

## TITLE 5 - REGULATORY PROVISIONS

### CHAPTER 5-4 TOBACCO

#### 5-4-1 Authority and Purpose

- (a) The authority for this Chapter 5-4 is found in CLUSI Const., Art. I, Section 1 and Art. VI, Section 2.
- (b) This Chapter 5-4 is for the purpose of regulating the sale and distribution of cigarettes and other tobacco products within the jurisdiction of the Tribes.

#### 5-4-2 Definitions

The following definitions shall apply for this Chapter 5-4:

- (a) Cigarette - any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated or mixed with another ingredient, where such roll has a wrapper or cover made of paper or any other material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco.
- (b) Licensee – any person or entity that holds a valid and current license pursuant to the provisions of this Chapter 5-4.
- (c) Outlet - any store, shop, building or place where tobacco products are sold within tribal jurisdiction, including a cigarette vending machine.
- (d) Person - any individual, business, entity or group acting as a unit.
- (e) Sale and Sell –
  - (1) To provide tobacco products in exchange for any value, consideration, or promise, or in any way other than purely gratuitously.
  - (2) To solicit or receive an order for tobacco products.
  - (3) To keep or expose tobacco products for sale or with the intent to sell.
  - (4) To peddle or traffic in tobacco products.
- (f) Tobacco Products - cigarettes, cigars, smoking tobacco, snuff, chewing tobacco and all other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking.
- (g) Tribal Land – all lands within the exterior boundaries of the reservation and trust lands of the Tribes.

#### 5-4-3 Requirements for Tobacco Sales License

- (a) No person shall engage in selling tobacco products on Tribal Land without a valid and current tobacco sales license issued pursuant to this Chapter 5-4.
- (b) All distributions or sales of tobacco products within Tribal Land shall be only by persons licensed by the Tribes.
- (c) Licensees shall be subject to the authority and control of the Tribes as provided in this Chapter 5-4.

#### 5-4-4 Application for Tobacco Sales License

An application for a tobacco sales license under this Chapter 5-4 must be submitted at least thirty (30) days prior to the requested effective date on a form provided by 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 proof of general liability insurance to the office of the Tribal Administrator.

#### 5-4-5 Renewal Application for Tobacco Sales License

A Licensee may apply for renewal of a tobacco 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 delivered proof of general liability insurance to the office of the Tribal Administrator.

#### 5-4-6 Processing of a License Application or Renewal

The Tribal Administrator shall forward to the Tribal Council for consideration any complete application or renewal application submitted with the required fee. Tribal Council action on a license application or renewal must be taken at a regular or special meeting. The Tribal Council may deny an application for or renewal of a license if it determines that sale of tobacco products is not appropriate at that location, for reasons including, but not limited to the following:

- (a) The proposed location for the tobacco outlet does not comply with all applicable building codes and zoning codes; or
- (b) There is not adequate demand for a tobacco outlet at the proposed location.

5-4-7 Conditions on a Tobacco Sales License

- (a) The following conditions apply to all tobacco sales licenses:
  - (1) Except as provided in CLUSTIC 5-4-7(d), a tobacco sales license shall be valid for a period of one (1) year from the date of its issuance and shall expire automatically without notice.
  - (2) No tobacco sales license shall be transferrable.
  - (3) The Licensee must maintain compliance with this Chapter 5-4.
- (b) Tribal Council may impose any conditions that 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 tobacco 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 until revoked or suspended pursuant to CLUSITC 5-4-9 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 5-4, including all provisions applicable to a Licensee.

5-4-8 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 tobacco 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 their initial licensing decision.
- (c) Any denial of a tobacco sales license or renewal of a tobacco sales license is final. There is no further right of appeal.

5-4-9 Revocation or Suspension of License

- (a) Failure of a Licensee to abide by any provision of this Chapter 5-4 and any conditions set forth herein or imposed by Tribal Council may result in revocation or

suspension of the Licensee's tobacco sales license by the Tribal Council, as well as the assessment of civil penalties in accordance with CLUSITC 5-4-10.

(b) Prior to suspension or revocation of a tobacco 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 tobacco sales license, it will issue a decision in writing.

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

#### 5-4-10 Civil Penalties & Forfeiture

(a) The Tribal Council may assess a penalty against any person who violates this Chapter 5-4, in an amount not to exceed one thousand dollars (\$1,000) for each violation.

(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. 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 5-4, the Tribal Council may direct the confiscation of any tobacco products sold or possessed by a person in violation of this Chapter 5-4. Confiscation will be treated the same as the assessment of a civil penalty in this section for appeal purposes. The confiscated tobacco products 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 tobacco for the benefit of the Tribes or may dispose of the tobacco products in any other manner it deems 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 5-4, whether committed by Tribal members, non-member Indians, or non-Indians, are civil in nature rather than criminal.

#### 5-4-11 Revenue Stamp and Tobacco Products Tax Requirement

No cigarette package shall be sold which does not bear a revenue stamp of the State of Oregon. If the Tribes enacts a tribal cigarette tax, no cigarette package shall be sold which does not bear a revenue stamp of the Tribes and the State of Oregon. No other tobacco products may be sold that do not comply with the requirements of the Oregon Tobacco Products Tax Act in chapter 323 of the Oregon Revised Statutes, including compliance with any requirement to maintain documentation of payment of taxes owed under the Oregon Tobacco Products Tax Act.

#### 5-4-12 Tribal Sovereign Immunity/Liability

Nothing in this Chapter 5-4 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.

#### 5-4-13 Severability

If a court of competent jurisdiction finds any provision of this Chapter 5-4 to be invalid or illegal under applicable Federal or Tribal law, such provision shall be severed from this Chapter 5-4 and the remainder of this Chapter 5-4 shall remain in full force and effect.

APPENDIX A  
LEGISLATIVE HISTORY AND EDITORIAL CHANGES

## LEGISLATIVE HISTORY AND EDITORIAL CHANGES

Pursuant to direct negotiation of a Tobacco Products Tax Refund Agreement with the Oregon Department of Revenue, the Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians adopted Ordinance No. 034E revising Chapter 5-4 Tobacco in a Tribal Council meeting on November 12, 2014. Vote was 5 (for), 0 (against), 1 (absent), 0 (abstaining) and 1 (vacancy). Paragraph 1(A) of the Cigarette Tax Refund Agreement effective October 14, 2007, requires the Tribes to provide the Oregon Department of Revenue with a copy of any proposed amendment to the Tobacco Ordinance. The Tribes provided such additional notice to the Oregon Department of Revenue by letter dated November 13, 2014.

Paragraph 1(A) of the Cigarette Tax Refund Agreement effective October 14, 2007, requires the Tribes to provide the Oregon Department of Revenue with a copy of any proposed amendment to the Tobacco Ordinance. The Tribes provided such notice to the Oregon Department of Revenue by letter dated June 26, 2014. The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians adopted Ordinance No. 034D revising Chapter 5-4 Tobacco in a Tribal Council meeting on August 10, 2014. Vote was 6 (for), 0 (against), 0 (absent), and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians adopted Ordinance No. 034C revising Chapter 5-4 Tobacco in a Tribal Council meeting on October 24, 2012. Vote was 4 (for), 0 (against), 2 (absent), and 0 (abstaining). Paragraph 1(A) of the Cigarette Tax Refund Agreement effective October 14, 2007, requires the Tribes to provide the Oregon Department of Revenue with a copy of any proposed amendment to the Tobacco Ordinance. By letter dated November 21, 2012, the Oregon Department of Revenue advised that it is "comfortable" with the requested changes adopted by Tribal Council on October 24, 2012.

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians amended the "Tobacco" Code with Resolution 04-073, in a regular Tribal Council meeting on November 14, 2004. Ordinance number was changed to 034B. Vote was 7 (for), 0 (against) and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians amended the "Tobacco" Code, with Resolution No. 03-058, in a business Tribal Council meeting on October 27, 2003. Vote was 7 (for), 0 (against), and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the "Tobacco" Code, Resolution No. 01-098, Ordinance No. 034, in a special Tribal Council meeting on December 17, 2001. Vote was 6 (for), 0 (against) and 0 (abstaining).

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