

CHAPTER 6-2 PACKAGED SPIRITS REGULATION

6-2-1

Name

This Chapter shall be known as the Colville Packaged Spirits Regulation Chapter, and shall replace the prior Chapter 6-2 "Liquor Control."

6-2-2

Findings

(a) The introduction, possession and sale of liquor on Indian reservations has been clearly recognized as a matter of special concern to Indian tribes and to the United States for more than 150 years. *United States v. Sandoval*, 231 U.S. 28 (1913); 18 U.S.C. §1161; 18 U.S.C. §1154.

(b) In 1953, the Business Council of the Colville Confederated Tribes, acting under its inherent powers as the government of the Colville Indian Reservation and under powers delegated to it by the United States, adopted a resolution permitting the sale and possession of alcoholic beverages within the boundaries of the reservation, subject to the laws of the State of Washington.

(c) Under present conditions the Business Council of the Colville Confederated Tribes finds it necessary to more closely control the sale, distribution, and possession of alcoholic beverages within the boundaries of the Colville Indian Reservation. The sale, distribution, and possession of such beverages has become a major or sole portion of the trade of many businesses which have been established on the Colville Indian Reservation affecting the people of the reservation and the schools, churches and other agencies of social betterment which have been established on the reservation.

(d) Federal policy has supported the Tribes' long term goal of self-governance and self-determination. Given that policy, and in light of the Tribes' unique geographical challenges and its experience regulating other highly regulated areas, such as gambling and cigarette sales, the Tribes is well suited to effectively regulate and enforce liquor laws in its Indian Country, in collaboration with the Washington State Liquor Cannabis Board (WSLCB), consistent with 18 U.S.C. § 1161.

(e) The Business Council finds that the present system of regulation by adoption of State law has been found to be inadequate to the needs of the members of the Colville Confederated Tribes and the residents of the Colville Indian Reservation, and has failed to provide sufficient prevention, treatment, and ancillary services to treat alcohol abuse on the Reservation and to address its negative impacts on those who abuse alcohol as well as their families and children.

(f) The Business Council finds that Tribal regulation of the introduction, sale, distribution, and possession of liquor on the reservation is necessary to protect the health, security and welfare of all persons and property on the reservation.

(g) The Colville Business Council finds that alcohol related criminal and family problems are the single greatest cause of social conflict among the people of the Colville Indian Reservation.

(h) The Business Council further finds it necessary to raise additional revenues for the prevention and treatment of alcohol abuse and Tribal Law Enforcement agencies and to provide for their expansion and increased efficiency.

(i) A Memorandum of Agreement with the State of Washington governing packaged liquor sales and distribution on the reservation will increase the ability of the tribal government to control the reservation liquor distribution, sale and possession, and at the same time will provide an important source of revenue for the continued operation of governmental services to the residents of the reservation.

(j) The CBC further finds that taxation of packaged spirits sold to non-Indian purchasers by licensed Tribal Enterprises in the Tribes' Indian Country is a matter separate from liquor licensure and shall be governed by a duly-executed MOA between the Tribes and the State Department of Revenue (DOR).

(k) For these reasons, the Business Council finds it necessary to enact this Chapter establishing a Tribal Liquor Administrator and regulating the introduction, sale, taxation, distribution, and possession of packaged

(_____ version of Chapter 6-2)

spirits on the Colville Indian Reservation.

6-2-3 Introduction, Sale, Distribution, and Possession of Packaged Spirits

The introduction, sale, distribution, and possession of packaged spirits shall be lawful within the Indian country under the jurisdiction of the Confederated Tribes of the Colville Indian Reservation and within the exterior boundaries of the Colville Indian Reservation only when such activities are in conformity with this Chapter. Such introduction, sale, distribution, and possession shall be in conformity with the laws of the State of Washington when required by Public Law 83-2-7, enacted August 15, 1953, relevant government-to-government agreements with State agencies including but not limited to the Washington State Liquor Cannabis Board (WSLCB) and the Department of Revenue (DOR), and as provided in this Chapter and the regulations and orders of the Tribal Liquor Administrator.

6-2-4 Conformity with Federal Laws

This Chapter shall govern the introduction, sale, distribution, and possession of packaged spirits within the Colville Indian Reservation pursuant to federal law; Resolution 1953-50 passed on October 9, 1953 by the Colville Business Council and published in the Federal Register, Volume 18, No. 230, on November 25, 1953.

6-2-5 Conflict with Prior Resolutions

This Chapter shall supersede and amend all Resolution of the Business Council inconsistent with this Chapter.

6-2-6 Definitions

(a) “Administrator” or “Liquor Administrator” means the Tribal Liquor Administrator of the Packaged Spirits Code in the Accounting Department of the Colville Tribes.

(b) “Distribute” means to deliver or sell liquor products prior to retail sale.

(c) “Employee” means any person employed by the Liquor Administrator.

(d) “Enforcement officer” means the administrator or any other enforcement personnel authorized to administer and enforce this Chapter.

(e) “Indian country,” consistent with the definition of 18 United States Code (U.S.C.) section 1151, means: (1) all land within the exterior boundaries of the Colville Reservation, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; and

(2) all Indian allotments or other lands held in trust for a Colville tribal member or the Colville Tribes, or otherwise subject to a restriction against alienation imposed by the United States, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

(f) “Liquor” means the four varieties of liquor (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 liquor 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) “Liquor Account” means the account established by the Liquor Administrator for the collection of fees and taxes on the sale of packaged spirits on the Colville Reservation or in the Tribes Indian country pursuant to the approved Memorandum of Agreement.

(h) “Liquor Tax Compact” means any packaged spirits tax compact may enter into pursuant to applicable law.

(i) “Memorandum of Agreement” means the approved Agreement entered into between the Colville Tribes and the Washington State Liquor Cannabis Board concerning the authorization of liquor sales on the Colville Reservation.

(j) "Package" means any container or receptacle used for holding liquor.

(k) "Packaged Spirits" means spirits sold to the consumer in an unopened container for consumption off the premises of the seller.

(l) "Public place" means streets and alleys of incorporated cities and towns; state, county, township or tribal highways or roads; buildings and grounds used for school purposes; rodeo grounds; parks; tribal ceremonial grounds; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this Chapter, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly-owned bathing beaches, parks or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(m) "Regulations" means regulations made by the Administrator under the power conferred by this Chapter.

(n) "Reservation" means the Colville Indian Reservation, including all land and waters within the exterior boundaries thereof, and off Reservations lands held in trust for the Tribes or individual Indians.

(o) "Sale" and "Sell" means exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of packaged spirits.

(p) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen (17%) percent of alcohol by weight.

(q) "Tribal Court" shall mean the Tribal Court of the Colville Tribes.

(r) "Tribes" means the Confederated Tribes of the Colville Indian Reservation, Washington.

6-2-7

Sale of Liquor

(a) Minimum Age of 21: Except as otherwise provided by tribal or state law, an employee in a licensed outlet or tavern may sell liquor to any person twenty one (21) years of age or older for beverage purposes.

(Amended 7/3/02, Resolution 2002-410)
(Certified 7/19/02)

(b) Proof of Minimum Age: Where there may be a question of a person's right to purchase liquor by reason of his or her age, such person shall be required to present any one of the following officially issued cards of identification which shows his or her correct age and bears his or her signature and photograph:

- (1) Colville Tribal identification card;
- (2) Washington State Tribal Enrollment Card (no expiration date required), or other Tribal enrollment identification cards;
- (3) "Identocard" issued by the Washington State Department of Licensing, or valid Washington State Temporary Driver's License;
- (4) Driver's License, Instruction Permit, or I.D. Card issued by any U.S. State, U.S. Territory and District of Columbia;
- (5) Driver's License, Instruction Permit, or I.D. Card issued by any Canadian Province;
- (6) Official Passport, passport card, or NEXUS card;

(_____ version of Chapter 6-2)

(7) U.S. Armed Forces I.D. Card (Encrypted signature acceptable);

(8) Merchant Marine I.D. Card issued by the U.S. Coast Guard

(c) Regulation Regarding Identification: The Liquor Administrator may adopt such regulations as it deems proper covering the acceptance of such identification cards.

(d) Sealed Packages Required—Exception: The Administrator shall by regulation prescribe that any or all liquors other than malt liquor be delivered to any purchaser at a licensed outlet only in a package sealed with an official tax stamp.

(e) Consumption on Premises: No employee in a licensed liquor outlet shall open or consume, or allow to be opened or consumed any packaged spirits on the store premises.

(f) Record of Purchases: All records whatsoever of the Administrator showing purchases of packaged spirits shall be deemed confidential, and may only be disclosed as required pursuant to the approved Memorandum of Agreement with the State of Washington.

(g) Intoxicated Persons: No licensed outlet or tavern shall sell packaged spirits to any buyer when, from the physical appearance of the buyer at the time of the sale, it could be reasonably believed or understood that the buyer was intoxicated. Any owner of a liquor outlet or tavern found to have made a sale to a buyer by the Colville Tribal Court, shall be, in any action for civil damages against the buyer and owner, jointly and severally liable in damages for any injury for which the buyer is found liable, and which injury occurs within eight (8) hours after the sale by the outlet or tavern to the buyer.

6-2-8

Colville Tribal Liquor Administrator

(a) Regulation by Administrator: For the purpose of carrying into effect the provisions of this Chapter according to their true intent or of supplying any deficiency therein, the Administrator may make such regulations and issue such orders not inconsistent with the spirit of this Chapter as are deemed necessary or advisable. All such regulations and orders shall have the same force and effect as if incorporated in this Chapter. Without limiting the generality of the foregoing provisions it is declared that the power of the Administrator to make regulations and issue orders shall include the power to:

(1) Regulate the equipment, management, nature of books and records and reports concerning stores and warehouses in which packaged spirits are sold or kept;

(2) Prescribe the hours during which liquor stores shall be open;

(3) Prescribe forms to be used for purposes of this Chapter or regulations;

(4) Prescribe the manner of giving and serving notices required by this Chapter or regulations, where not otherwise provided for in this Chapter;

(5) Prescribe the manner and regulation of collection of the share of licensing fees owed by each location selling packaged spirits pursuant to a license issued under the Memorandum of Agreement;

(6) Determine the localities within the Reservation where liquor stores or outlets shall be established and the number and situation of such stores within each locality pursuant to the approved Memorandum of Agreement;

(7) Execute or cause to be executed all contracts, papers, and documents in the name of the Administrator under such regulations as may apply.

(b) Immunity from Personal Liability: Neither the Liquor Administrator nor any employee thereof shall be personally liable in any action at law for damages sustained by any person because of any action performed or done or omitted to be done by the Liquor Administrator or any employee of the Liquor Administrator in the

(_____ version of Chapter 6-2)

performance of his or her duties and the administration of this Chapter.

(c) Preemption of Field by Tribes: No municipality, city, town or county, nor the State of Washington, shall have power to impose an excise or any other tax upon packaged spirits as defined in this Chapter, or to govern or license the sale or distribution thereof in any manner within the Colville Indian Reservation, except as permitted in the regulations of the Liquor Administrator and pursuant to the Memorandum of Agreement.

(d) Inspection of Records: For the purpose of obtaining information concerning any matter related to the administration or enforcement of this Chapter, the Liquor Administrator, or any person appointed by it in writing for the purpose, may inspect the books and records of any licensed seller of packaged spirits doing business on the Reservation. Every person who neglects or refuses to produce or submit for inspection any records referred to in this section when requested to do so by the Liquor Administrator or a person appointed by it, shall be guilty of a violation of this Chapter.

6-2-9 Packaged Spirits Account

(a) Creation of Account: There shall be a "Packaged Spirits Account" which shall hold all taxes, fees, penalties, forfeitures, and all other monies, income or revenue received under this Chapter by the Liquor Administrator.

(b) Custodian of Liquor Account: The Liquor Administrator shall be custodian of the Liquor Account.

(c) Disbursements: Disbursements from the fund shall be on authorization of the Colville Business Council at the request of the Liquor Administrator, and may be made only for tribal programs or projects related to the prevention or treatment of alcohol abuse, including ancillary services for families and children affected by a family member's alcohol abuse.

(d) Use of Revenue: All revenue derived from the sale of packaged spirits shall be used in accordance with this section. All revenue shall be specially earmarked and used only for the following purposes:

- (1) The prevention and treatment of alcohol abuse and related programs; and
- (2) Tribal Colville Law Enforcement agencies to provide for their expansion and increased efficiency.

6-2-10 Pharmaceutical Preparations, Patent Medicines, Denatured Alcohol

Nothing in this Chapter shall apply to or prevent sale, purchase or consumption of:

(a) Any pharmaceutical preparation containing liquor which is prepared by a druggist according to a formula of the pharmacopeia of the United States, or the dispensatory of the United States; or

(b) Any proprietary or patent medicine; or

(c) Wood alcohol or denatured alcohol, except in the case of the sale, purchase, or consumption of wood alcohol or denatured alcohol for beverage purposes, either alone or combined with any other liquid or substance.

6-2-11 Distribution of Packaged Spirits on the Colville Indian Reservation

(a) All persons, businesses, or entities of any sort distributing packaged spirits to businesses or persons within the boundaries of the Colville Indian Reservation or on off Reservation lands held in trust for the Tribes or individual Indians are subject to the provisions of this Chapter and other applicable law or approved Memoranda of Agreement as required.

(b) Any person or entity which does distribute packaged spirits to any person or business located within the boundaries of the Colville Indian Reservation at a time when such person or entity is not validly licensed to do business shall be in violation of this Chapter and in violation of the Memorandum of Agreement and/or other applicable law.

(c) Persons or entities holding licenses for the sale of packaged spirits under this section shall be required to subject themselves in writing to the civil jurisdiction of the Colville Confederated Tribes and its Tribal Court for

(_____ version of Chapter 6-2)

the purposes of this Chapter.

6-2-12 Taxes and Fees

(a) A tax amounting to precisely the same amount of tax collected by the State of Washington on the same or similar packaged spirits item shall be assessed pursuant to the provisions of an approved Memorandum of Agreement or fully-executed Liquor Compact or with the state of Washington.

(b) Taxes collected by the Administrator shall be held in the Liquor Account.

6-2-13 Sovereign Immunity Preserved

Nothing in this Chapter is intended or shall be construed as a waiver of the sovereign immunity of the Confederated Tribes of the Colville Reservation. The Administrator, its staff, any manager or employee of the Tribes or Tribal Enterprises is specifically prohibited from attempting to waive the inherent sovereign immunity of the Colville Confederated Tribes.

6-2-14 Other Business

A licensee under this Chapter may conduct other business simultaneously with the management of a liquor products outlet, subject to applicable laws and regulations. The other business may be conducted on the same premises.

6-2-15 Operating Without a License

No person shall operate a liquor product outlet or tavern within the boundaries of the Colville Indian Reservation without first obtaining a current and valid license; persons in violation of this section shall be considered to be in violation of all federal Indian liquor laws and regulations as well as in violation of this Chapter.

6-2-16 Violations

(a) The Administrator of the Colville Confederated Tribes shall have the following powers to enforce this Chapter.

(b) Non-payment of Fees:

(1) Any person or entity within or doing business within the boundaries of the Colville Indian Reservation who does not pay the taxes required to be paid under this Chapter shall be proceeded against in the Tribal Court of the Colville Confederated Tribes.

(2) The Tribal Court of the Colville Confederated Tribes is empowered to seize, attach, and forfeit to the Colville Confederated Tribes any property belonging to any person who shall be alleged or found to have failed to pay applicable fees or taxes due and owing under this Chapter; provided that the amount of property forfeited shall not be of a wholesale value greater than the amount of applicable fees or taxes alleged or found to be due and owing.

(3) Persons sued under this Section by the Administrator shall be entitled to a full evidentiary and adversarial hearing before the Tribal Court of the Colville Confederated Tribes before any order or forfeiture may be issued. Persons sued under this Section shall have the burden of proving that they do not own any fees or taxes or that they have been assessed a greater amount of fees or taxes than they lawfully own under this Chapter.

(c) Failure to Obtain a License and all Other Violations: The Administrator shall bring all persons or entities that violate any provision of this Chapter, except non-payment of fees or taxes due, to the attention of appropriate law enforcement officials.

6-2-17 Other Agreements

Notwithstanding anything to the contrary, if the Colville Tribes enters into a liquor compact with the State of Washington, relating to alcohol wholesaling, distribution, or retail sales which are not subject to an existing tribal-state Memorandum of Agreement or compact, that compact will control over conflicting provisions of this Chapter.

(_____ version of Chapter 6-2)