

TITLE 5 - REGULATORY PROVISIONS

CHAPTER 5-1 LIQUOR CONTROL

5-1-1 Authority and Purpose

(a) The authority for this Chapter 5-1 and its adoption by Tribal Council is found in the CLUSI Const. Art. I, section 1 and Art. VI, section 2. This Chapter 5-1 is intended, and shall be construed, to conform to the requirements of state law as required by 18 U.S.C. § 1161.

(b) This Chapter 5-1 is for the purpose of regulating the sale, possession and use of alcoholic liquor on Tribal Land of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (Tribes).

5-1-2 Definitions

The following definitions shall apply to this Chapter 5-1:

(a) Alcoholic Beverages and Alcoholic Liquor (Liquor) - any liquid or solid containing more than one half of one percent (0.5%) alcohol by volume and capable of being consumed by a human being.

(b) Tribal Land - all lands within the exterior boundaries of the reservation and trust lands of the Tribes.

(c) Licensee – any person or entity that holds a valid and current license pursuant to the provisions of this Chapter 5-1.

(d) Sale and Sell -

- (1) To provide alcoholic liquor in exchange for any value, consideration, or promise, or in any way other than purely gratuitously.
- (2) To solicit or receive an order for alcoholic liquor.
- (3) To keep or expose alcoholic liquor for sale or with the intent to sell.
- (4) To peddle or traffic in alcoholic liquor.

5-1-3 Prohibited Activity

(a) It shall be unlawful for any person or business establishment on Tribal Land to sell liquor without a liquor sales license from the Tribes.

(b) It shall be unlawful for any person or business establishment on Tribal Land to possess, transport or keep with intent to sell any liquor, except for those licensed business establishments on Tribal Land, provided, however, that a

person may transport liquor from a licensed business establishment on Tribal Land consistent with the terms of the license.

- (c) It shall be unlawful for any person to consume alcoholic liquor on a public highway.
- (d) It shall be unlawful for any person to publicly consume any alcoholic liquor at any community function, or at or near any place of business, Indian celebration grounds, recreational areas, including ballparks and public camping areas, the Tribal Headquarters area and any other area where minors gather for meetings or recreation, except within a licensed business establishment on Tribal Land where liquor is sold.
- (e) It shall be unlawful for any person under the age of twenty-one (21) years to buy, attempt to buy or to misrepresent their age in attempting to buy, alcoholic liquor. It shall be unlawful for any person under the age of twenty-one (21) years to transport, possess or consume any alcoholic liquor on Tribal Land, or to be under the influence of alcohol or to be at liquor business establishment on Tribal Land, except as authorized under CLUSITC 5-1-11. No person shall sell or furnish alcoholic liquor to any minor.
- (f) Alcoholic liquor may not be given as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind.
- (g) Without limiting the foregoing paragraphs in this chapter, any other prohibition relating to liquor under the state law of Oregon shall apply on Tribal Lands.

5-1-4 Application for Liquor Sales License

An application for a liquor sales license under this Chapter 5-1 must be submitted at least thirty (30) days prior to the requested effective date on a form provided by the Tribal Council (available from the office of the Tribal Administrator). The application must be made by a person who is at least twenty-one (21) years of age and shall be submitted to the office of the Tribal Administrator with the required license fee. A license will not become effective unless the applicant delivers to the office of the Tribal Administrator:

- (a) a valid copy of applicant's state liquor license from the Oregon Liquor Control Commission; and
- (b) proof of insurance sufficient to meet the requirements for a state liquor license from the Oregon Liquor Control Commission.

5-1-5 Renewal Application for Liquor Sales License

A Licensee may apply for renewal of a liquor sales license by filing, not less than thirty (30) days prior to the license expiration date, a renewal application on a form

provided by the Tribal Council (available from the office of the Tribal Administrator). The renewal application shall be submitted to the office of the Tribal Administrator with the required license fee. A license renewal will not become effective unless the applicant delivers to the office of the Tribal Administrator:

- (a) a valid copy of applicant's state liquor license from the Oregon Liquor Control Commission; and
- (b) proof of insurance sufficient to meet the requirements for a state liquor license from the Oregon Liquor Control Commission.

5-1-6 Processing of a License Application or Renewal

(a) The Tribal Administrator shall cause notice of the receipt of any completed application or renewal application for a liquor sales license to be posted for a period of fourteen (14) days in the Administrative Building, Tribal Hall, Outreach Offices, on the Tribes' website, in the office of the Gaming Commission and at the business establishment on Tribal Land requesting the license prior to Tribal Council consideration of the application or renewal. The notice shall include a statement that any comments on the application or renewal may be directed to the Tribal Council by delivery to the office of the Tribal Administrator.

(b) The Tribal Administrator shall deliver a copy of a completed application or renewal application to the Tribal Police Department for performance of a background check on the applicant. The Tribal Police Department, or its designee, will conduct a background check of the applicant and provide a report of its findings to the Tribal Administrator within ten (10) days of receipt of a copy of the completed application or renewal application.

(c) The Tribal Administrator shall forward to the Tribal Council any complete application or renewal application for a liquor sales license submitted with the required fee, along with a copy of the Tribal Police Department background check and certification of the date notice was posted pursuant to CLUSITC 5-1-6(a).

(d) Tribal Council action on a license application or renewal must be taken at a regular or special meeting. The Tribal Council shall deny an application for or renewal of a license if it determines that the applicant does not have a valid and current liquor license from the Oregon Liquor Control Commission. The Tribal Council may deny an application for or renewal of a license if it determines that sale of alcoholic liquor is not appropriate at that location.

5-1-7 Conditions on a Liquor Sales License

(a) The following conditions apply to all liquor sales licenses:

- (1) The holder of a Tribal liquor license must also maintain a state liquor license from the Oregon Liquor Control Commission to the extent required under state law.
 - (2) Except as provided in CLUSITC 5-1-7(d), a liquor sales license shall be valid for one (1) year from the date of its issuance.
 - (3) A liquor sales license shall not be transferable.
 - (4) The holder of the Tribal liquor license must maintain compliance with this Chapter 5-1 and Oregon Revised Statutes Chapter 471, including without limitation compliance with laws regarding the sale, service and handling of liquor.
- (b) The Tribal Council may impose any other conditions it deems necessary to safeguard and promote the safety, health and general welfare of members of the Tribes.
- (c) Unless otherwise specified, a renewed license will be subject to the same conditions as an original license and any additional conditions the Tribal Council deems appropriate.
- (d) A liquor sales license issued to a business establishment on Tribal Land operated by the Tribes, including without limitation Three Rivers Casino & Hotel and Ocean Dunes Golf Course, shall be valid so long as the Tribal business establishment on Tribal Land maintains a valid state liquor license from the Oregon Liquor Control Commission unless earlier revoked or suspended pursuant to CLUSITC 5-1-10 or surrendered by the Licensee. A business establishment on Tribal Land operated by the Tribes remains subject to all other applicable provisions of this Chapter, including all provisions applicable to a Licensee.

5-1-8 Special Event Liquor License

An individual may request a special event liquor license for a special event or occasion of limited duration by submitting a request to the office of the Tribal Administrator for consideration by the Tribal Council. The Tribal Council may take action on a request for a special event liquor license, including imposing specific conditions on the license, at any regular or special meeting. Notwithstanding the foregoing, an individual requesting a special event liquor license under this section must also hold a state liquor license from the Oregon Liquor Control Commission, to the extent required under state law.

5-1-9 Appeal of a Licensing Application Decision

(a) Should an applicant or Licensee disagree with a Tribal Council decision on an application for or renewal of a liquor sales license, the applicant or Licensee may request a hearing before the Tribal Council by submitting a written request for a hearing to the office of the Tribal Administrator not later than seven (7) days after

receipt of the Tribal Council's decision. If an applicant or Licensee so submits a timely request, the Tribal Council shall provide reasonable notice to the applicant of a hearing date, time and location, as well as the procedures to be followed at the hearing.

(b) Following such hearing, the Tribal Council shall affirm, modify or reverse its initial licensing decision.

(c) Any denial of a liquor sales license or renewal of a liquor sales license is final. There is no further right of appeal.

5-1-10 Revocation or Suspension of License

(a) Failure of a Licensee to abide by any provision of this Chapter 5-1 and any conditions set forth herein or imposed by Tribal Council may result in revocation or suspension of the Licensee's liquor sales license by the Tribal Council, as well as the assessment of civil penalties in accordance with CLUSITC 5-1-13.

(b) Prior to suspension or revocation of a liquor sales license, the Licensee shall have the right to a hearing before the Tribal Council. The Tribal Council shall provide reasonable notice to the Licensee of the hearing date, time and location, as well as the procedures to be followed. If the Tribal Council decides to revoke or suspend a liquor sales license, they will issue a decision in writing.

(c) The decision of the Tribal Council on the revocation or suspension of a liquor sales license is final. There is no further right of appeal.

5-1-11 Sale or Service of Liquor by Licensee's Minor Employees

(a) The holder of a license issued under this Chapter 5-1 or Oregon Revised Statutes Chapter 471 may employ persons eighteen (18), nineteen (19) and twenty (20) years of age who may take orders for, serve and sell alcoholic liquor in any part of the licensed premises when that activity is incidental to the serving of food except in those areas classified by the Oregon Liquor Control Commission as being prohibited to the use of minors. However, no person who is eighteen (18), nineteen (19) or twenty (20) years of age shall be permitted to mix, pour or draw alcoholic liquor except when pouring is done as a service to the patron at the patron's table or drawing is done in a portion of the premises not prohibited to minors.

(b) Except as stated in this section, it shall be unlawful to hire any person to work in connection with the sale and service of alcoholic beverages in a licensed business establishment on Tribal Land if such person is under the age of twenty-one (21) years.

5-1-12 Warning Signs Required

Any person or business in possession of a liquor sales license, which sells liquor by the drink for consumption on the premises or sells for consumption off the premises, shall post a sign consistent with Oregon law informing the public of the effects and risks of alcohol consumption during pregnancy.

5-1-13 Civil Penalties & Forfeitures

(a) The Tribal Council may assess a penalty against any person who violates this Chapter 5-1, in an amount not to exceed one thousand dollars (\$1,000) for each violation, provided, however, that a penalty assessed against a minor shall not exceed five thousand dollars (\$5,000).

(b) Upon the assessment of a penalty, the person against whom the penalty was assessed may request a hearing before the Tribal Council by submitting a written request to the Tribal Council not later than seven (7) days after receipt of assessment. If the person against whom the penalty was assessed so submits a timely request, the Tribal Council shall provide reasonable notice to the person against whom the penalty was assessed of the hearing date, time and location, as well as the procedures to be followed.

(c) If the Tribal Council upholds its decision to assess a penalty, the person against whom the penalty was assessed may appeal the decision to the Tribal Court, but only on the grounds that the decision was arbitrary and capricious or a violation of Tribal Constitutional rights. Such appeal must be filed with the Tribal Court in writing within fourteen (14) days following receipt of the Tribal Council's decision. The Tribal Court shall review without jury the decision of the Tribal Council. The person against whom the penalty was assessed has the burden of persuading the Tribal Court that the Tribal Council's decision is arbitrary or capricious or a violation of Tribal Constitutional rights.

(d) In addition to assessing a penalty against any person who violates this Chapter 5-1, the Tribal Council may direct the confiscation of any alcoholic liquor sold or possessed by a person in violation of this Chapter 5-1. Confiscation will be treated the same as the assessment of a civil penalty in this section for appeal purposes. The confiscated alcoholic liquor shall be stored in a secure manner until the completion of any appeal. If the person does not appeal within the time provided, or if forfeiture is upheld by the Tribal Court on appeal, then the Tribal Council may sell the confiscated liquor for the benefit of the Tribes or may dispose of the liquor in any other manner they deem appropriate.

(e) The Tribal Council hereby specifically finds that the penalties under this section are reasonably necessary and are related to the expense of governmental administration necessary in maintaining law and order and public safety on Tribal Land. All violations of this Chapter, whether committed by tribal members, non-member Indians, or non-Indians, are civil in nature rather than criminal.

5-1-14 Tribal Sovereign Immunity/Liability

Nothing in this Chapter 5-1 shall be construed to have waived the sovereign immunity of the Tribes, any tribal entity, department or program, or any tribal official or employee, except as specifically and explicitly described herein.

5-1-15 Severability

If a court of competent jurisdiction finds any provision of this Chapter 5-1 to be invalid or illegal under applicable Federal or Tribal law, such provision shall be severed from this Chapter 5-1 and the remainder of this Chapter 5-1 shall remain in full force and effect.

5-1-16 Consistency with State Law

The Tribes will comply with Oregon liquor laws to the extent required by 18 USC § 1161.

5-1-17 Effective Date

(a) This Chapter 5-1 shall be effective upon publication in the Federal Register after approval by the Secretary of the Interior or his designee.

(b) Tribal Council may adopt amendments to this Chapter 5-1 and those amendments shall be effective upon publication in the Federal Register after approval by the Secretary of the Interior or his designee.

APPENDIX A
LEGISLATIVE HISTORY AND EDITORIAL CHANGES

LIQUOR CONTROL

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians Tribal Council enacted the revisions to the Liquor Code by Ordinance 031B on August 10, 2014, effective on that same date. Vote was 6 (for), 0 (against), and 0 (absent) and 0 (abstaining). 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 liquor ordinances for the purpose of regulating liquor transactions in Indian country. These amendments were approved by the Secretary of the Interior and made effective on May 29, 2015.

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the amendments approved at the June 28, 2004 Business Tribal Council meeting. Resolution 04-071, Ordinance No. 031A, in a regular Tribal Council meeting on October 10, 2004. Vote was 7 (for), 0 (against), and 0 (abstaining). Pursuant to the Act of August 15, 1953, 83, 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 liquor codes for the purpose of regulating liquor transactions in Indian country. These amendments were approved by the Secretary of the Interior and made effective on February 23, 2006.

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the "Liquor Control" Code, Resolution 01-091, Ordinance No. 031, in a regular Tribal Council meeting on December 9, 2001. Vote was 7 (for), 0 (against) and 0 (abstaining). Under the Act of August 15, 1953, 83, 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 the adopted liquor ordinances for the purpose of regulating liquor transactions in Indian Country. This Liquor Control Code was approved by the Secretary of the Interior and made effective on March 13, 2003.

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