

SHOALWATER BAY TRIBE

TITLE 9

BUSINESS LICENSING & TAXATION

ADOPTED
3-30-88

REVIEWED 9/26/87
AT A PUBLIC HEARING

SHOALWATER BAY TRIBE
 BUSINESS LICENSING & TAXATION/TITLE 9
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TITLE 9

BUSINESS LICENSING & TAXATION

Chapter 9.1 General Provisions

9.1.010 TITLE. This title shall be known as the Shoalwater Bay Business Code.

9.1.020 EXEMPTIONS. Fireworks and gambling activities within the jurisdiction of the Shoalwater Bay Tribe are exempt from the provisions of this title. These activities are regulated under specific titles of the Shoalwater Bay Tribal Code.

9.1.030 DEFINITIONS.

- a) "Business" as used in this title shall mean all activities engaged in with the purpose of gain, benefit or advantage to the owner or operator or to a third person, directly or indirectly.
- b) "Council" as used in this title shall mean the Shoalwater Bay Tribal Council.
- c) "Person" as used in this title shall mean any member of the Shoalwater Bay Indian Tribe whether he or she is doing business as an individual, firm, partnership, joint venture, corporation, company, or association. No other person is eligible to receive a license under this code. This section does not prohibit business activities involving non-members where a validly licensed tribal member is a principal in the business and 51% of the business is owned by members of the Shoalwater Bay Indian Tribe.
- d) "Reservation" as used in this title shall mean the Shoalwater Bay Indian Reservation in Pacific County, Washington and any other lands now held or acquired in the future by or for the benefit of the Shoalwater Bay Indian Tribe.

Chapter 9.2 Business Licensing

9.2.010 BUSINESS LICENSES REQUIRED-APPLICATION. Every person, who engages in a trade, business, profession, or commercial activity of any sort within the exterior boundaries of the Shoalwater Bay Reservation shall file an application for a business license with the Shoalwater Bay Tribal Council before December 1 of each calendar year. Persons engaged in business within the Reservation before the effective date of this code shall file an application within thirty (30) days of the effective date and then before December 1 of each calendar year thereafter. New businesses must apply for and receive an approved license prior to conducting business and then submit an application before December 1 of each calendar year thereafter. A valid business license shall entitle the person to engage in the kind(s) of business activity at the location(s) listed in the application.

9.2.020 APPLICATION FEE. Each application shall be accompanied by a \$25.00 license fee.

9.2.030 APPLICATION FORMS, OTHER LICENSES MAY BE REQUIRED. A copy of the license application form may be obtained during regular business hours at the office of the Shoalwater Bay Tribe. This license shall be in addition to all other license fees and permits required by law, except activities exempted under section 9.1.020.

9.2.040 LICENSING PROCEDURE. Within 10 working days after

receipt of an application and fee, as provided for in sections 9.2.010 and 9.2.020, the Tribal Council shall issue to the applicant a tribal license to engage in business activity on the Reservation. The license shall indicate the kinds(s) and location(s) of business activity for which the person has been licensed.

9.2.050 CONDITIONS PRIOR TO LICENSING. Notwithstanding section 9.2.040, no license shall be granted to any person until he or she has presented proof to the Tribal Council of compliance with all tribal requirements established as conditions of starting business on the Reservation, including, but not limited to evidence that the person has submitted compliance plans if required by the Tribe's contract and employment preference codes, and has such plans approved by the enforcing agency(s).

9.2.060 DENIAL OF LICENSE FOR HEALTH, SAFETY, WELFARE. Notwithstanding section 9.2.040, where the Tribal Council has reason to believe that a person applying for a license will present a danger to the health, safety, or welfare of residents of the Reservation if permitted to start business on the Reservation, the Tribal Council shall, within 10 days, provide the person with a written notice setting out the reasons it believes the person presents such a danger and scheduling a date for a hearing. The hearing shall be held no later than 10 working days after the delivery of the notice. The person shall be given an opportunity to demonstrate that his or her business activity does not present a danger to

the health, safety, or welfare of the residents of the Reservation. The Tribal Council shall establish necessary procedures for such hearings that comply with the requirements of due process. However, formal rules of evidence shall not apply. If the Tribal Council finds, by a preponderance of the evidence, that a danger does exist it shall so notify the person in writing within 2 working days. The notice shall state the reasons for the Council's findings. If the Tribal Council finds there is no danger, it shall issue a business license to the person within two working days. The person may appeal the Tribal Council's decision to the Tribal Court.

9.2.070 LICENSES TO BE CONSPICUOUSLY DISPLAYED. Every person issued a business license shall post it in a conspicuous place at the business location listed on the license, or, if it lists more than one location, it shall post a notice indicating the location at which the license is posted.

9.2.080 DURATION OF LICENSE. All licenses issued under this code shall remain in effect for the duration of the calendar year for which it is issued unless revoked as provided in this code or under the provisions of any other Shoalwater Bay Tribal Code and shall expire at midnight on the 31st day of December of each year. The license cannot be transferred to any other party.

9.2.090 EFFECT OF FAILURE TO APPLY FOR LICENSE. A person doing business on the Reservation who fails to obtain a license as

provided for in this code shall be fined \$50.00 per day for each day it operated on the Reservation without a license, unless good cause is shown to the Tribal Council as to why such a license had not been obtained in a timely manner. In addition to the fine, the person is required to immediately obtain a license and pay the license fee. If the Tribal Council becomes aware that a person is conducting business on the Reservation without a license, it shall cause a notice to be served by certified mail, return receipt requested to the person stating that he or she is operating on the Reservation in violation of this code and that he or she must obtain such a license and pay such fines as are indicated in the letter within 2 days. However, where the Tribal Council has reason to believe that the health, safety, or welfare of residents of the Reservation are endangered by the continuation of such business activity, the Tribal Council may order such business to terminate all business activity until it has obtained a license. If a business activity is conducted within the jurisdiction of the Shoalwater Bay Tribe by anyone who is not eligible for a business license, the person shall be subject to exclusion under Title 4 of the Shoalwater Bay Tribe Code of Laws. (This section amends section 4.2.010 by adding to the grounds for exclusion, conducting business when ineligible to be licensed under this code.) Exclusion may be used in addition to any other remedy provided in this code.

9.2.100 NOTICE TO CEASE BUSINESS ACTIVITIES. Any person doing

business on the Reservation without a license or who fails to obtain a license within the time period required by the Tribal Council as provided for in section 9.2.090 above, or any person whose license to do business has been revoked by any court or agency of competent jurisdiction under any provision of this code or any other law of the Shoalwater Bay Tribe, shall immediately cease to carry out business on the Reservation; provided that, upon showing of good cause, the Tribal Council or the Tribal Court may grant the person a reasonable period during which to conclude business, so long as the continuation of such business does not endanger the health, safety, or welfare of residents of the Reservation. Where notice to cease business is issued by the Tribal Council, it shall be hand delivered to the business by the Shoalwater Bay Law Enforcement.

9.2.110 SANCTIONS. The Tribal Council may file a motion with the Court for an order to compel a business to cease doing business if the person fails to comply with the Tribal Council's notice under section 9.2.100. The Court may enjoin the business from operating, pending a hearing. Failure of any person to comply with the order of the Court shall result in contempt of court proceedings under Title I of the laws of the Shoalwater Bay Tribe.

Chapter 9.3 Taxation of Businesses

9.3.010 BUSINESS TAX. All persons engaging in business within the jurisdiction of the Shoalwater Bay Indian Tribe shall pay a tax

for the privilege of engaging in business. The tax shall be equal to three percent (3%) of the net profits of the business; provided that this section shall not be construed to apply to the income of a genuine employee of a taxpayer. "Net profit" means the following, for each type of business:

- Sole proprietorship - IRS form 1040 Schedule C, "net profit."
- Partnership - IRS form 1065, "ordinary income."
- Corporation - IRS form 1120, "taxable income."
- Subchapter S corporation - IRS form 1120 S, "ordinary income."

9.3.020 TAX RETURNS. All taxes assessed pursuant to this chapter shall be due and payable annually. The taxpayer shall prepare and submit to the Council on or before May 15, a tribal tax return showing the net profit of the business for the preceding year. A copy of the I.R.S. form(s) listed in section 9.3.010 filed with the I.R.S. by the taxpayer shall be attached to the tribal tax return.

9.3.030 PENALTY. Failure of any person to pay the tax as provided in this code shall result in a penalty being assessed. The penalty shall be assessed for each month the tax remains unpaid and shall be equal to one and one half percent (1½%) of the tax owing (not to exceed 18% annually).

9.3.040 RECORDS. Every person subject to taxation under this chapter shall maintain and keep current books and other records showing money and credits which have accrued and cost of merchandise

sold, which have been incurred during the course of business, including invoices, receipts, ledgers, bills of sale, and other documentation. The taxpayer shall make these books and records and a copy of the taxpayer's tax returns for the I.R.S., available to the tribal Treasurer for inspection upon written request. The treasurer's request for inspection shall be sent to the taxpayer by certified mail, return receipt requested.

9.3.050 REASSESSMENT. If, upon examination of the taxpayer's records or upon other information, the tribal Treasurer determines that the tax due from a taxpayer is different in amount than the tax reported or paid by the taxpayer, the treasurer shall promptly send the taxpayer a revised statement of tax due or a refund, as is appropriate.

9.3.060 APPEAL OF REASSESSMENT. A taxpayer to whom the tribal Treasurer issues a notice of tax due, additional tax due, delinquent taxes, or penalties assessed and who disagrees with or objects to the tax or penalties assessed may request in writing a hearing before the Tribal Council. Such hearing shall be held no sooner than five (5) days and no later than twenty (20) days after receipt by the Council of the request; provided, that no person shall be entitled to such hearing who has not first paid all disputed taxes, fees or penalties.

9.3.070 ORDER OF SEIZURE. If any tax or penalty is not paid

thirty (30) days after it becomes due, the Tribal Council may issue a written order to the tribal treasurer commanding him or her to seize so much of the business property as is necessary to pay the taxes and interest due and the cost of carrying out the Tribal Council's order. The treasurer shall carry out the Council's order and return the money accruing from the sale to the Council within sixty (60) days of the issuance of the order; provided, that if the Council has reason to believe that the taxpayer is about to close his or her business or to remove all assets from the Reservation, it may issue an order for the immediate seizure of the taxpayer's property.

9.3.080 HEARING. A taxpayer whose property is seized and sold pursuant to an order of the Council as provided in this chapter and who has not previously requested and received a hearing pursuant to this code may request in writing a hearing before the Council, and such hearing shall be held as provided in Section 9.3.060 of this chapter.

9.3.090 REVOCATION OF PRIVILEGE. Notwithstanding any other measures which it has taken or may take under this chapter, the Tribal Council may prohibit any taxpayer who fails to pay taxes or penalties due as required from engaging in any business including fireworks and gaming on the Reservation. Notice of such prohibition shall be posted at the tribal office and at the taxpayer's place of business. The Tribal Council shall provide notice and the opportunity for a hearing to any taxpayer prohibited from conducting

business under this section.

Chapter 9.4 Severability

9.4.010 SEVERABILITY. If any provision of this code or its application to any person or circumstance is held invalid, the remainder of this code, or the application of the provision to other persons or circumstances is not affected.

APPLICATION FOR A LICENSE
TO DO BUSINESS ON THE
SHOALWATER BAY RESERVATION

For the Calendar Year 19____

1. Name of Business: _____
2. Form of Business (corporation, partnership, sole proprietorship, other): _____
3. If corporation, where registered: _____
4. Business location(s): _____

5. Business Telephone: _____
6. Kind(s) of business: _____
7. Owner(s): _____ Tribal Member: Yes _____ No _____

8. Address(es) of owner(s): _____

9. Number of employees during the calendar year:
Year: 19____ INDIANS _____ NON-INDIANS _____
10. Gross of sales for prior calendar year: \$ _____

11. If a Foreign Corporation, name of statutory agent on the Reservation (statutory agent shall be a resident of the Reservation):

Name: _____

Address: _____

Telephone: _____

12. If the applicant will engage in any contracting or subcontracting activity, has a contractor/subcontractor Indian preference plan for complying with the Tribe's contract preference ordinance been submitted to the Shoalwater Bay Tribal Council.

YES NO

Has it been approved? (No license will be granted until a plan has been submitted and approved. Such proof of approval should be submitted with this application.)

YES (approval attached) NO

13. Has the applicant submitted a plan to the Tribal Employment Rights Office for complying with the Tribe's Indian Employment Preference Ordinance.

YES NO

Has it been approved? (No license will be granted unless the plan has been submitted and approved. Such proof of approval should be submitted with this application.)

YES (approval attached) NO

I hereby certify that the information provided in this application is true and complete to the best of my knowledge and belief. I further hereby certify that I have read the applicable ordinances of the Shoalwater Bay Indian Tribe, criteria and procedures and do hereby submit to the jurisdiction provided for therein.

Signature of Authorized Official

Date

Typed name and title: _____

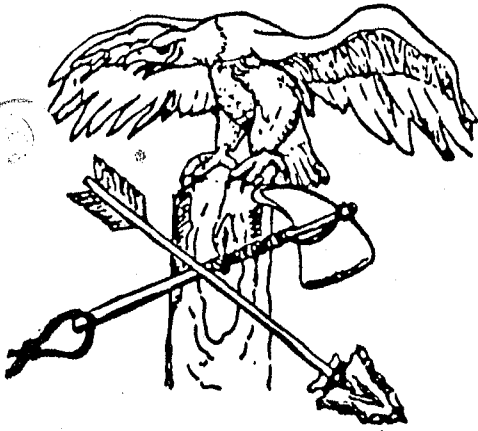
SHOALWATER BAY INDIAN TRIBE

Tokeland, Washington 98590

Telephone 267-6766

SHOALWATER BAY INDIAN TRIBE

RESOLUTION NO. 03-30-88-12



WHEREAS, the Shoalwater Bay Tribe is a federally recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; and

WHEREAS, the Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe according to its Constitution; and

WHEREAS, the Shoalwater Bay Tribal Council has the power to impose taxes on all persons, property, and activities within the Tribe's jurisdiction under Article VI, section 1 (d) of the Constitution of the Shoalwater Bay Tribe; and

WHEREAS, the Shoalwater Bay Tribal Council has the power to license and regulate the conduct of business activities within the Tribe's jurisdiction under Article VI, section 1 (e) of the Constitution of the Shoalwater Bay Tribe; and

WHEREAS, the Shoalwater Bay Tribal Council has the power to prescribe and enforce conditions upon which non-tribal members may enter and remain on the reservation under Article VI, section 1 (1) of the Shoalwater Bay Tribe; and

WHEREAS, the Tribal Council finds that in order to both develop and protect the Shoalwater Bay Reservation, business within the Reservation shall be conducted only by members of the Shoalwater Bay Indian Tribe or by businesses owned at least 51% by members of the Shoalwater Bay Tribe; and

WHEREAS, the Tribal Council finds that a net profits tax will best and most fairly allow business development within the Reservation while contributing to the tribal tax base which is necessary to promote and support the general welfare of the Shoalwater Bay Indian Tribe; and


WHEREAS, the Shoalwater Bay Tribe is currently amending and codifying its laws, including previous versions of a business licensing and tax code;

NOW THEREFORE BE IT RESOLVED, that the attached Title 9 Business Licensing and Taxation is hereby adopted, effective on the date this resolution is signed, and

BE IT FURTHER RESOLVED, that all previous business tax and business licensing codes of the Shoalwater Bay Indian Tribe are repealed.

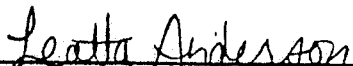
***** C E R T I F I C A T I O N *****

The above resolution was passed at a regular Tribal Council meeting held on the 30 day of March, 1988 at the Shoalwater Bay Tribal Center at which a quorum was present by a vote of 3 FOR, 0 AGAINST, and 0 ABSTAIN.



Doug Davis, Chairman

ATTEST:



Leatta Anderson
Vice-chairman