

SHOALWATER BAY INDIAN TRIBE

TITLE 18

MOTOR VEHICLE IMPOUNDMENT

REVIEWED AT PUBLIC  
HEARING 01-23-91  
ADOPTED 01-31-91

SHOALWATER BAY TRIBE  
MOTOR VEHICLE IMPOUNDMENT

TABLE OF CONTENTS

Chapter 18.01 MOTOR VEHICLE IMPOUNDMENT - GENERALLY AND  
DEFINITIONS

18.01.01	Purpose.....	1
18.01.02	Sections Incorporated by Reference.....	1
18.01.03	Impoundment.....	1
18.01.04	Forfeiture.....	1
18.01.05	Vehicle.....	1
18.01.06	Abandoned Vehicle.....	2

Chapter 18.02 VEHICLES ABANDONED ON TRIBAL PROPERTY

18.02.01	Law Enforcement Officer's Duty.....	2
18.02.02	Authority to Remove or Impound Vehicles.....	2

Chapter 18.03 IMMEDIATE REMOVAL OF CERTAIN VEHICLES

18.03.01	Removal of Certain Vehicles for Safety and Other Reasons.....	3
----------	---	---

Chapter 18.04 REGISTRATION, NOTICE AND HEARING

18.04.01	Registration and Notice - Title 17 Requirements Incorporated by Reference.....	4
18.04.02	Time of Hearing.....	4
18.04.03	Hearing - Procedure and Outcome.....	5
18.04.04	Failure to Appear.....	6
18.04.05	The Sale.....	6

Chapter 18.05 SOVEREIGN IMMUNITY, SEVERABILITY

18.05.01	Sovereign Immunity Preserved.....	7
18.05.02	Severability.....	7

Chapter 18.06 APPEAL

1806.01	Appeal - Generally.....	8
---------	-------------------------	---

## TITLE 18

### MOTOR VEHICLE IMPOUNDMENT

#### Chapter 18.01 Motor Vehicle Impoundment - Generally and Definitions

##### 18.01.01 Purpose.

The Shoalwater Bay Tribe, as an exercise of its civil jurisdiction, hereby authorizes impoundment and/or forfeiture of motor vehicles, for the purpose of protecting the health, welfare and safety of the Shoalwater Bay Tribal Community. 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.

##### 18.01.02 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: 3.01.020 Jurisdiction and 3.01.030 Means of Exercising Jurisdiction.

##### 18.01.03 Impoundment.

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

##### 18.01.04 Forfeiture.

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

##### 18.01.05 Vehicle.

"Vehicle", as used herein, shall mean all motorized vehicles that are either presently licensed by the State of Washington or subject to licensing by the State of Washington. Vehicles not amenable to State of Washington licensing, including but not limited to, certain types of

vessels, motorcycles and recreational vehicles, are for purposes of impoundment and forfeiture, subject to Title 17 of the Shoalwater Bay Code of Laws (General Impoundment Code).

18.01.06 Abandoned Vehicle.

For purposes of this chapter, an "abandoned vehicle" means any vehicle which meets either of the following criteria:

- a) A vehicle parked within the boundaries of the Shoalwater Bay Reservation without authorization for more than 24 hours; or
- b) A vehicle parked within the boundaries of the Shoalwater Bay Indian Reservation without movement for more than 2 months.

**Chapter 18.02 Vehicles Abandoned on Tribal Property**

18.02.01 Law Enforcement Officer's Duty.

A Shoalwater Bay Law Enforcement Officer discovering an apparently abandoned vehicle, as defined in sections 18.01.04(a) and (b), shall attach to the vehicle a conspicuous notice giving the following information:

- a) The date and time the notice was attached;
- b) The identity of the officer;
- c) A statement that if the vehicle is not removed within 24 hours from the time the notice was attached, the vehicle may be taken into custody and stored at the owner's expense; and
- d) The address and telephone number where additional information is available.

18.02.02 Authority to Remove or Impound Vehicles.

- a) Law Enforcement Officials

If the vehicle has not been removed within twenty-four hours from the time notice is given under Section 18.02.01, a law enforcement official may take custody of the vehicle and remove the vehicle or cause it to be removed to a place of reasonable safety. "A place of reasonable safety" shall include the business location of a tow truck operator licensed by the State of Washington or the parking area adjacent to the Shoalwater Bay Tribal Center.

b) Other persons

Only law enforcement officials shall have the authority to remove vehicles. Private parties who feel a vehicle is "abandoned", and thus, subject to impoundment, shall either notify law enforcement and ask that they investigate, or file a complaint with the Clerk of the Shoalwater Bay Tribal Court seeking a court order authorizing impoundment. Complaint forms shall be made available by the Court Clerk and shall ask the complainant to state any information the complainant has as to the identity and whereabouts of the owner of the vehicle and what efforts, if any, the complainant has made to have the owner remove the vehicle. A Judge of the Tribal Court shall issue an impoundment order, 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. Pursuant to the Tribal Court's order authorizing impoundment, the object shall be removed by a law enforcement official to a "place of reasonable safety", as provided for above in subsection 18.02.02 a).

### Chapter 18.03 Immediate Removal of Certain Vehicles

#### 18.03.01 Removal of Certain Vehicles for Safety and Other Reasons.

A law enforcement official may take immediate custody of a vehicle and provide for its removal to a place of reasonable safety whenever:

- a) Any unattended vehicle obstructs traffic, access of any Shoalwater Bay Community member to their residence or jeopardizes public safety;
- b) A law enforcement official discovers a vehicle he or she reasonably believes is stolen;
- c) The driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her vehicle or fails to do so;
- d) The driver of a vehicle is arrested and taken into custody and is not physically or mentally capable of deciding upon steps to be taken to protect his or her vehicle or fails to do so;
- e) Any vehicle is driven outside of designated public roads without the consent of the Shoalwater Bay Community member who has authority over the land in which the vehicle is being driven over;

- f) The vehicle is the instrument which causes damage to property;
- g) The vehicle is seized as evidence in a criminal investigation; or
- h) The Shoalwater Bay Tribal Court has issued an order of impoundment.

A law enforcement official has discretion to decide whether to allow another person to take custody of the vehicle under subsections c) and d).

### Chapter 18.04 Registration, Notice and Hearing

#### 18.04.01 Registration and Notice - Title 17 Requirements Incorporated by Reference.

The requirements of registration and notice under this Title shall be identical to the requirements of registration and notice under Title 17 (General Impoundment Code), except that the word "vehicle" shall be substituted for the word "object." Thus, the following sections of Title 17 of the Shoalwater Bay Code of Laws are incorporated by reference and are part of this code: 17.04.01 Notice, 17.04.02 Service of Notice and 17.04.03 Contents of Notice.

#### 18.04.02 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 10 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 10 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 unscheduled 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 a vehicle 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 17.04 of the General Impoundment Code and the hearing is not less than 10 days after service or mailing of the notice, whichever is later. If the Court fails to provide notice to an owner of vehicle 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 subsection 18.04.02 a) above.

18.04.03 Hearing - Procedure and Outcome.

a) Generally

The Tribe and 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 vehicle was subject to impoundment as set forth under this Title or section 16.02.11 of the Civil Infraction Code. If the validity of the impoundment or an ordered impoundment is not proven, the vehicle 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 vehicle forfeited and order the vehicle sold no less than 14 days nor more than three months from the date of the hearing, to pay all damages to the Tribe or private persons caused by the impounded vehicle, to pay all costs arising from impoundment and to pay all civil or criminal penalties that may have been levied against the owner or user of the vehicle due to the use of the vehicle in connection with a violation of the Tribe's code of regulations. The vehicle 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, attorney fees and costs associated with the impoundment.

b) Release Subject to Additional Conditions

The court, as part of the resolution of a civil or criminal hearing, may order impoundment of a vehicle 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 three (3) 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 a vehicle shall deem the vehicle forfeited, regardless of an owner's willingness to pay fines, costs or restitution.

c) Release Under No Condition - Forfeiture

The Court, as part of the resolution of a civil, criminal or impoundment hearing, may deem a vehicle forfeited and not to be released under any condition when the Court determines that unconditional forfeiture is necessary to protect the health, welfare and/or 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.

18.04.04 Failure to Appear.

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.

18.04.05 The Sale.

a) Procedure

The Tribe shall sell the vehicle 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 vehicle.

b) Proceeds

Proceeds from the sale of an impounded vehicle 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 vehicle;
- (iii) Restitution to private parties for damages suffered in connection with the impounded vehicle;
- (iv) Payment to the Tribe for all civil or criminal penalties levied against the user of the vehicle 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 vehicle.

## Chapter 18.05 Sovereign Immunity, Severability

### 18.05.01 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.

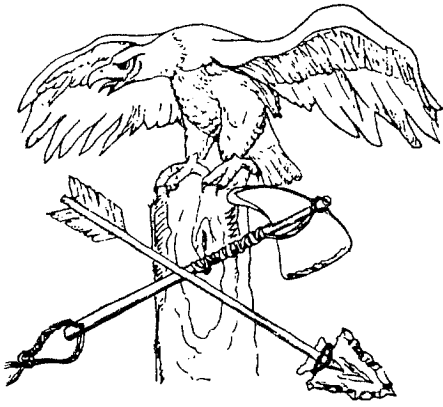
### 18.05.02 Severability.

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 18.06 Appeal

### 18.06.01 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

P.O. Box 130 • Tokeland, Washington 98590

Telephone (206) 267-6766 • FAX (206) 267-6778

## SHOALWATER BAY INDIAN TRIBE RESOLUTION # 01-31-91-08

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 Tribal 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 the conduct of all persons and defining offenses against the Shoalwater Bay Indian Tribe, AND

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

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


WHEREAS, A Public Hearing was held regarding the Motor Vehicle Impoundment Code also known as Title 18, on Shoalwater Bay January 23, 1991,

NOW THEREFORE BE IT RESOLVED, THAT The Shoalwater Bay Tribe hereby adopts the attached Title 18 Motor Vehicle 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 meeting held January 31, 1991, at which a quorum was present.

FOR 4 AGAINST 0 ABSTENTIONS 0

  
\_\_\_\_\_  
DOUGLAS M. DAVIS, CHAIRMAN

  
\_\_\_\_\_  
LYNN CLARK, SECRETARY