

Suggested Code Revisions as of January 20, 2016

Shoalwater Bay Indian Tribe Code Of Laws



Title 16 Civil Infractions

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AUTHORITY AND PURPOSE

16.01.01 **Constitution of the Shoalwater Bay Indian Tribe**

The Constitution of the Shoalwater Bay Indian Tribe provides that the Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe with the authority to enact Codes and regulations consistent with this Constitution for the conduct and administration of all Tribal elections, the appointment of the Election Board and the regulation of its duties; to enact Codes and laws governing the conduct of all persons and defining offenses against the Shoalwater Bay Indian Tribe; maintain order and protect the safety and welfare of all persons within the Shoalwater Bay Tribe's jurisdiction; and pass any Codes or laws necessary to govern the administration of justice and the enforcement of all laws, Codes or regulations; and to provide for the jurisdiction and procedures of the Shoalwater Bay Tribal Court.

16.01.02 **Purpose**

It is the duty and obligation of the Shoalwater Bay Tribal Council to safeguard, protect, manage, administer and develop the natural resources of Tribal lands for the sole economic, cultural, and social benefit of the members of the Tribal Community. The peace, property, and public safety

of all persons, both Indian and non-Indian, may be threatened by disruptive, destructive, negligent, or malicious acts.

The Tribal Council possesses the inherent and constitutional authority and obligation, subject to the limitations of applicable Federal law, to protect the people; property; natural, historic and archeological resources; culture; land; water; riparian rights; livestock; and wildlife from any threat or conduct by any person which might diminish, degrade, damage, injure, destroy or threaten Tribal Community members, their natural resources, or the social, cultural, religious, political or economic well-being of the Tribal Community in any manner.

It is the purpose of this Code to regulate such threats or conduct, and to provide relief to the Tribal Community and its individual members for damages which result therefrom, and to provide for remedies in the nature of civil sanctions.

Nothing in this Code is intended to supersede any possible similar sections of the Law and Order Code.

16.01.03 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, Prosecutor, Police, employees, and Tribal representatives are cloaked with the sovereign immunity of the Shoalwater Bay Indian Tribe.

GENERAL PROVISIONS

16.02.01 Definitions

As used in this Code:

- (a) "Defendant" means the person against whom an action is file under this Code.
- (b) "Infraction" means a civil offense against the Shoalwater Bay Tribe for which the remedy involved is monetary fines/damages. An infraction is not a crime and the punishment shall not affect or impair the rights or credibility of any person convicted thereof.
- (c) "Public place" means a location, exclusive of a private residence, to which the members of the tribal community have general access or a location in which three or more members of the tribal community have gathered. Public places include, but are not limited to, tribal buildings; parks; highways and roads; beaches, shorelines, river banks and waterways; transport facilities; schools; jails and prisons; the common areas of apartment buildings; places of business or amusement; and the common areas of any neighborhood.

16.02.02 Duties and Authority of Officers; Warrants Not Required

- (a) It shall be the duty of tribal law enforcement officers to enforce the provisions of this Code without the necessity of procuring a warrant.
- (b) A tribal law enforcement officer is authorized to arrest any person who resists, delays, prevents or obstructs any such officer, in the discharge, or attempt to discharge, of any duty under this Code or gives a false report to any peace officer.

Any person who is subject to the criminal laws of the tribe and who is arrested under this section shall be guilty of a misdemeanor and may be prosecuted pursuant to the criminal provisions of the Shoalwater Bay Tribal Code.

To the extent authorized by law, any person who is not subject to the criminal laws of the Tribe and who is detained under this section may be held for a reasonable time until a State or Federal law enforcement officer takes the defendant into custody or transported without unnecessary delay to the nearest authority for the State of Washington or the United States.

OFFENSES

16.03.01 Trespass

A person commits the infraction of trespass if he:

- (a) Enters upon the real property of the Shoalwater Bay Tribe or members of the Shoalwater Bay Tribe that is posted to prohibit trespassing, is fenced, or contains obvious outward signs of habitability without permission of the owner or the owner's agent;
- (b) Enters tribal lands that are not specifically posted as open to the public;
- (c) Is a non-tribal member and enters or remains on lands of the Shoalwater Bay Tribe and its members that lie within the boundaries of the Shoalwater Bay Reservation or other Tribal lands or any fish bearing stream that lie within the boundaries of the Shoalwater Bay Indian Reservation or lands unless s/he has the authority of the Shoalwater Bay Tribe or s/he is the spouse or minor child of a tribal member;
- (d) Refuses to depart from or reenters the Shoalwater Bay Reservation or lands in violation of an order of exclusion issued by the Tribal Court as provided by the Shoalwater Bay Tribal Code.

16.03.02 Vandalism

A person commits the infraction of vandalism if he:

- (a) Injures, defaces, damages or destroys:
 - (1) Private property in which any other person has an interest without the consent of such other person;
 - (2) Tribal or other public property without the lawful consent of the appropriate governing body; or
 - (3) An obvious place of burial or established archaeological site.

16.03.03 Use or Possession of Alcohol at a Public Facility or Public Event

A person commits the infraction of use or possession of alcohol at a public facility or a public event if s/he consumes any kind of alcohol beverage or has any kind of alcoholic beverage in his or her possession or under his or her control at a public place where alcohol is prohibited as defined in section 16.02.01(c) above.

The transport of alcoholic beverages in closed containers in a vehicle on the public highways by a person over twenty-one (21) years of age is not a violation of this section.

16.03.04 Harassment

A person commits the infraction of harassment if:

- (a) Without lawful authority, s/he, by words or conduct directed at another within the Shoalwater Bay Indian Reservation or lands, acts to or threatens to:
 - (1) Cause bodily injury in the future to any person;
 - (2) Cause physical damage to the property of a person other than the actor;
 - (3) Subject any person to physical confinement or restraint
 - (4) Do any other act which is intended to substantially harm any person with respect to his or her physical or mental health or safety;
 - (5) The person by words or conduct places the person threatened in reasonable fear that the treat will be carried out; and
 - (6) Prevents or substantially interferes with members of the Shoalwater Bay Tribe lawfully engaged in hunting, fishing or trapping activities, including but not limited to possession of legally taken fish and wildlife.

16.03.05 False Reporting

A person commits the infraction of false reporting if s/he initiates a false alarm or report which is

transmitted to a fire department, law enforcement agency or other organization that responds to emergencies involving danger to life or property.

16.03.06 Curfew

- a) Any person sixteen (16) through seventeen (17) years of age, found on the reservation public areas, including its streets, roadways, and paths between the hours of 10:00 pm and 5:00 am on school nights and 12:00 midnight and 5:00 am on non-school nights has committed a civil infraction, unless they are accompanied by someone with parental permission, who is at least eighteen (18) years old.
- b) Any person thirteen (13) through fifteen (15) years of age, found on the reservation's public areas, including its streets, roadways, and paths between the hours of 10:00 pm and 5:00 am on school nights and 11:00 pm and 5:00 am on non-school nights has committed a civil infraction, unless they are accompanied by someone with parental permission, who is at least eighteen (18) years old.
- c) Any person eight (8) through twelve (12) years of age, found on the reservation's public areas, including its streets, roadways, and paths between the hours of 9:00 pm and 5:00 am on school nights and 10:00 pm and 5:00 am on non-school nights has committed a civil infraction, unless they are accompanied by someone with parental permission, who is at least eighteen (18) years old.
- d) Any person from birth through seven (7) years of age, found on the reservation's public areas, including its streets, roadways, and paths after dusk has committed a civil infraction, unless they are accompanied by someone with parental permission, who is at least eighteen (18) years old.

A Court appearance for this infraction shall be mandatory.

16.03.07 Littering

A person commits the infraction of littering if s/he deposits, throws, or propels any garbage or waste material, including but not limited to disposable packaging or containers, upon any highway, roadway, runway, waterway or railroad track, or from any boat or vehicle while such boat or vehicle is either in motion or stationary, or upon any public or private property, UNLESS such garbage or waste material is deposited for purposes of storage, disposal or collection in accordance with any valid and lawful contract for the storage, disposal, or collection of garbage, recyclables, or other waste material.

16.03.08 Disturbing the Peace

A person who causes or allows a public disturbance or noise to originate from property where he or she is located, has committed a civil infraction.

The following are determined to be public disturbances:

- A) Frequent, repetitive or continuous sounds made by any animal which unreasonably disturbs or interferes with the peace, comfort, or rest of the Shoalwater Bay Reservation community members;
- B) Frequent, repetitive or continuous sounds made by any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by Code or regulation of the Shoalwater Bay Tribe;
- C) The creation of frequent, repetitive or continuous sounds in connection with the starting operation, repair, rebuilding or testing of any motor vehicle or internal combustion engine, so as to unreasonably disturbs or interferes with the peace, comfort, or rest of the Shoalwater Bay Reservation community members;
- D) The creation of frequent, repetitive or continuous sounds in connection with the use of a musical instrument, radio, television, recording player, so as to unreasonably disturbs or interferes with the peace, comfort, or rest of the Shoalwater Bay Reservation community members;
- E) The creation of frequent, repetitive or continuous sounds in connection with the fireworks, construction, remodeling, or repair work, so as to unreasonably disturbs or interferes with the peace, comfort, or rest of the Shoalwater Bay Reservation community members;
- F) The possession and/or use of any controlled substance or related paraphernalia as described in the Title 2 26 of the Law and Order Code without a prescription;
- G) Any excessive behavior that unreasonably disturbs or interferes with the peace, comfort, or rest of the Shoalwater Bay Reservation community members.

16.03.09 Minor under the Influence/Possession

Any person under the age of twenty one (21) years of age who shall possess, purchase, consume, be under the influence of, obtain, or sell any alcoholic beverage has committed a civil infraction.

Possess shall include both actual and constructive possession.

Actual possession means that the alcohol was found on the person.

Constructive possession means that the person had dominion and control over the alcohol or the location where the alcohol was found.

Dominion and control need not have been exclusive to the person.

16.03.10 Dangerous Use of Firearms

Any person who shall use a firearm on the Shoalwater Bay Reservation or Tribal lands in a

manner that is dangerous to persons, property, or non-game animals has committed a civil infraction.

A person who discharges a firearm in any building within the Reservation or lands or uses a firearm in a manner that is contrary to the Tribe's safety and welfare, hunting regulations or any Federal hunting or firearms regulation is in automatic violation of this section.

For the purposes of this section "firearm" means any weapon, which will, is designed to , or may readily expel a projectile, including but not limited to BB guns, bow and arrow, slingshots, wrist rockets, etc.'

16.03.11 Dangerous Use of Fireworks

Any person who shall use fireworks on the Shoalwater Bay Reservation in a manner that is dangerous to human life, animal life or dangerous to any property has committed a civil infraction.

16.03.12 Disorderly Conduct

Any person who acts in a manner that disrupts the public order, peace or welfare of the Shoalwater Bay Tribe or its residents has committed the infraction of disorderly conduct.

Examples of disorderly conduct include but is not limited to:

- (a) Uses abusive language and thereby intentionally creates a risk of assault;
- (b) Intentionally disrupts any lawful assembly or meeting of persons without lawful authority;
- (c) Intentionally obstructs vehicular or pedestrian traffic without lawful authority; or
- (d) Intentionally engages in fighting or in tumultuous conduct or makes unreasonable noise, within five hundred feet of the location where a funeral or burial is being performed;
- (e) Suffers or permits in any building or on property any riotous conduct, drunkenness, or fighting to the annoyance of the public;
- (f) Consumes intoxicating beverages or controlled substances while on a public street or sidewalk or while in Tribally owned buildings unless authorized by the Tribal Council;
- (g) Performs any other act not specifically described which disturbs public peace, provokes disorder or endangers the health, welfare and safety of others.

ENFORCEMENT

16.04.01 Notice of Infraction

Tribal Law enforcement may issue a Notice of Infraction when it occurs in the officer's presence or when the officer finds reasonable cause to believe a civil infraction has been committed; or

The Tribal Prosecutor may file a Civil Complaint upon examination of any law enforcement report.

A person who has been issued a Notice of Infraction or has been served with a Notice of a Civil Complaint must respond to the notice within fifteen (15) days of the date the notice was received or reasonably should have been received. The response may be in person or by mail. If mailed the response must be postmarked no later than midnight on the date the response was due.

A person may respond to a civil infraction by:

- 1) Pay the fine. The Tribal Court shall then enter a judgment that the person committed the civil infraction; (Not available for mandatory appearances)
- 2) Request a hearing to explain the circumstances surrounding the occurrence of the civil infraction which may arguably lessen the amount of the fine; or
- 3) Request a hearing to contest the determination that the infraction occurred.

16.04.02 Hearings

The Tribal Prosecutor shall represent the Tribe in all matters arising under the Civil Infraction Code. The Prosecutor shall make all final decisions on the submission of complaints or other legal action to be taken in the prosecution of cases.

Except as otherwise provided for within this Title, Hearings shall be conducted in a manner consistent with that of Shoalwater Bay Title 2, Civil Procedure Code.

16.04.03 Burden of Proof—Preponderance of the Evidence

(a) The burden of proving that an infraction under this Code has been committed shall be on the TRIBE.

(b) The TRIBE shall be considered to have met the burden of proof if the TRIBE's evidence shows it is more likely than not the infraction was committed.

16.04.04 Failure to Respond / Default Judgment

(a) Unless otherwise provided by this part, the Tribal Court shall enter a default judgment against any defendant who is cited/complained for an infraction of any provision of this Code or regulations promulgated under this Code and does not appear at

the hearing or otherwise respond to the notice of infraction as provided in this subchapter.

If a default judgment is entered, the court clerk shall, if feasible, issue notice of judgment to the defendant advising him that he must pay the judgment by a date certain which shall not be less than fifteen (15) days after the date of the notice.

The notice shall state that failure to pay the judgment may result in forfeiture of any bond held pursuant to this Code, and/or a civil proceeding in Tribal Court to collect the Court ordered fine amount, and/or referred by the Tribal Court to an authorized collection agency. An additional administrative processing fee of one hundred and fifty dollars (\$150.00) shall be added to any imposed fine.

Before ordering collection of the fine amount and any additional administrative processing fee, the Tribal Court shall find:

- (1) The notice of infraction was issued;
 - (2) The defendant was informed of his duty to either pay the fine amount or enter an appearance; and
 - (3) The defendant did not appear at the hearing or otherwise respond to the notice of infraction as provided by this subchapter.
- (b) Any defendant shall be deemed to have conceded to the correctness of the determination of the infraction and the fine amount imposed on the notice if s/he has:
- (1) Requested a hearing to contest the determination that an infraction was committed or requested a hearing to explain mitigating circumstances, and without good cause fails to appear at the hearing scheduled; or
 - (2) Fails to respond to the notice.

16.04.05 Civil Fine/Damages Schedule

(a) As directed by the Tribal Council, the directors of the appropriate tribal department(s) shall prepare for the approval of the council, and from time to time shall review and, as necessary, propose revisions to a schedule of fines/damages consisting of a dollar determination or dollar determinations calculated to closely approximate the cost of providing equitable restitution to the Tribe for the damage or loss which would be caused by any infraction(s) of this Code or regulation adopted thereunder.

In calculating fines/damages, the Tribal Council may consider, in addition to any other factors they reasonably deem relevant:

- (1) The cost to the Tribe of producing and/or protecting the tribal property or

interest affected;

- (2) The cost of replacing or restoring the tribal property or interest affected;
- (3) The costs of enforcement including the general overall costs and costs particularized to individual infractions where appropriate;
- (4) The loss to the Tribe of any revenue affected by the infraction;
- (5) Fine/Damages for trespass;
- (7) The costs incurred in representing the Tribe in an action under this subchapter.

(b) The director of the tribal department preparing or updating the fine schedules shall post notice of the adoption of the schedule at all public buildings on the Shoalwater Bay Reservation. Such notice shall provide that schedules will be available at the Shoalwater Bay Tribal Department of Public Safety and the Shoalwater Bay Fisheries Department.

(c) The following fines/damages schedule shall apply to infractions set forth in the Civil Code Title 16 et. seq. of the Shoalwater Bay Tribal Code. Copies of the fine schedule are available at the Shoalwater Bay Department of Public Safety and the Shoalwater Bay Fisheries Department in accordance with 16.04.01(b).

16.03.01	Trespass	\$100 to \$1000
16.03.02	Vandalism	\$100 to \$5000
16.03.03	Use or Possession of Alcohol	\$100 to \$500
16.03.04	Harassment	\$100 to \$5000
16.03.05	False Reporting	\$100 to \$500
16.03.06	Curfew	
	A. First Offense	\$25.00
	B. Second Offense	\$50.00
	C. Third and Subsequent Offense(s)	\$100.00
16.03.07	Littering	\$100 to \$1000
16.03.08	Disturbing the Peace	\$100 to \$5000
16.03.09	Minor under the Influence/Possession	\$100 to \$500
16.03.10	Dangerous Use of Firearms	\$100 to \$5000
16.03.11	Dangerous Use of Fireworks	\$100 to \$2000
16.03.12	Disorderly Conduct	\$100 to \$5000

(NOTE: Fines may be paid through community service or be taken out of the violator's per capita payment [If applicable] if not made within 60 days of being assessed by the Court.)

16.04.06 Fine/Damages Presumption

- (a) Since in most instances the exact amount of damages caused to the Tribe by a

particular infraction of this Code or regulation adopted hereunder will be difficult or impossible to determine, it shall be presumed by the court adjudicating an infraction of this Code that the amount fixed within the schedule in 16.04.01 represents the fine(s)/damages owed to the Tribe as restitution if the defendant is found to be guilty of the infraction.

This presumption may be rebutted by evidence which shows that the amount indicated by the schedule is inadequate or excessive, or special circumstances warrant a reduction of the imposed fine amount in a particular case. In any case in which the presumption is successfully rebutted, the parties may introduce evidence to prove the mitigating circumstances as in any other civil case.

(b) All persons shall be deemed to have consented to the provisions of this Code by their entry onto the Reservation, and where applicable, by their signature on a tribal permit or permits.

16.04.07 Expulsion

Nothing in this Code shall be deemed to preclude the use of the remedy of expulsion of nonmembers for violation of this Code and any enforcement officer or other appropriate official may follow the procedure provided by tribal law to initiate an action for expulsion in addition to or in lieu of any other enforcement procedure provided for by this Chapter.

16.04.08 Federal Prosecution

(a) Nothing in this Chapter shall be deemed to preclude the federal prosecution under 18 U.S.C. 1165 of nonmembers who trespass on the Reservation. Any enforcement officer or attorney representing the Tribe may initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided for by this Code.

(b) This Code has been enacted to protect the resources of the Shoalwater Bay Tribe, and the taking or using of tribal property or services contrary to the terms of this Code constitutes theft of tribal assets. Nothing in this Code shall be deemed to preclude federal prosecution of violators under 18 U.S.C. 1163 for theft of tribal assets or any other federal law designed to protect tribal wildlife or other natural resources. Any conservation officer may initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided for by this Chapter.

16.04.09 Severability

Should a court of competent jurisdiction declare any provision of this Code invalid, such decision shall not affect the validity of any other part of the Code which can be given effect without the invalid part.