

**Article XIV—Amendments**

This Ordinance may be amended only pursuant to a duly enacted Tribal Council Resolution with certification by the Secretary of the Department of the Interior and publication in the **Federal Register**, if required.

**Article XV—Sovereign Immunity**

Nothing contained in this Ordinance is intended to nor does it in any way limit, alter, restrict, or waive the Tribe's sovereign immunity from unconsented suit or action.

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BILLING CODE 4310-4J-P

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****Skokomish Liquor Control Ordinance**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes an amendment to the Skokomish Indian Tribe's Liquor Control Ordinance published in the **Federal Register** November 3, 1983 (48 FR 50797). The amendment regulates and controls the possession and consumption of liquor within the tribal lands. The tribal lands are located in Indian country and this amended Ordinance allows for possession of alcoholic beverages within their boundaries. This Ordinance will increase the ability of the tribal government to control liquor sales, possession and consumption by the community and its members.

**DATES:** *Effective Date:* This Ordinance is effective on January 7, 2009.

**FOR FURTHER INFORMATION CONTACT:** Betty Scissons, Tribal Government Services Officer, Northwest Regional Office, 911 NE 11th Ave., 8th Floor, Portland, OR 97232, Telephone: (503) 231-6723, Fax (503) 231-2189; or Elizabeth Colliflower, Office of Indian Services, 1849 C Street, NW., Mail Stop 4513-MIB, Washington, DC 20240, Telephone: (202) 513-7640.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted or amended liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Skokomish Indian Tribe amended its Tribal Liquor Control

Ordinance by Resolution No. 08-011 on February 20, 2008. The purpose of this Ordinance is to govern the sale and possession of alcohol within tribal lands of the Tribe. This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the amended Skokomish Indian Tribe's Liquor Control Ordinance was duly adopted by the Skokomish Indian Tribe's Tribal Council on February 20, 2008.

Dated: November 24, 2008.

**George T. Skibine,**

*Acting Deputy Assistant Secretary for Policy and Economic Development.*

The amended Skokomish Indian Tribe's Liquor Control Ordinance reads as follows:

**Skokomish Liquor Control Ordinance***General Provisions*

## 4.05.001 Title

This Ordinance shall be known as the Skokomish Liquor Control Ordinance.

## 4.05.002 Authority

This Ordinance is enacted by the Skokomish Tribal Council, the governing body of the Skokomish Indian Tribe, which has 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 pursuant to the Constitution of the Skokomish Indian Tribe Article IV, Section 1; Article V, Section 1(j).

## 4.05.003 Findings

(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 and federal trust land 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.

## 4.05.004 Purpose

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 Control Ordinance." This Ordinance shall be liberally construed to fulfill the purposes for which it has been adopted.

## 4.05.005 Jurisdiction

(a) *General Jurisdiction.* The provisions of this Ordinance shall apply to the fullest extent of the sovereign jurisdiction of the Skokomish Indian Tribe as authorized by the Tribe's Constitution, the Treaty of Point No Point and applicable federal law.

(b) *Civil Jurisdiction.* The Skokomish Tribal Court shall have exclusive jurisdiction to enforce the provisions of this Ordinance.

(c) *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.

## 4.05.006 Severability

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.

#### 4.05.007 Effective Date

This Ordinance shall be effective upon certification by the Secretary of the Interior and its publication in the **Federal Register**.

#### 4.05.008 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.

#### 4.05.009 Conformity with Tribal Constitution

All provisions of, acts and transactions under this Ordinance shall at all times comply with the Constitution of the Skokomish Indian Tribe.

#### 4.05.010 Sovereign Immunity Preserved

Nothing in this Ordinance is intended or shall be construed as a waiver of the sovereign immunity, rights, powers or privileges of the Skokomish Indian Tribe.

#### 4.05.011 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.

#### 4.05.012 Amendment

This Ordinance may only be amended by a vote of the Board.

#### 4.05.013 Definitions

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

(b) *Alcoholic Beverage* is synonymous with the term Liquor as defined in Section 4.05.013(f) 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) *Gross Profits* means total sales revenue less the cost of goods sold, no adjustment being made for additional expenses and taxes.

(f) *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.

(g) *Malt Liquor* means Beer, strong Beer, ale, stout, and porter.

(h) *Package* means any container or receptacle used for holding Liquor.

(i) *Public Place* includes state or county or tribal or federal highways or roads; buildings and grounds used for school purposes: Public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access, and which are generally used by the public. For the purpose of this Ordinance, *Public Place* shall also include any establishment other than a single-family home, which is designed for or may be used by more than just the owner of the establishment.

(j) *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.

(k) *Spirits* means any beverage, which contains Alcohol obtained by distillation, including Wines exceeding seventeen percent of Alcohol by weight.

(l) *Taxpayer* means one who pays or is subject to a tax.

(m) *Tribal Council* means the governing body of the Skokomish Indian Tribe.

(n) *Tribal Liquor Store* means any store, wholly owned by the Tribe at which Liquor is sold at retail and, for

the purpose of this Ordinance, includes stores only a portion of which are devoted to the sale of Liquor.

(o) *Tribe* means the Skokomish Indian Tribe.

(p) *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 Alcohol by weight.

#### Skokomish Indian Liquor Board

#### 4.05.014 Liquor Agency Created (REPEALED)

#### 4.05.015 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.

(b) *Powers of the 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.

#### 4.05.016 Liquor Business Manager (REPEALED)—Liquor Sales

#### 4.05.017 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 or other Public Place wholly owned by the Tribe and authorized to sell Liquor.

#### 4.05.018 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 except that this

provision does not prevent the payment for purchases with the use of a consumer credit or debit card issued by a federally chartered bank.

#### 4.05.019 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 exterior boundaries of 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 4.05.027.

#### 4.05.020 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.

#### Taxation and Proceeds

#### 4.05.021 Tax Imposed

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

(a) On each retail sale of Spirits within the exterior boundaries of the Skokomish Indian Reservation, a tax at the rate of 5% of the retail sales price; and

(b) On each retail sale of Beer and Wine within the exterior boundaries of the Skokomish Indian Reservation, a tax at the rate of 1%.

#### 4.05.022 Taxes Due

All taxes for the sale of Liquor and Alcoholic Beverages on the Skokomish Indian Reservation are due on the 15th day of the month following the end of the fiscal quarter for which taxes are due.

(a) *Delinquent Taxes.* Past due taxes shall accrue interest at 2% per month.

(b) *Mandatory Reporting.* In addition to payment of taxes imposed herein, the Taxpayer shall submit a quarterly accounting of all income from the sale or distribution of Liquor as well as for the taxes collected and remitted.

(c) *Annual Audit Required.* The Taxpayer shall audit, on an annual basis, all Gross Proceeds from Liquor sales including tax assessed, overhead costs and the net proceeds distributed to the general fund of the Tribe as required in Section 4.05.023 of this Ordinance.

#### 4.05.023 Distribution of Taxes

All taxes from the sale of Liquor 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 Tribal 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.

#### 4.05.024 Distribution of Gross Profits

The Gross Profits collected by the Taxpayer for all sales of Liquor within the exterior boundaries of the Skokomish Indian Reservation shall be distributed as follows:

(a) For the payment of taxes provided in Section 4.05.021 of this Ordinance;

(b) For the payment of all necessary personnel, administrative costs, and legal fees directly related to the sale of Liquor;

(c) 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 Tribal Council for the general governmental services of the Tribe.

#### Illegal Activities

#### 4.05.025 Violations

(a) *Liquor Stamp—Contraband.* It shall be a violation of this Ordinance for any person to sell Alcoholic Beverages within the exterior boundaries of 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)

(b) *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.

(c) *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.

(d) *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.

(e) *Illegal Purchase of Liquor.* It shall be a violation of this Ordinance for any person within the exterior boundaries of the Skokomish Indian Reservation to buy Liquor from any person other than at a properly authorized Tribal Liquor Store or Public Place wholly owned by the Tribe.

(f) *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.

(g) *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.

(h) *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.

(i) *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 4.05.024(h) above.

(j) *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.

(k) *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.

(l) *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.

#### Enforcement

##### 4.05.026 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.

##### 4.05.027 Civil 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.

##### 4.05.028 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:

- (a) Liquor control authority card of identification of any state; or
- (b) Driver's license of any state or an identification card issued by any State Department of Motor Vehicles; or
- (c) United States Active Duty Military identification; or
- (d) Passport; or
- (e) Point-No-Point or other treaty area identification cards.

##### 4.05.029 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 or she

shall have the authority to seize consistent with the Skokomish Constitution and the applicable provisions of 25 U.S.C. 1302.

##### 4.02.030 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 Civil 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 Civil Rule 3.01.065(h) of the Skokomish Tribal Court Rules. Provided, however, that the items so forfeited shall not be sold to any person not entitled to possess them under applicable law.

##### 4.05.0031 Abatement

(a) *Declaration of Common 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) *Prima Facie Evidence of Common Nuisance*. 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.

[FR Doc. E8-29025 Filed 12-5-08; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### The Confederated Tribes of the Grand Ronde Community of Oregon

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes an amendment to the Tribal Code (Code), Liquor Ordinance, for the Confederated Tribes of the Grand Ronde Community of Oregon first published in the **Federal Register** July 1, 1996. The amendment regulates and controls the possession and consumption of liquor within the tribal lands. The tribal lands are located in Indian country and this amended Code allows for possession of alcoholic beverages within their boundaries. This Code will increase the ability of the tribal government to control liquor possession, sale and in the community.

**DATES:** *Effective Date:* This Ordinance is effective on December 8, 2008.

**FOR FURTHER INFORMATION CONTACT:** Betty Scissons, Tribal Government Services Officer, Northwest Regional Office, 911 NE 11th Ave., 8th Floor, Portland, OR 97232, Telephone: (503) 231-6723, Fax (503) 231-2189; or Elizabeth Colliflower, Office of Indian Services, 1849 C Street, NW., Mail Stop 4513-MIB, Washington, DC 20240, Telephone: (202) 513-7640.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme