



**4337-15-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

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**Cowlitz Indian Tribe Liquor Ordinance**

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

**ACTION:** Notice.

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**SUMMARY:** This notice publishes the liquor ordinance of the Cowlitz Indian Tribe. The liquor ordinance regulates and controls the possession, sale, manufacture, and distribution of alcohol in conformity with the laws of the State of Washington. Enactment of this ordinance will help provide a source of revenue to strengthen Tribal government, provide for the economic viability of Tribal enterprises, and improve delivery of Tribal government services.

**DATES:** This code shall become effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Norton, Tribal Government Specialist, Northwest Regional Office, Bureau of Indian Affairs, 911 NE 11<sup>th</sup> Avenue, Portland, Oregon 97232, Telephone: (503) 231-6702, Fax: (503) 231-2201.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Pub. 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. The Tribal Council of the Cowlitz Indian Tribe duly adopted the Cowlitz Tribal Liquor Ordinance on October 27, 2016.

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 Tribal Council of the Cowlitz Indian Tribe duly adopted the Cowlitz Tribal Liquor Ordinance by Ordinance No. 16-02 dated October 27, 2016.

Dated: March 15, 2017

Michael S. Black,  
*Acting Assistant Secretary–Indian Affairs.*

## **SECTION 1. –**

### **INTRODUCTION**

#### *1.1 Authority*

This ordinance is enacted pursuant to the Act of August 15, 1953, 67 Stat. 586, codified at 18 U.S.C. § 1161, by the authority of the Cowlitz Tribal Council enumerated in Article VIII of the Constitution of the Cowlitz Tribe of Indians to enact legislation and

regulate activities of businesses operating on the Tribe's lands, and in conformity with applicable Washington State laws and all attendant agreements with the State of Washington.

*1.2 Purpose*

The purpose of this ordinance is to regulate and control the possession, sale, manufacture, and distribution of liquor within the Tribe's reservation, trust lands, and all Indian Country as defined in 18 U.S.C. § 1151, in order to permit alcohol sales by tribally owned and operated enterprises and lessees and at other tribally approved special events. The enactment of this ordinance will increase the ability of the Cowlitz Tribe to control the manufacture, distribution, sale, and possession of liquor on the Tribe's lands and will provide an important source of revenue for the continued operation and strengthening of the Cowlitz tribal government, the delivery of tribal governmental services, and the economic viability of tribal enterprises.

*1.3 Short Title*

This shall be known as the "Cowlitz Tribal Liquor Ordinance" and shall be codified as Ordinance No. 16-02 of the Cowlitz Tribal Code.

*1.4 Jurisdiction*

This ordinance shall apply to all lands now or in the future under the governmental authority of the Tribe, including the Tribe's reservation, trust lands, and Indian Country as defined under 18 U.S.C. § 1151.

*1.5 Application of 18 U.S.C. § 1161*

By adopting this Ordinance, the Tribe hereby regulates the sale, manufacturing, distribution, possession, and consumption of liquor while ensuring that such

activity conforms with applicable laws of the State of Washington as required by 18 U.S.C. § 1161 and the United States.

*1.6 Declaration of Public Policy; Findings*

The Tribal Council enacts this Ordinance, based on the following findings:

(a) The manufacture, distribution, possession, sale, and consumption of liquor in the Tribe's Indian Country are matters of special concern to the Tribe.

(b) Federal law currently prohibits the introduction of liquor into or manufacture of spirits in Indian Country, except as provided in 18 U.S.C. § 1161, except in accordance with State law and the duly enacted law of the Tribe.

(c) The Cowlitz Tribe recognizes that a need exists for strict tribal regulation and control over liquor transactions within its lands because of the many potential problems associated with the unregulated or inadequately regulated manufacture, distribution, sale, possession, and consumption of liquor. The Tribal Council finds that tribal control and regulation of liquor is necessary to achieve maximum economic benefit to the Tribe, to protect the health and welfare of tribal members, and to address specific concerns relating to alcohol use on tribal lands.

(d) It is in the best interests of the Tribe to enact an ordinance governing liquor transactions on its lands.

**SECTION 2. – DEFINITIONS**

*2.1 Definitions*

As used in this ordinance, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) "Alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance from whatever source or by whatever process produced.

(b) "Beer" means any beverage such as beer, ale, lager beer, stout, and porter 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 and containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this ordinance, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(c) "Indian Country" means the Tribe's reservation, trust lands, and all other lands as defined in 18 U.S.C. 1151.

(d) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine, and beer), includes 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 semisolid 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, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight. "Malt Liquor" means beer, strong beer, ale, stout and porter.

(e) "Sale" and "Sell" includes exchange, barter and traffic; and also includes 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.

(f) "Spirits" means any beverage, which contains alcohol obtained by distillation, including wines exceeding twenty-four percent of alcohol by weight.

(g) "State" means the State of Washington.

(h) "Tribal Council" means the Cowlitz Tribal Council, which is the governing body of the Tribe.

(i) "Tribe" means the Cowlitz Indian Tribe, a federally recognized sovereign Indian tribe.

(j) "Wine" means any alcoholic beverage obtained by fermentation of fruits, (grapes, berries, apples, et cetera) 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 twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this ordinance, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (i) Wines that are both sealed or capped by cork closure and aged two years or more; and (ii) wines that contain more than

fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

### **SECTION 3. – LIQUOR SALES, POSSESSION, AND MANUFACTURE**

#### *3.1 Possession*

The introduction and possession of liquor shall be lawful within Indian Country, provided that such introduction or possession is in conformity with the laws of the Tribe and the applicable laws of and the Tribe's agreements with the State.

#### *3.2 Retail Sales*

The sale of liquor shall be lawful within Indian Country, provided that such sales are in conformity with the laws of the Tribe and the applicable laws of and agreements with the State.

#### *3.3 Manufacture*

The manufacture of liquor shall be lawful within Indian Country, provided that such manufacture is in conformity with the laws of the Tribe and the applicable laws of and agreements with the State.

#### *3.4 Age Limits*

The legal age for possession or consumption of alcohol within Indian Country shall be the same as that of the State, which is currently 21 years. No person under the age of 21 years of age shall purchase, possess, or consume any liquor.

### **SECTION 4. – LICENSING**

#### *4.1 Licensing*

The Tribal Council shall have the power to establish procedures and standards for tribal licensing of liquor manufacture, distribution, and sale within Indian Country,

including the setting of a license fee schedule, and shall have the power to publish and enforce such standards. For license applicants that are not tribally owned, no tribal license shall issue except upon showing of satisfactory proof that the applicant is duly licensed by the State. The fact that an applicant for a tribal license possesses a license issued by the State however shall not provide the applicant with an entitlement to a tribal license.

## **SECTION 5. – ENFORCEMENT**

### *5.1 Enforcement*

The Tribal Council shall have the power to develop, enact, promulgate, and enforce regulations as necessary for the enforcement of this Ordinance and to protect the public health, welfare, and safety of the Tribe, provided that all such regulations shall conform to and not be in conflict with any applicable tribal, Federal, or State law.

Regulations enacted pursuant to this Ordinance may include provisions for suspension or revocation of tribal liquor licenses, reasonable search and seizure provisions, and civil and criminal penalties for violations of this Ordinance to the full extent permitted by Federal law and consistent with due process.

Tribal law enforcement personnel and security personnel duly authorized by the Tribal Council shall have the authority to enforce this Ordinance by confiscating any liquor sold, possessed, distributed, manufactured, or introduced within Indian Country in violation of this Ordinance or of any regulations duly adopted pursuant to this Ordinance.

The Tribal Council shall have the exclusive jurisdiction to hold hearings on violations of this Ordinance and any procedures or regulations adopted pursuant to this Ordinance; to promulgate appropriate procedures governing such hearings; to determine and enforce penalties or damages for violations of this Ordinance; and to delegate to a



subordinate hearing officer or panel or to the Cowlitz Tribal Court the authority to take any or all of the foregoing actions on its behalf.

## **SECTION 6. – TAXATION**

### *6.1 Taxation*

Nothing contained in this Statute is intended to, nor does in any way, limit or restrict the Tribe's ability to impose any tax upon the sale or consumption of alcohol. The Tribe retains the right to impose such taxes by appropriate statute to the full extent permitted by Federal law.

## **SECTION 7. – MISCELLANEOUS PROVISIONS**

### *7.1 Sovereign Immunity Preserved*

Nothing contained in this Ordinance is intended to, nor does in any way, limit, alter, restrict, or waive the sovereign immunity of the Tribe or any of its agencies, agents, or officials from unconsented suit or action of any kind.

### *7.2 Conformance with Applicable Laws*

All acts and transactions under this Ordinance shall be in conformity with the laws of the State to the extent required by 18 U.S.C. § 1161 and with all Federal laws regarding liquor in Indian Country.

### *7.3 Effective Date*

This Ordinance shall be effective as of the date on which the Secretary of the Interior certifies this Statute and publishes the same in the *Federal Register*.

#### 7.4 *Repeal of Prior Acts*

All prior enactments of the Tribal Council, including tribal resolutions, policies, regulations, or statutes pertaining to the subject matter set forth in this Ordinance are hereby rescinded.

#### 7.5 *Amendments*

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

#### 7.6 *Severability and Savings Clause*

If any part or provision of this Ordinance is held invalid, void, or unenforceable by a court of competent jurisdiction, such adjudication shall not be held to render such provisions inapplicable to other persons or circumstances. Further, the remainder of the Ordinance shall not be affected and shall continue to remain in full force and effect.

[FR Doc. 2017-05815 Filed: 3/22/2017 8:45 am; Publication Date: 3/23/2017]