

SHOALWATER BAY INDIAN TRIBE

TITLE 17

GENERAL IMPOUNDMENT CODE

Reviewed Public Hearing
January 23, 1991

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SHOALWATER BAY INDIAN TRIBE

GENERAL IMPOUNDMENT

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TITLE 17

GENERAL IMPOUNDMENT

Chapter 17.01 Purpose and Definitions

17.01.01 Purpose.

In order to protect the health, welfare and safety of tribal members, preserve the Tribe's resources and regulate the use and disposition of property upon the Reservation, objects used to violate the Tribe's code or regulations or used to cause damage on the Reservation must be impounded. As an exercise of the Tribe's civil jurisdiction, the Tribe hereby authorizes impoundment and/or forfeiture of such objects. The following impoundment and forfeiture procedures are compensatory and remedial and not penal or prohibitory and do not serve as punishment but instead constitute civil proceedings against offending property, against which property are assessed damages, costs, fees and civil fines.

17.01.02 Sections Incorporated by Reference.

The following sections of Title 3 of the Shoalwater Bay Tribe's Code of Laws are incorporated by reference and are part of this code: 3.1.020 Jurisdiction and 3.1.030 Means of Exercising Jurisdiction.

17.01.03 Object.

"Object", as used herein, shall mean any physical object capable of being held as personal property, including but not limited to: guns and weapons of all types; fish and game; fishing, camping and boating gear; containers; recreational or any other type of equipment; tools; licenses or permits; boats and vessels; and all vehicles not included in the provisions of Title 18 of the Shoalwater Bay Code of Laws.

17.01.04 Impoundment.

"Impoundment", as used herein, shall mean to seize an "object" and take it into the custody of the Shoalwater Bay Tribe.

17.01.05 Forfeiture.

"Forfeiture", as used herein, shall mean that the owner of an impounded "object", due to certain circumstances, as provided below, has lost his/her right to ownership of the "object" and thus, the Shoalwater Bay Tribe is authorized and ordered to sell the "object".

Chapter 17.02 Sovereign Immunity, Severability

17.02.01 Sovereign Immunity Preserved.

The sovereign immunity of the Shoalwater Bay Indian Tribe shall in no manner be waived by this Title. The Tribal Council, Court personnel, employees and Tribal Representatives are cloaked with the sovereign immunity of the Shoalwater Bay Indian Tribe and thus shall not be subject to liability due to any incidents or facts arising under this Title.

17.02.02 Severability.

If any provision of this Title or its application to any person or legal entity or circumstances, is held invalid the remainder of this Title or the application of its provision to other persons or legal entities or circumstances shall not be affected.

Chapter 17.03 Impoundment and Forfeiture

17.03.01 Impoundment and Forfeiture - Generally - Objects Subject to Impoundment and Forfeiture.

Any object used in violation of the Shoalwater Bay Code or in violation of any valid regulation of the Tribe, or used in any manner to facilitate a violation of the Code or a violation of any valid regulation of the Tribe, or which object is the instrument which causes damage to real or personal property or to any person, shall be subject to impoundment and forfeiture as hereinafter provided.

17.03.02 Impoundment - Persons Authorized.

a) Law Enforcement Officials

Any object for which there is probable cause to believe that the object is subject to impoundment may be impounded by any tribal law enforcement official, unless the provisions of the Motor Vehicle Impoundment Code (Title 18) are otherwise applicable. The official shall fill out a registration form for the object, using the form provided in 17.05 below. The object shall be taken into custody of the Tribe and kept at any place of reasonable safety.

b) Other Complainants

Only law enforcement officials shall have the authority to impound objects. However, any person may file a complaint with the

Shoalwater Bay Tribal Court seeking a court order authorizing impoundment under Section 17.03.01. The complaint shall be in the form provided in Chapter 17.05 below. A judge of the Tribal Court shall issue an impoundment order, in the form provided in Chapter 17.05 below, if the judge finds that the court has jurisdiction and that the complaint is supported by probable cause to believe that the object is subject to impoundment. The Court may enforce the order through its contempt powers under the Shoalwater Bay Tribe Court Procedures Code. Pursuant to the Tribal Court's order authorizing impoundment, the object shall be taken into custody of the Tribe and kept at any place of reasonable safety. The law enforcement official shall fill out a registration form for the object, using the form provided in Chapter 17.05 below.

17.03.03 Registration with Court.

Within 24 hours after impoundment, the impounding tribal law enforcement official shall register the impounded object(s) with the Court Clerk of the Shoalwater Bay Tribal Court. If impoundment occurs on a week-end or holiday, the tribal law enforcement official shall register the impounded object(s) on the first working day following impoundment. The registration shall be in the form provided in Chapter 17.05 below.

Chapter 17.04 Notice and Hearing.

17.04.01 Notice.

Upon registration with the Clerk of the Shoalwater Bay Tribal Court, the Clerk, on behalf of the Court, shall cause a notice of hearing to be served as hereinafter provided, upon the owner of the object impounded.

17.04.02 Service of Notice.

- a) Known Owners - If the owner of the object impounded is known, the notice of hearing may be personally served or sent by certified mail to the owner's last known, reasonably ascertainable, address. Service or mailing of the notice shall occur within 7 days of registration of the impounded object.
- b) Unknown Owners - If the owner of the object is unknown and his identity not reasonably ascertainable, the notice shall be served by posting notice in at least two public places on the Reservation and two consecutive issues of a newspaper of general circulation in the Reservation area within 7 days of the registration of the impounded object.

17.04.03 Contents of Notice.

The notice of hearing shall be in the form provided in Chapter 17.05 below, and shall state that the object has been impounded by a law enforcement official with the Tribe, the reason for the impoundment, a general description of the place where the violation occurred, the present location of the object impounded, the fact that damages, fees, costs of impoundment and a civil fine may be assessed and information concerning the hearing.

17.04.04 Time of Hearing.

a) Following an Impoundment

Where the owner is known, the hearing shall be at a time and place indicated in the notice, not less than thirty days nor more than 60 days after service or mailing of the notice as provided herein, whichever is later, unless the owner requests and is granted an earlier hearing date. If the owner is unknown, the hearing shall be at a time and place indicated in the notice, not less than thirty days nor more than 60 days after posting and publication of the notice as provided herein. Requests for an earlier hearing date shall be in writing, directed to the Court Clerk and shall be granted if the court is scheduled to be in session on an earlier date and the Clerk determines that the Court will have sufficient time to conduct the hearing on such date.

b) Following a Civil Infraction Hearing or Criminal Conviction

In cases where impoundment of an object is ordered following the finding that a civil infraction was committed, as provided for under Section 16.02.11 of the Civil Infraction Code, a hearing as to the validity of such an impoundment may be held immediately following the civil infraction hearing, prior to actual seizure, if the owner of the object was given notice in the form provided in Chapter 17.05 below and the hearing is not less than 30 days after service or mailing of the notice, whichever is later. If the court fails to provide notice to an owner of an object subject to impoundment, that a hearing on the validity of impoundment might take place immediately following the civil infraction hearing, the hearing on impoundment shall take place on a later date, in accordance with Section 17.04.04(a).

17.04.05 Failure to Respond to Notice or Appear at Hearing.

Following service of notice as provided above, failure of the owner to appear at the hearing, or failure of the owner to request in writing and obtain a continuance of the hearing prior to the hearing, shall be deemed an admission to all material allegations in the notice and the admission of the validity of the impoundment. Fourteen days following such failure to respond or appear, the impounded object shall be deemed forfeited by the owner and shall be sold by the Tribe to pay for damages, costs and any civil fines or restitution imposed by the Court on the person found to have used the object to violate the Tribe's code or regulations.

17.04.06 Hearing - Procedure and Outcome.

- (a) The tribe and the owner may both be represented by counsel at the hearing. If the owner appears at the hearing, the court shall determine whether the complainant has proven by a preponderance of the evidence that the object is subject to impoundment, as set forth in Section 17.03.01 above. If the validity of the impoundment or an ordered impoundment is not proven, the object shall be released to the owner upon proof of ownership. If the impoundment has not yet taken place, the order to impound shall be immediately withdrawn. If a finding of valid impoundment is made, the Court shall deem the object forfeited and order the object sold no less than 14 days nor more than six months from the date of the hearing, to pay all damages to the Tribe or private persons caused by the impounded object, to pay all costs arising from impoundment and to pay all civil fines or criminal penalties that may have been levied against the owner or user of the object due to the use of the object in connection with a violation of the Tribe's code of regulations. The object shall be released to the owner if he or she appears prior to the sale date, proves ownership and pays all such damages, costs and civil penalties accrued to date.

"Costs" shall include, but not be limited to, costs of the hearing, law enforcement costs, court fees, impound fees, attorney fees and costs of storage.

- (b) The Court, in its discretion may, but is not required to, order release of the object if the violation of the tribal code or regulation(s) or damage occurred without any fault or responsibility of the owner. In order to obtain release of the object under this subsection, the owner must pay all damages, if any, caused by the object, all costs and prove that he or she is the owner and not at fault or responsible for the damage or violation of Tribal law. The Tribe agrees to

reimburse the owner for his or her payment of damages if the Tribe is able to collect damages, within a year of the release, from the person who had control of the object when it caused the damage to the tribe and/or private persons. The Tribe shall not reimburse the owner for his or her payment of costs.

- (c) The Court, as part of the resolution of a civil or criminal hearing, may order impoundment of an object involved in the commission of a civil or criminal offense and stipulate that its release is subject to the owner not committing certain civil or criminal offenses for a period of up to six (6) months. This remedy may be imposed in addition to imposing jail time, payment of civil or criminal fines, payment of costs, or payment of restitution. An owner's failure to meet conditions for the release of an object shall deem the object forfeited, regardless of an owner's willingness to pay fines, costs or restitution.
- (d) The Court, as part of the resolution of a civil, criminal or impoundment hearing, may deem an object forfeited and not to be released under any condition when the Court determines that unconditional forfeiture is necessary to protect the health, welfare and safety of the Tribe or individual members of the Tribal Community. In order to implement this subsection, the Court, as part of the impound hearing, must make a special finding that forfeiture is necessary in order to protect the health, welfare and/or safety of the Tribal Community or individual members of the Tribal Community.

17.04.07 The Sale.

a) Procedure

The Tribe shall sell the object to the highest bidder by means of a sale which solicits sealed bids and requires such bids to be mailed to the Court Clerk and postmarked on or before a particular date. If two or more bidders submit identical bids, the Court Clerk shall randomly choose one of the high bidders by means of a drawing regulated by the Tribal Council. The sale shall be publicized by posting notice in at least two public places on the Reservation and two consecutive issues of a newspaper of general circulation in the Shoalwater Bay Reservation area. Sales shall be made in the form of cash and be final. The Tribe shall have the option of refusing all bids and either extending or postponing the sale if all of the submitted bids fall short of what the Tribe determined to be the fair market value of the object.

b) Proceeds

Proceeds from the sale of an impounded object shall be disbursed by the Tribal Council in the following order:

- (i) Reimbursement to the Tribe for all costs it incurred due to the impoundment;
- (ii) Restitution to the Tribe for damages suffered in connection with the impounded object;
- (iii) Restitution to private parties for damages suffered in connection with the impounded object;
- (iv) Payment to the Tribe for all civil or criminal penalties levied against the user of the object due to use of the object in connection with a violation of the Tribe's code or regulations;
- (v) The balance, if any, to the owner of the object.

Chapter 17.05 Appeal

17.0501 Appeal - Generally.

Any person aggrieved by the decision of the Tribal Court shall have the right to appeal such decision as prescribed in Title 19 of the Shoalwater Bay Tribal Code of Laws.



SHOALWATER BAY INDIAN TRIBE

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SHOALWATER BAY INDIAN TRIBE RESOLUTION # 01-31-91-07

WHEREAS, The Shoalwater Bay Indian Tribe is a Federally Recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; AND

WHEREAS, The Shoalwater Bay Council is the governing Body of the Shoalwater Bay Indian Tribe in accordance with their Constitution and By-laws; AND

WHEREAS, The Shoalwater Bay Tribal Council has the power and responsibility to enact laws governing all persons and defining offenses against The Shoalwater Bay Indian Tribe; AND

WHEREAS, The Shoalwater Bay Tribe is in need of effective and harmonious laws to govern people within the jurisdiction of the Tribe; AND

WHEREAS, The General Impoundment Code will provide procedures for enforcement of law and order to all people within the jurisdiction of the Tribe; AND

WHEREAS, A public hearing was held regarding the General Impoundment Code, also known as Title 17, on Shoalwater Bay on January 23, 1991,

NOW THEREFORE BE IT RESOLVED, THAT the Shoalwater Bay Tribe hereby adopts the attached Title 17 General Impoundment Code, effective as of the date of this resolution with the provision, to amend and/or delete as needed.

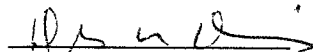
CERTIFICATION

This resolution was passed at a Tribal Council meeting Jan. 31, 1991, at which a quorum was present.

FOR 4

AGAINST 0

ABSTENTIONS 0


DOUGLASM. DAVIS, CHAIRMAN


LYNN CLARK, SECRETARY