

**SKOKOMISH BUSINESS LICENSING ORDINANCE**

**Adopted by Resolution No. 06-114 (October 4, 2006)**

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**General Provisions**

**4.08.001 Title**

This Ordinance shall be known as the Skokomish Business Licensing Ordinance.

**4.08.002 Authority**

This Ordinance is enacted pursuant to the inherent sovereign authority of the Skokomish Indian Tribe in accordance with the Treaty of Point No Point, the Constitution of the Skokomish Indian Tribe, and applicable federal law. Pursuant to Article V of the Constitution, the Skokomish Tribal Council has the authority to enact laws and ordinances, to license and regulate the conduct of business activities, and to impose taxes on all persons and property within the Tribe's jurisdiction.

#### **4.08.003 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; 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 detention, service of summons and process, and search and seizure, in conjunction with legal actions arising pursuant to this Ordinance.

#### **4.08.004 Findings and 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 political integrity, economic security, and health and welfare of the Tribe. Accordingly, the Council declares that the Tribe has 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deny, or withdraw the privilege of doing business within the Reservation, except where such authority is limited or withdrawn from the Tribe by the applicable laws of the United States. Therefore, it is necessary to promulgate rules and regulations which govern the conduct of trade and business transactions on lands under the jurisdiction of the Skokomish Tribe.

#### **4.08.005 Definitions**

The words below shall have the meaning set forth in this section when they appear in this Ordinance, unless a different meaning is clearly intended. If a term is not defined herein, it has its ordinary dictionary meaning.

- (a) **Abuse of Discretion** means a gross failure to exercise sound, reasonable, and legal decision-making.
- (b) **Aggrieved Party** means a party who has been denied a business license at any stage, including the Final Determination.
- (c) **Business, Trade, or Commercial Activity** means any activity engaged in by any person for the purposes of realizing a gain, benefit, or advantage, either direct or indirect, such as conducting a trade, profession, or commercial activity involving the sale of any property or services; provided however, that an isolated sale of property or an isolated service shall not be considered to be a business under this Title.

- (d) **Board** means the Business Licensing Hearings Board appointed by the Tribal Council for the purpose of hearing administrative appeals from licensing violations or revocations, as provided under Section 4.08.035 of this Title.
- (e) **Certified Mail** means any method of delivery in which the sending party receives confirmation of receipt.
- (f) **Closed Hearing or Closed Session** means a hearing or meeting of the Tribal Council that is not open to the public.
- (g) **Conflict of Interest** means an action taken by an official or employee of the Tribe which is in conflict with his or her obligation to take actions in the best interest of the Skokomish Indian Tribe. In most cases, a conflict of interest arises because an individual has taken an action in his or her own personal interest rather than in the interest of the Tribe or tribal membership as a whole. A conflict of interest does not necessarily arise when the individual takes an action or position believing it to be in the best interest of the Tribe even though others may disagree.
- (h) **Council or Tribal Council** means the governing body of the Skokomish Indian Tribe as constituted and empowered under the Constitution of the Skokomish Indian Tribe, as amended.
- (i) **Days** are calculated as calendar days.
- (j) **Governmental Entity** means the United States, the Tribe, 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 Tribe.
- (k) **Immediate Family** includes, mother, father, sisters, brothers, sons, daughters, stepchildren, spouses, and significant others.
- (l) **Indian Country** includes, consistent with the meaning given in 18 United States Code (U.S.C.) section 1151, the following lands:
- (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.
- (m) **License** means any official, legal, and revocable permission granted by the Tribe, pursuant to this Ordinance, to conduct any business activity on Indian lands.
- (n) **Licensee** means any person issued a business license by the Tribe.

- (o) **Person** means any individual, association, partnership, corporation, trust, or any other form of business organization.
- (p) **Reservation** means all lands lying within the external boundaries of the Skokomish Indian Nation's Reservation.
- (q) **Tribal Manager** means the executive officer hired by the Tribal Council to be responsible for the execution of tribal laws and policies and the management of tribal business, or their designee.
- (r) **Tribe** means the Skokomish Indian Tribe.
- (s) **Tribal Court** means the Skokomish Tribal Court.

**4.08.006 Administration of Title**

Responsibility for administration of this Title shall be assumed by the Tribal Manager of the Skokomish Tribe or their designee.

**4.08.007 Business Licensing Hearings Board**

The Skokomish Tribal Council shall appoint a Business Licensing Hearings Board for the purpose of hearing administrative appeals from licensing violations or revocations, as provided under Section 4.08.035 of this Title. The Board shall be made up of three (3) members. Two (2) alternates shall also be appointed and shall serve in the event of unavailability or conflict of interest. No Board member shall hear an appeal involving an immediate family member. Board members shall serve indefinite terms until resignation or removal for cause by the Tribal Council.

**Business Licenses**

**4.08.010 License Required**

This Title shall be applicable to all persons engaged in business within the exterior boundaries of the Reservation. No person shall engage in business upon the Reservation without a valid business license issued by the Tribe, except as provided in Section 4.08.015 of this Title. Any business regulated by the Skokomish Fireworks, Fishing, or Gaming Ordinances must be licensed in accordance with the provisions found in those Titles and are not subject to this Ordinance.

**4.08.011 Application and Issuance**

(a) An application for a business license shall be submitted in writing to the Tribal Manager through a form approved by the Tribal Council or other individual authorized by the Tribal Council. All applications shall include:

- (1) A description of the business or trade;
- (2) The name and address of the owner or owners of the business or trade, including proof of identification;
- (3) The trade name, if any, to be used by the business or trade;

- (4) The location(s) at which the business will be conducted;
  - (5) A sworn statement that the applicant will comply with all tribal law applicable to the business;
  - (6) A statement that the applicant consents to Tribal Court jurisdiction and service of process in matters arising from the conduct of business;
  - (7) The name, address, and signature of the agent who will accept service of process on behalf of the company; and
  - (8) The appropriate fee.
- (b) If the application is approved, the Tribal Manager or their designee shall issue the license within fourteen (14) calendar days.

**4.08.012 Classes of Licenses**

- (a) Temporary Business License: All persons engaged in business on the Reservation for a period of seven (7) calendar days or less shall have a temporary business license.
- (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.
- (c) Permanent Business License: All persons engaged in business for a period exceeding three (3) months shall have a permanent business license. A licensee holding a permanent business license must apply for renewal each year. Applications for renewal of a permanent business license must be submitted at least thirty (30) calendar days prior to the expiration of the existing license.

**4.08.013 Denial of License and Appeal**

If it is determined that:

- (a) the application is incomplete or the appropriate fee has not been paid; or
- (b) the applicant has materially misrepresented facts contained in the application or has filed an application which is incomplete in any way; or
- (c) the applicant is presently in non-compliance with tribal law or has engaged in a fraudulent, deceptive, or dishonest practice; or
- (d) the applicant is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in commercial activity or any particular practice related to such activity; or
- (e) the business will threaten the political integrity, economic security, or health and welfare of the Tribe,

the Tribal Manager shall issue an order of denial to the applicant by certified mail, return receipt requested, within fourteen (14) calendar 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 seven (7) calendar days from receipt of the order of denial to file a notice of appeal with the Tribal Manager under Section 4.08.14 of this Title.

#### **4.08.014 Process for Reconsideration and Appeal**

(a) Written Notice of Request for Reconsideration. Any person who is denied a business license, pursuant to Section 4.08.013 of this Title, may file a notice for reconsideration as follows:

- (1) The Notice of Request for Reconsideration shall be in writing, dated and signed by the aggrieved party;
- (2) The Notice of Request for Reconsideration shall include a concise statement of relief requested and any new or previously unconsidered information that supports the relief; and
- (3) A copy of the Notice of Request for Reconsideration shall be given to the Tribal Manager.

(b) Expedited Administrative Hearing. Within seven (7) calendar days of receipt of the Notice of Request for Reconsideration, the Tribal Manager shall set a date for hearing and shall notify the applicant.

- (1) A closed hearing shall be held within thirty (30) calendar days of receipt of the Notice of Request for Reconsideration;
- (2) At the closed hearing, the aggrieved party shall be given the opportunity to present any testimony, documents, or other evidence to support the request; and
- (3) The Tribal Manager shall inform the aggrieved party of the final determination in writing within seven (7) calendar days of the hearing.

(c) Appeal from Final Determination. Any person who is aggrieved by a final determination of the Tribal Manager, pursuant to sub-section (b) above, may appeal the decision to the Tribal Council.

- (1) The aggrieved party shall file a written Notice of Appeal with the Tribal Council and shall be added to the agenda of the next regular Tribal Council meeting;
- (2) The aggrieved party shall attach to the written Notice of Appeal, copies of the original Notice of Request for Reconsideration and supporting documentation presented at the hearing;
- (3) Upon the filing of the Notice of Appeal, the Tribal Manager shall provide any record of the expedited administrative hearing to the Tribal Council;

- (4) The Tribal Manager shall attend the Tribal Council meeting at which the appeal is to be heard;
- (5) The appeal shall be heard in a closed session of the Tribal Council meeting;
- (6) The Tribal Council shall reverse a final determination of the Tribal Manager only upon a finding that it was arbitrary, capricious, or an abuse of discretion.

#### **4.08.015 Exemptions**

Governmental entities shall not be required to obtain a license under this Title.

#### **4.08.016 Conditions of License**

- (a) Each licensee shall comply with all applicable tribal laws.
- (b) Each licensee consents to the jurisdiction of the Tribal Court as to any cause of action arising in connection with the transaction of any business within the Reservation. Each licensee consents to the service of process of the Tribal Court with respect to all actions over which the Tribal Court has subject matter jurisdiction, in accordance with the Rules of the Skokomish Tribal Court.

### **Business Licensing Fee**

#### **4.08.020 License Fee Imposed**

Any person required to obtain a business license in accordance with this Title shall pay a license fee. License fees shall be set by the Tribal Council in a fee schedule. The fee schedule shall set forth the applicable rates for designated classes of licenses and may be periodically amended at the discretion of the Tribal Council. The Tribal Manager may review license fees annually and make recommendations to the Tribal Council regarding such amendments.

### **Enforcement and Penalties**

#### **4.08.030 Failure to Obtain License or to Comply with Terms of License**

- (a) Failure to Obtain a License

Any person who fails to obtain a license required under this Ordinance shall be issued a Notice of Violation, which may include an order to show cause why that person should not be enjoined from doing business on the reservation without a license.

- (b) Failure to Comply with License

Any person who fails to comply with the terms of a license under this Ordinance shall be issued a Notice of Violation, which may include an order to show cause why that person's license should not be revoked.

#### **4.08.031 Notice of Violation**

The Notice of Violation shall describe the specific violation, the amount of any monetary penalty, and if applicable, shall order the violation to cease and desist. The notice shall be given to the person directly or sent by certified mail with return receipt requested.

#### **4.08.032 Revocation of License**

(a) Licenses issued under the provisions of this Ordinance may be revoked for any of the following causes:

- (1) Fraud, misrepresentation, or incorrect statement contained in the application for license; or
- (2) Fraud or misrepresentation made in the course of carrying on the business; or
- (3) Conducting business in an unlawful manner or in such a manner as to constitute a danger to the health, safety, or general welfare of the public; or
- (4) Failure to comply with any other applicable licensing, certification, or bonding requirements specific to the business licensed.

(b) When it is brought to the attention of the Tribe that grounds for revocation exist, the Tribal Manager shall issue a written Notice of Revocation to the licensee.

#### **4.08.033 Notice of Revocation**

The Notice of Revocation shall describe the specific grounds for the revocation and order the licensee to cease and desist business immediately. The notice shall be given to the person directly or sent by certified mail with return receipt requested.

#### **4.08.034 Civil Penalties and Restitution**

The civil penalty for failure to obtain a license or failure to conform to the terms of a license, as required by this Ordinance, is a fine not to exceed five thousand dollars for each violation. Penalties shall be set by the Tribal Council in a penalty schedule. The penalty schedule shall set forth minimum penalties for violations of this Ordinance. The Tribal Manager may make recommendations to the Tribal Council regarding amendments to the penalty schedule. Restitution may also be ordered.

#### **4.08.035 Appeals**

(a) Administrative Appeal



- (1) After receiving a Notice of Violation or Notice of Revocation, a licensee may make an administrative appeal to the Business Licensing Hearings Board. A Notice of Appeal must be filed with the Tribal Manager within five (5) days of the notice of violation or notice of revocation, unless additional time has been granted after written request by the licensee. Upon receipt of the notice of appeal, the Tribal Manager shall notify the appellant in person, by telephone, or by other electronic means, of the time set for the hearing. The hearing shall take place within ten (10) calendar days after filing of the notice of appeal.
- (2) At the hearing, the appellant shall be entitled to present testimony, to cross-examine opposing witnesses, and to present other evidence in accordance with the Skokomish Rules of Court. All oral testimony shall be recorded and retained until expiration of the time within which the appellant could appeal to Tribal Court. In the event of such an appeal, the Tribal Manager 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 Business Licensing Hearings Board shall rule upon the appeal within five (5) days after the hearing, and shall set forth in writing the factual findings and reasons for its decision. If the appeal is denied, the ruling shall state that the applicant has five (5) days from receipt thereof to file a notice of appeal with the Tribal Court under this Section.

(b) Tribal Court Appeal

- (1) If the Business Licensing Hearings Board denies the administrative appeal, the licensee may appeal to Tribal Court. A written Notice of Appeal must be filed with the court within five (5) calendar days of receipt of the Board's decision. Appeals shall be governed in all respects in accordance with the rules and procedures of the Skokomish Tribal Court, except as specified in sub-section (b)(2) below.
- (2) Upon receipt of a Notice of Appeal from an administrative hearing, the Tribal Court shall notify the applicant of the time set for the appeal hearing. The appeal shall be decided by the Tribal Court sitting without a jury, solely on the record established during the administrative hearing. No new or additional evidence may be introduced during the appeal. The Tribal Court shall uphold all factual findings of the Board unless the Court determines that such findings are not supported by substantial evidence in the record, and the standard of review shall be abuse of discretion.

**4.08.36 Severability**

If any provision of this Title or its application to any person, entity, or circumstance is held to be invalid, the remainder of the Title shall not be affected.