the case of a continuing violation, each day in which the seller is in violation of this ordinance shall constitute a separate violation.

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

4.06.031 Enforcement

The Skokomish Tribal Court, established in S.T.C. 3.01, shall have jurisdiction in all proceedings to enforce this ordinance. The Rules of the Skokomish Tribal Court (S.T.C. 3.01) and the Skokomish Criminal Code—Sentencing, Sentencing guidelines, and Bail Schedule (S.T.C. 9.11) shall apply to proceedings under this ordinance.

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

SECTION FOUR

4.02.040 Severability

In the event that any section or provision of this ordinance is held invalid, it is the intent of the Tribal Council that the remaining sections or provisions of this ordinance shall continue in full force and effect.

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

Legislative History prior to July 5, 2017

+Adopted by Resolution No. 75-68 (January 10, 1975)
+Adopted by Resolution No. 79-9 (March 13, 1979)*
Extended for Six Months by Resolution 79-47 (August 27, 1979)*
+Civil Actions Authorized by Resolution 80-6 (February 26, 1980)*
+Extended for One Year by Resolution 80-15 (April 7, 1980)*
Amended by Resolution 80-24 (May 16, 1980)*
+Amended by Resolution 05-96 (August 10, 2005)
Reaffirmed by Resolution No. 17-100 (July 5, 2017)

*Emergency Interim Tobacco Control and Tax Ordinance

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