

Ordinance Number 12.800. Amended by Resolution No. 2005-361, dated September 16, 2005; Resolution No. 2013-201, dated July 19, 2013.

Original Date: January 18, 1997
Subject: Civil Offense

CIVIL OFFENSE ORDINANCE

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§ 12.800 PURPOSE AND AUTHORITY

The Siletz Tribal Council has the authority to adopt civil offenses regulating the conduct of persons and activities within its jurisdiction, and to decriminalize related Tribal Crimes to avoid the possibility of double jeopardy. The Siletz Tribal Council has the authority to adopt this ordinance pursuant to The Constitution of the Confederated Tribes of Siletz Indians of Oregon (the "Tribe"), Article IV, Section 1. The intent of this ordinance is not to classify crimes or criminalize conduct, but rather to set forth civil offenses, punishable by civil fines and/or other civil penalties within the jurisdiction of the Siletz Tribal Court. The Siletz Tribal Court has the authority to review alleged offenses of the below-described civil offenses pursuant to The Constitution of the Confederated Tribes of Siletz Indians of Oregon, Article IV, Section 2.

§ 12.801 PROCEDURE

(a) **Rules of Procedure:** Unless a specific provision of this ordinance provides otherwise, the prosecution of the below-described civil offenses shall be governed by the Siletz Tribal Court Rules and Procedures.

(b) **Notice:** Upon determining that a civil offense has occurred, the Tribe shall serve the respondent with a notice that shall include, at least the following:

- (1) The name of the Respondent;
- (2) The name of the officer or agent issuing the notice, including the signature of the agent or officer;
- (3) The date the notice was prepared;

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Amended: 9/16/05; 7/19/13

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- (4) A citation and quotation of the provision of this ordinance which the Tribe alleges the Respondent has violated and statement of the authority and jurisdiction under which the hearing is to be held;
- (5) A succinct summary of the facts supporting the alleged violation;
- (6) A hearing date, not less than 30 days beyond the date of the notice;
- (7) A statement which provides that the Respondent may obtain an attorney at their own expense, and that the Respondent may have the opportunity to call witnesses and cross-examine the Tribe's witnesses.
- (8) A general description of the hearing procedure including the order of presentation of evidence and an explanation of the burdens of proof or burdens of going forward with the evidence;
- (9) The amount of any bail; and
- (10) The amount or range of possible fines, and a statement that the court may impose other available civil remedies.

The notice described in this subsection shall be personally served on the Respondent in accordance with Siletz Tribal Court Rules and Procedures, § 3.006.

(c) **Appeals from Tribal Court:** Appeals from Tribal Court shall be handled in accordance with the Siletz Tribal Court of Rules and Procedures.

(d) **Burden of Proof:** The Tribe shall have the Burden of Proof for proving all elements of the below-described offenses by the preponderance of the evidence.

(e) **Definitions:**

- (1) "Person" means any individual, corporation, commission, partnership or other entity;
- (2) "Intentionally" or "with intent" when used with respect to a result or to conduct described by a provision of Siletz Tribal law defining a civil offense means that a person acts with a conscious objective to cause the result or to

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engage in the conduct so described.

- (3) "Knowingly" or "with knowledge" when used with respect to a result or to conduct described by a provision of Siletz Tribal law defining a civil offense, means that a person acts with an awareness that the conduct of the person is of a nature so described or that a circumstance so described exists.
- (4) "Recklessly" or "reckless" when used with respect to a result or to a circumstance described by a provision of Siletz Tribal law defining a civil offense, means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.
- (5) "Negligence" or "negligent" when used with respect to a result or to a circumstance described by a provision of Siletz Tribal law defining a civil offense, means that a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.
- (6) "Liquor" means any liquid or solid containing more than one-half of one percent alcohol by volume and capable of being consumed by a human being.
- (7) "Siletz Indian Country" means: any real property owned by, held in trust for or possessed by the Confederated Tribes of Siletz Indians, Chinook Winds Gaming and Convention Center, Siletz Tribal Economic Development Commission or any other entity of the Tribe.

(f) **Proper Parties and Procedure:**

- (1) All civil offenses shall be enforced and pursued in court by the Confederated Tribes of Siletz Indians of Oregon only.
- (2) No other person or entity may enforce, nor pursue in court, a civil offense contained in this ordinance without the express authorization of the Tribal Council of the Confederated Tribes of Siletz Indians of Oregon.

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- (3) No employee, agent, instrumentality, enterprise, contract employee, volunteer, business, official or director of the Confederated Tribes of Siletz Indians of Oregon, Siletz Tribal Economic Development Commission, Chinook Winds Gaming and Convention Center, Siletz Indian Housing Authority, or other entity or division of the Tribe or any other entity listed in this subpart may be prosecuted under this civil offense ordinance for acts committed during their hours of duty or employment without the express consent of the Tribal Council of the Confederated Tribes of Siletz Indians of Oregon.

(g) **Consent to Jurisdiction:** The Siletz Tribal Court Rules and Procedures contain provisions relating to when a party consents to the Tribe's jurisdiction. These consent to jurisdiction provisions, as amended, apply to the Tribe's jurisdiction to prosecute the civil offenses set forth below.

§ 12.802 **CIVIL OFFENSES**

(a) The following shall be civil offenses against the Confederated Tribes of Siletz Indians of Oregon. Violations of Civil Offenses are punishable through the imposition of fines, up to \$2,500, in addition to any other civil penalty or order of the Siletz Tribal Court. It is within the Siletz Tribal Court's authority to impose any civil penalty within its authority, including, but not limited to orders to pay restitution, revocation of licenses and orders of eviction. In addition to the offenses listed below, a person commits the offense of "attempt" when the person intentionally engages in conduct which constitutes a substantial step toward commission of a civil offense.

(b) **Giving False Information to a Law Enforcement or Security Officer:** A person commits the offense of Giving False Information to a Law Enforcement or Security Officer when the person knowingly uses or gives a false or fictitious name, address, or date of birth to any Law Enforcement or Security officer for the purpose of issuing or serving the person a citation.

(c) **Assault:** A person commits the offense of Assault when the person

- (1) Intentionally, knowingly or recklessly causes physical injury to another; or
- (2) With criminal negligence, causes physical injury to another by means of a deadly weapon.

(d) **Menacing:** A person commits the offense of Menacing when the person, by word or

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conduct, intentionally attempts to place another in fear of imminent serious bodily injury.

(e) **Recklessly Endangering Another Person:** A person commits the offense of recklessly endangering another person if the person recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

(f) **Mistreatment:** A person commits the offense of Mistreatment if, with negligence and

(1) In violation of a legal duty to provide care for another person, including an elder, and the person withholds necessary and adequate food, physical care or medical attention from that person; or

(2) Having assumed the permanent or temporary care, custody or responsibility for the supervision of another person, including an elder, the person withholds necessary and adequate food, physical care or medical attention from that person.

(g) **Child Neglect:** A person having custody or control of a child under 10 years of age commits the offense of Child Neglect, if, with criminal negligence, the person leaves the child unattended in or at any place for such period of time as may be likely to endanger the health or welfare of such child.

(h) **Endangering the Welfare of a Minor:** A person commits the offense of Endangering the Welfare of a Minor if the person knowingly:

(1) Induces, causes or permits an unmarried person under 18 years of age to witness an act of sexual conduct or sadomasochistic abuse, as defined above; or

(2) Permits a person under 18 years of age to enter or remain in a place where unlawful activity involving controlled substances is maintained or conducted; or

(3) Distributes, sells, or causes to be sold, tobacco in any form to a person under 18 years of age; or

(4) Sells to a person under 18 years of age any device in which tobacco, marijuana, cocaine or any controlled substance, as defined above, is burned

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and the principal design and use of which is directly or indirectly to deliver tobacco smoke, marijuana smoke, cocaine smoke or smoke from any controlled substance into the human body.

(i) **Theft:** A person commits the offense of Theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person takes, appropriates, obtains or withholds such property from an owner of the property.

(j) **Reckless Burning:** A person commits the offense of Reckless burning if the person recklessly damages property of another by fire or explosion.

(k) **Arson:** A person commits the offense of Arson if, by starting a fire or causing an explosion, the person intentionally damages either:

- (1) Any property not owned by the person or a member of the person's household or
- (2) Any building or real property.

(l) **Mischief:** A person commits the offense of Mischief if, with intent to cause substantial inconvenience to the owner or to another person, and having no right to do so nor reasonable ground to believe that the person has such right, the person tampers or interferes with property of another.

(m) **Unlawfully Applying Graffiti:** A person commits the offense of Unlawfully Applying Graffiti if the person, having no right to do so nor reasonable ground to believe that the person has such right, intentionally damages property of another by applying graffiti to the property.

(n) **Littering:** A person commits the offense of Littering if the person discards any glass, cans or other trash, rubbish, debris or litter on any land or structure or within any building owned or operated by the Confederated Tribes of Siletz Indians of Oregon or the Siletz Indian Housing Authority.

(o) **Disorderly Conduct:** A person commits the offense of Disorderly Conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, the person:

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- (1) Engages in fighting or in violent, tumultuous or threatening behavior; or
- (2) Makes unreasonable noise; or
- (3) Disturbs any lawful assembly of persons without lawful authority; or
- (4) Obstructs vehicular or pedestrian traffic on a public way; or
- (5) Congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or
- (6) Initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime or offense, catastrophe or other emergency; or
- (7) Creates a hazardous or physically offensive condition by any act which the person is not licensed or privileged to do.

(p) **Harassment:** A person commits the offense of harassment if the person intentionally:

- (1) Harasses or annoys another person by:
 - (A) Subjecting such other person to offensive physical contact; or
 - (B) Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response;
- (2) Subjects another to alarm by conveying a false report, known by the conveyor to be false, concerning death or serious physical injury to a person, which report reasonably would be expected to cause alarm; or
- (3) Subjects another to alarm by conveying a telephonic, computerized or written threat to inflict serious physical injury on that person or to commit a felony involving the person or property of that person or any member of that person's family, which threat reasonably would be expected to cause alarm.

(q) **Abuse of Tribal Venerated Objects, Tribal Memorials or Objects of Special**

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Tribal Significance: A person commits the offense of Abuse of Tribal Venerated Objects, Tribal Memorials or Objects of Special Tribal Significance if the person intentionally destroys, mutilates, defaces, injures or removes any

- (1) Tomb, monument, gravestone or other structure or thing placed as, or designed for, a memorial to the dead; or
- (2) Fence, railing, curb or other thing intended for the protection or for the ornamentation of any structure or thing listed in subpart (1); or
- (3) Any building, structure, artifact, symbol, artwork, remnant, or any other object of historical, spiritual, traditional, memorial, significance to the Confederated Tribes of Siletz Indians of Oregon.

(r) **Telephonic Harassment:** A telephone caller commits the offense of Telephonic Harassment if the caller intentionally harasses or annoys another person:

- (1) By causing the telephone of the other person to ring, such caller having no communicative purpose; or
- (2) By causing such other person's telephone to ring and causing such other person to answer it, knowing that the caller has been forbidden from doing so by a person exercising lawful authority over the receiving telephone.

(s) **Pointing Firearm at Another:** Any person over the age of 12 years who purposely points or aims any loaded or empty pistol, gun, revolver or other firearm at or toward any other person within range of the firearm, except in self defense, shall have committed the offense of Pointing Firearm at Another.

(t) **Animal Abuse:** A person commits the offense of Animal Abuse if, except as otherwise authorized by law, the person intentionally, knowingly or recklessly, causes serious physical injury or death to an animal.

(u) **Tobacco Possession by Minors:** A person under 18 years of age shall commit the offense of Tobacco Possession by Minors when such person possesses any Tobacco Products.

(v) **Providing Liquor to Persons under 21 or to Intoxicated Person:**

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- (1) No person shall sell, give or otherwise make available any alcoholic liquor to any person who is visibly intoxicated.
- (2) No one shall sell or give any alcoholic liquor to a person under the age of 21 years.

(w) **Possession of Liquor by Person under 21:** No person under the age of 21 years shall have personal possession of alcoholic liquor. For the purposes of this section, "personal possession" of alcoholic liquor includes the acceptance or consumption of a bottle of such liquor, or any portion thereof or a drink of such liquor. However, this section does not prohibit the acceptance or consumption by any religious person of sacramental wine as part of a religious rite or service.

(x) **Criminal Trespass:** A person commits the offense of criminal trespass if the person enters or remains unlawfully in or upon premises. For the purposes of this subsection, "enter or remain unlawfully" means:

- (1) to enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public or when the entrant is not otherwise licensed or privileged to do so; or
- (2) to fail to leave premises that are open to the public after being lawfully directed to do so by the person in charge.

For the purposes of this subpart, "person in charge" means a person, a representative or employee of the person who has lawful control of premises by ownership, tenancy, official position or other legal relationship.

For the purposes of this subpart, "premises" includes any building and/or any real property, whether privately or publicly owned.

(y) **Possession, Delivery or Manufacturing of Controlled Substances:** For the purposes of this subsection, a "controlled substance" includes a drug or its immediate precursor classified in schedules I through V under the Federal Controlled Substances Act, 21 U.S.C. §§ 811 to 812. Any person who possesses, delivers or manufactures a controlled substance shall commit the offense of Possession, Delivery or Manufacturing of Controlled Substances, unless such substances was obtained pursuant to an prescription from a licensed professional, authorized under state, federal or tribal law to issue such prescriptions.

(z) **Abandoned Vehicles:** For the purposes of this section, a "person's vehicle" shall be

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any automobile, motor home, motorcycle or other vehicle under a person's control or supervision." A person shall commit the offense of abandoned vehicles in any of the following cases:

- (1) The person's vehicle is not driveable and is located on Tribal Property;
- (2) The person's vehicle does not display current license tags;
- (3) The person's vehicle is parked in violation of posted parking requirements; or
- (4) The person's vehicle obstructs any established right of way.

(aa) **Unauthorized Sale or Distribution of Prescription Drugs:** A person shall commit the offense of unauthorized sale of prescription drugs if the person is not authorized and licensed to sell or distribute prescription drugs and the person sells or distributes prescription drugs.

(bb) **Failing to Observe Pets:** A person shall commit the offense of Failing to Observe Pets if any pet under their control or supervision either:

- (1) Is not secured to a leash under the control of the owner or another responsible individual capable of managing the pet; or
- (2) The owner and/or person in control of a pet fails to prevent the pet from causing injury to a third party without provocation.

(cc) **Nuisance:** A person shall commit the offense of Nuisance if he or she creates or fails to remove any condition wholly or partially on his or her own property which substantially interferes with the rights of others to enjoy their property.

§ 12.803 ENFORCEMENT

Notices, and citations of alleged civil offenses may only be issued by officers and agents of the Confederated Tribes of Siletz Indians of Oregon.