

Yurok Tribe

Tobacco Control Ordinance

Table of Contents

Section 1	Title
Section 2	Definitions
Section 3	Establishment of Tobacco Outlets
Section 4	Nature of Outlet
Section 5	Application for Tobacco Outlet License
Section 6	Conditions for Application and Approval of Tobacco Outlet License
Section 7	Tobacco Outlet License
Section 8	Trader's License
Section 9	Expiration; License Renewal
Section 10	Revenue Stamp Required
Section 11	Restricted Sales to Minors
Section 12	Tribal Immunity – Liability – Credit
Section 13	Operating Without a License
Section 14	Revocation of Tobacco Outlet License
Section 15	Violations – Application to Tribe
Section 16	Non – Application to Tribe
Section 17	Severability

Yurok Tribe

Tobacco Control Ordinance

WHEREAS the Tribal Council of the Yurok Tribe of Klamath, California is charged with the duty of safeguarding the promoting the peace, safety, morals, health, and general welfare of the members of the Yurok Tribe, by regulating the conduct of trade and the use and disposition of property on the Yurok Reservation; and

WHEREAS the Tribal Council finds it essential to the peace, safety, morals and general welfare of the Yurok Tribe of Klamath, California to enact an ordinance regulating the sales and distribution of cigarettes and other tobacco products on the Reservation;

NOW, THEREFORE, BE IT ENACTED by the Tribal Council of the Yurok Tribe of Klamath, California, pursuant to the Preamble to the Yurok Tribe Constitution that the following ordinance be and hereby is adopted:

Section 1 **Title** – This ordinance shall be known as the Yurok Tribe Tobacco Control Ordinance.

Section 2 **Definitions** – As used in this ordinance the following words and phrases shall each have the designated meaning unless a different meaning is expressly provided or the context clearly requires and different meaning:

- (1) “Cigarette” means any roll for smoking, made wholly or in part of tobacco, irrespective to size or shape and irrespective of whether the tobacco is flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material except where such wrapper is wholly or in the greater part made of natural leaf tobacco.
- (2) “Council” shall mean the Tribal Council of the Yurok Tribe.
- (3) “Operator” shall mean any person licensed by the Yurok Tribe to operate a tobacco outlet.
- (4) “Person” includes any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

- (5) "Tobacco Outlet" shall mean any outlet for the sale of tobacco products within the exterior boundaries of the Yurok Reservation and shall include a cigarette vending machine.
- (6) "Tobacco Products" shall include cigarettes, cigars, smoking tobacco, snuff, chewing tobacco and all other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking.
- (7) "Tribe" shall mean the Yurok Tribe.

Section 3 Establishment of Tobacco Outlets – The Tribe may establish one or more tobacco outlets within the exterior boundaries of the Yurok Reservation as the Council in its sole discretion deems necessary to provide adequate service to customers of tobacco products.

Section 4 Nature of Outlet – Each tobacco outlet established hereunder shall be a Tribal tobacco outlet and shall be operated by an Operator pursuant to a license granted by the Council hereunder and shall also be operated pursuant to a federal Indian trader's license as required in Section 8 hereof. Such operator shall be an independent contractor.

Section 5 Application for Tobacco Outlet License – Any person may apply for a tobacco outlet license upon an application form provided by the Council. The application shall state the name and address of the applicant, the location of the proposed tobacco outlet, the period of time, not in excess of five years, for which the license is requested, a description of any other retail or commercial business conduct or to be conducted by the applicant to the location of the proposed tobacco outlet, such other information as the Council may require, and shall be signed by the applicant under oath.

Section 6 Condition for Application and Approval of Tobacco Outlet License

- (1) No application for a tobacco outlet license shall be granted unless:
 - (a) The applicant pays an application fee established by the Council which shall not exceed \$25.00. Tribal Members shall not be required to pay a license fee.
 - (b) The applicant, if a natural person, shall be at least 21 years of age.
 - (c) The location proposed for such tobacco outlet complies with all applicable Tribal building codes and zoning ordinances.

- (d) The applicant is engaged in or proposed to engage in retail or commercial business at such location other than the sale tobacco products, unless the proposed tobacco outlet is a cigarette vending machine.
 - (e) The Council determines that there is adequate demand for tobacco outlet at the location proposed;
 - (f) The Council determines that the applicant is of good moral character.
- (2) The conditions described in this section are not exclusive and the Council may impose any other conditions which it deems necessary. Findings and decisions by the Council with respect to the denial of any application or the granting of any application and the conditions therefore shall be final and conclusive on all persons.

Section 7 The Tobacco Outlet License – Upon approval of an application, the Council shall issue the applicant a tobacco outlet license which shall be effective for a period stated therein, not in excess of five years, and shall entitle the Operator to establish and maintain one tobacco outlet on the Yurok Reservation at the location described in the license. The license shall be non-transferable.

Section 8 Trader's License – If under applicable federal law the applicant is required to obtain a Federal Indian trader's license, the applicant shall apply for such trader's license within 30 days after receipt of a tobacco outlet license. Failure of the Operator to apply for, obtain or maintain a federal Indian trader's license shall be grounds for immediate revocation of the tobacco outlet license.

Section 9 Expiration; License Renewal – Each license granted hereunder shall expire automatically without notice on the expiration date stated in the license. An Operator may apply for renewal of a license by filing a renewal application with the Council not less than 10 days prior to the license expiration date. Renewal applications shall be subject to all conditions and requirements applicable to an initial application.

Section 10 Revenue Stamp Required – No cigarettes shall be sold that do not bear a revenue stamp of the State of California or such revenue stamp as may hereafter be established by Tribes.

Exception to Revenue Stamp Requirement: All Cigarettes manufactured by a Federally recognized Indian Tribe within the exterior boundaries of that Tribe's reservation are exempt from the State of California tax stamp requirement.

Section 11 Restricted Sales to Minors – No person shall distribute any tobacco products on the Yurok Reservation to any person under the age of eighteen years.

Section 12 Tribal Immunity – Liability – Credit – An Operator shall not attempt or be authorized to waive the sovereign immunity of the Tribe from suit, nor shall such Operator attempt or be authorized to create any liability on behalf of the Tribe or to utilize Tribal credit as a source of payment of any taxes, penalties or other obligations of the Operator arising under this ordinance.

Section 13 Operating Without a License – No person shall engage in the business of selling or distributing tobacco products on the Yurok Reservation without having in effect a valid tobacco outlet license issued pursuant to this ordinance.

Section 14 Revocation of Tobacco Outlet License – Failure of an Operator to abide by any requirement of this ordinance and any additional requirements imposed by the Council will constitute grounds for revocation of the Operator’s tobacco outlet license as well as enforcement of the remedies provided in Section 15 hereof.

Section 15 Violations – Penalties – Upon application by the Chairman of the Council, the Tribal Judge shall issue an order directing the Tribal Law Enforcement Office to seize all tobacco products from wherever purchased and by whoever owned from any tobacco outlet being operated in violation of this ordinance. Within three days of such seizure, after adequate notice to the person operating such outlet, a hearing shall be held in Tribal Court at which time such person shall be given an opportunity to present evidence in defense of his activities. If the Tribal Judge shall determine by a preponderance of the evidence that such tobacco outlet was being operated in violation of this ordinance, the Tribal Judge may impose a penalty of not less than \$50.00 or more than \$250.00 for each such violation, and in addition may declare a forfeiture to the Tribe of all or any part of the tobacco products seized as described above. Any non-member of the Tribe found to be in violation of this ordinance may be excluded from the Yurok Reservation under existing Tribal Law, Custom, or Tradition governing exclusion of undesirable persons.

Section 16 Non-Applicable to Tribe – The provisions of this ordinance requiring a tobacco outlet license and a Federal Indian Trader’s License shall not apply to any sales of tobacco products by the Tribe, or its businesses or enterprises.

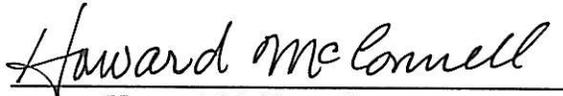
Section 17 Severability – If any provision of this ordinance or its application to any person or circumstances is held invalid, the remainder of this ordinance, or the application of the provision to other person or circumstances, shall not be affected.

Section 18 Effective Date – This ordinance shall be effective upon adoption by the Yurok Tribal Council and certification by the Chairperson and Recording Secretary.

C * E * R * T * I * F * I * C * A * T * I * O * N

This is to certify that **Yurok Tribe Tobacco Control Ordinance** was adopted at a regularly scheduled meeting of the Yurok Tribal Council on **November 4th, 2004** at which a quorum was present and that this ordinance was approved by a vote of 8 For, 0 Opposed and 0 Abstentions.

Dated this 4th day of November, 2004



Howard McConnell
Chairman

ATTEST:



Cindee Carlson