

# BUSINESS AND PROFESSIONS CODE

## ARTICLE I

### BUSINESS LICENSES

[Any and all prior Titles designated as the Business License Code and any Articles thereof enacted or amended are hereby repealed. Ordinance 04-01 enacting this Article shall take effect upon the approval of its provisions by the Tribal Council of the Colorado River Indian Tribes, which date was March 12, 2004, as amended by Ordinance 06-01 adopted March 15, 2006.]

#### Section 1-101. Purpose.

The Colorado River Indian Tribes have a duty and obligation to all its members and to the Tribes itself, to protect and preserve the political integrity, economic security, and health and welfare of the Tribes. In order to provide direct and indirect civic and economic benefits to the members of the Tribes, to residents of the Reservation and to the general public, and to promote economic development on the Reservation and to preserve tribal existence, the Tribes have determined that a business license fee is an appropriate method for generating revenue for the operation, maintenance, and improvement of essential tribal governmental services and programs, and for paying for a portion of the costs of governmental services and programs incident to the preservation of tribal existence and the continued economic development of the Reservation.

Because of the close interrelationship between the Tribes' inherent sovereign powers to regulate the conduct of business on the Reservation and the Tribes' inherent powers to collect taxes from persons engaged in business on the Reservation, the Department of Revenue and Finance is hereby delegated the responsibility to administer and carry out the provisions of this Article and promulgate such regulations as necessary to effectuate its implementation.

#### Section 1-102. Jurisdiction Program Established.

- (1) The Director is authorized and directed to establish a process, known as the Jurisdiction Program, to fully implement the provisions of this Title with respect to all persons doing business on the Reservation.
- (2) The Jurisdiction Program will seek ways to enhance the jurisdiction of the Tribes by reviewing existing licenses, leases, easements, and other commercial dealings. The Director shall conduct such review in conjunction with the Office of the Attorney General.
- (3) The Director may, in conjunction with the Office of the Attorney General, also engage in a process of re-writing current licenses, leases, and easements to enhance the Tribes' jurisdiction.
- (4) The Director may, in conjunction with the Office of the Attorney General, develop new relationships between the Tribes and persons conducting business on the Reservation. Nothing contained herein shall preclude the ability of the Tribal Council to enter into such relationships on its own accord or exercise any of the powers reserved to it under this Title.

Section 1-103. Definitions.

- (1) “Business” means all activities or acts, personal, corporate or otherwise, engaged in with the object of profit, gain, benefit or advantage, either directly or indirectly, wholly or in part, within lands subject to the jurisdiction of the Tribes.
- (2) “Director” means the Director of the Colorado River Indian Tribes’ Department of Revenue and Finance.
- (3) “Peddler” means any person with no fixed place of business who goes from any place to place within the exterior boundaries of the Colorado River Indian Tribes’ Reservation for the purpose of offering for sale, displaying or exposing for sale, selling or attempting to sell, and delivering immediately upon sale, or attempting to obtain orders for, the goods, wares, products, merchandise, food, or other property that the person is carrying or otherwise transporting. Peddler shall include a transient merchant, meaning any person with no fixed place of business who temporarily engages in business out of a vehicle, cart, stand, wagon, trailer, boxcar, tent, other portable shelter, empty store front, or from one’s person, within the exterior boundaries of the Colorado River Indian Tribes’ Reservation for the purpose of exposing or displaying for sale, selling or attempting to sell, and delivering goods, wares, products, merchandise, food, or other property, and who does not remain or intend to remain in any one location or within 100 yards of that location for more than four (4) consecutive days.
- (4) “Person” means any natural person, trustee, court appointed representative, syndicate, association, partnership, firm, club, company, corporation, business trust, institution, agency, government corporation, municipal corporation, district or other political subdivision, contractor, supplier, vendor, vendee, operator, user or owner, or any officers, agents, employees or other representative, acting either for himself or herself or for any other person in any capacity, or any other entity recognized by law as the subject of rights and duties. The masculine, feminine, singular or plural is included in any circumstance.

Section 1-104. License Required of all Businesses; No Effect on Other Laws.

All persons conducting or engaged in business or trade upon any land subject to the jurisdiction of the Colorado River Indian Tribes must obtain a tribal business license and pay a license fee, as provided for in this Article, prior to engaging in any such business. For any person engaged in such business on the effective date of this Article operating pursuant to a tribal business license, said license shall remain in effect until the natural expiration of its term, at which time the person shall be required to obtain a new tribal business license as provided in this Article.

The tribal business license provided for in this Article is required of every business upon any land subject to the jurisdiction of the Colorado River Indian Tribes, whether temporary or permanent, regardless of whether such business is required to obtain a federal trader's license or permit, or any other license or permit required under the laws of the Colorado River Indian Tribes, and shall include all entities required to obtain a federal tax identification number.

Separate licenses shall be obtained for each branch establishment or each separate location of a business.

Nothing in this Article affects, limits, alters, modifies, or waives the need for a business to obtain all licenses and permits required by applicable law, including but not limited to compliance with building and safety regulations, and health and safety regulations. The issuance of a business license shall not be deemed or construed as a certification of a business's compliance with other applicable regulations or laws. Additional permits and licenses may be necessary before a person may lawfully conduct a business. It is the sole responsibility of the person obtaining a business license under this Article to comply with other applicable laws and regulations concerning operation of the person's business.

Section 1-105.        Exemptions.

1. The following shall not be required to obtain a license under this Article:
  - (a) Federal, state and local governmental entities.
  - (b) Tribal enterprises performing essential governmental functions.
  - (c) Persons employed by a business subject to the license requirements of this Article, including, but not limited to:
    - (i) persons employed by a business required to obtain a license under this Article who are engaged in delivery, in the regular course of business, of food items for immediate consumption or other goods prepared by a business with a fixed permanent location to the premises of a person ordering or otherwise entitled to the same; and
    - (ii) persons canvassing or soliciting for businesses that are not required to pay a fee for the issuance of a license under this Article.
  - (d) Persons engaged in the type of sales commonly known as garage sales, rummage sales, or estate sales.
2. The following shall not be required to pay a fee for the issuance of a license under this Article:
  - (a) any church engaged in raising funds for religious or charitable purposes;
  - (b) any school, club, or athletic organization engaged in staging athletic events for which an admission fee is charged, provided such admission fees do not accrue to the personal benefit of any individual; and
  - (c) any accredited school, no part of the income of which accrues to the personal benefit of any individual.
  - (d) any other business, the entire proceeds of which, are distributed to any charitable, religious, educational, or other eleemosynary group or organization.

Section 1-106.        Application for Business License.

An applicant intending to conduct business within lands subject to the jurisdiction of the Tribes shall complete and file with the Department of Revenue and Finance an application for business license on a form prescribed by the Department within thirty (30) days of first conducting business. Persons engaged in such business on the effective date of this Article shall complete and file an application for a business license within thirty (30) days of the effective date of this Article. Failure to complete or file a license application when due shall result in the

imposition of a late fee. Failure to renew an annual license by January 1 shall also result in the imposition of a late fee. The late fee shall be twelve dollars if paid after the due date but within thirty days of its due date. If the license fee is not paid within thirty days after its due date, the late fee shall be eight dollars for each subsequent month the fee is not paid. Late fees shall be added to and included within the total license fee.

All applications shall include, but are not limited to, the following:

1. A description of the type of business;
2. The name and address of the owner or owners of the business;
3. The trade name, if any, to be used by the company;
4. The locations on the reservation at which the business will be conducted;
5. A sworn statement that the applicant will comply with all tribal laws applicable to the applicant's business;
6. A statement that the applicant consents to the jurisdiction of the Tribal Court of the Colorado River Indian Tribes and service of process in matters arising from the conduct of business;
7. The name, address and signature of the agent who will accept service of process on behalf of the company.

The Department of Revenue and Finance shall notify the applicant by regular mail within fourteen (14) days after receipt of the application whether a license shall be issued. The license shall include as Tribal Taxpayer Identification Number.

An application for renewal of a tribal business license should be filed with the Department of Revenue and Finance no later than thirty (30) days prior to the expiration date of the license to avoid processing delays.

Section 1-107. Classes of Licenses.

1. Temporary Business License: All persons engaged in business on the reservation for a period of four (4) days or less shall have a temporary business license.
2. Seasonal Business License: All persons engaged in business on the reservation for a period of more than four (4) days but less than three (3) months shall have a seasonal business license.
3. Annual Business License: All persons engaged in business on the reservation for a period exceeding three (3) months shall have an annual business license.
4. Peddler License: All persons engaged in business on the reservation as a "peddler" shall have a peddler license. A peddler possessing a valid peddler license shall be exempt from paying applicable tribal taxes.

The fee for each class of license shall be established by the Director.

Section 1-108. Term of Licenses.

Annual and peddler licenses, no matter when issued, shall expire at 11:59 p.m. on December 31 of the year of issuance of the license.

Section 1-109. Consolidated License.

For businesses with multiple branches or locations, the Director may issue a consolidated license covering all of the person's businesses, provided that the same type of business is conducted at each location. The fee for a consolidated license shall be determined based on the class of license issued pursuant to this Article multiplied by the number of separate branches or locations of the business.

Section 1-110. Denial of License or Renewal.

The award of a business license is a privilege and not a right. The Tribes shall award business licenses to applicants whose presence on the Reservation will, in the judgment of the Department of Revenue and Finance, be beneficial to the Tribes and the community and will not endanger the public health, safety, or welfare of tribal members, and who have met all of the other criteria set forth under Tribal law.

The Tribes reserve the right to refuse to issue a business license to any business whose presence on the reservation will not be beneficial to the community. Because the presence of businesses on the Reservation affects the social and economic balance of the community, the Tribes also reserve the right to limit the number of businesses to whom its licenses are issued and to give a preference to local Indian businesses in the licensing process.

The Department of Revenue and Finance shall deny any application or renewal application for a tribal business license if it is determined that the applicant has materially misrepresented facts contained in the application or that the business will threaten the peace, safety, morals, or general welfare of the Tribes, or if the applicant is, at the time of the application or renewal application, delinquent in the payment of any license fees, interest, or penalties provided for in this Article, or if the applicant is in any other respect in violation of tribal law. Any applicant whose application or renewal application is denied by the Department of Revenue and Finance may protest that decision in the same manner and under the same terms as provided for actions in Tribal Court pursuant to Tribal law.

Section 1-111. Conditions of License.

Each licensee shall comply with all tribal laws, including but not limited to: tribal tax laws, Indian employment and contracting preference laws, and applicable federal law. The licensee is required to comply with any additional tribal laws as such laws are enacted by the Tribal Council.

Each licensee consents to the jurisdiction of Tribal Court as to any cause of action arising in connection with the transaction of any business within the reservation, or any tortious acts

committed in connection with the transaction of any business within the reservation. Each licensee consents to the service of process of the Tribal Court with respect to all actions over which the Tribal Court has subject matter jurisdiction, in accordance with the Rules of Procedure of the Tribal Court.

Each licensee shall respond in a timely manner to requests by the Department of Revenue and Finance for information about the licensee's business for the purpose of establishing whether the licensee is in compliance with the terms of this Article.

Section 1-112.        Revocation of License.

If any business is more than sixty (60) days delinquent in the payment of any license fees, interest, or penalties imposed by this Article, or is otherwise not in compliance with Tribal law, the Department of Revenue and Finance may, after notice and opportunity for hearing, revoke the tribal business license of such business. Appeal from a decision by the Department of Revenue and Finance revoking a business license may be taken in the same manner and under the same terms as for action in Tribal Court pursuant to Tribal law.

Section 1-113.        Reinstatement of License.

The Department of Revenue and Finance may, upon application, reinstate a business license that has been revoked upon the payment of all license fees, penalties, and interest owed by the business pursuant to this Article, provided the business is otherwise in compliance with Tribal law, and provided further that the Department of Revenue and Finance may require as a condition of such reinstatement that the applicant furnish a bond to the Tribe, or other adequate security, as security for payment of any tribal license fees that may become due. An applicant shall pay a reinstatement fee. The reinstatement fee shall be established by the Director.

Section 1-114.        Violations; Additional Penalties; Appeal.

Conducting business within lands subject to the jurisdiction of the Tribes in the absence of a tribal business license or the failure by any licensee to comply with the requirements of this Article or Title 20 Taxation Code shall subject the person to any of the following: (a) forfeiture of license; (b) forfeiture to the Tribes of all improvements constructed on, or any personal and real property found upon, tribally owned lands; (c) expulsion from the Reservation; and (d) civil fines as provided herein.

Any person who violates, disobeys, omits, neglects or refuses to comply with, or resists or opposes the enforcement of any of the provisions of this Article, may be assessed a penalty of not less than Seventy-Five Dollars (\$75.00) nor more than One Thousand Dollars (\$1,000.00) for the first violation, and not less than One Hundred Fifty Dollars (\$150.00), nor more than One Thousand Dollars (\$1,000.00) for the second violation, and not less than Three Hundred Dollars (\$300.00) nor more than One Thousand Dollars (\$1,000.00) for the third violation, and not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00) for the fourth and each subsequent violation, or five (5) times the amount of the applicable license licensee fee imposed, if any, whichever is higher, for the second and each subsequent violation.

A separate and distinct violation shall be regarded as committed each day said person continues any such violation, or permits any such violation to exist after notification thereof.

Failure to pay the license fee on or before the due date of any amount payable hereunder whether as licensee fee, land rental, or otherwise shall bear interest at a rate of eight percent (8%) per year from the date of which the fee became due and payable. In addition to any other penalties or interest imposed under this Article, a person in violation of this Article may be required to pay the costs of collection incident to any administrative or judicial proceeding brought to enforce the provisions of this Article.

The Director or his designee shall have the authority to take all action necessary to enforce the term of this Article, including but not limited to the authority to assess penalties and costs of collection, and issue notices of violation of this Article. Notices of violation shall be provided, where applicable, by personal service or by sending notice to the person engaged in business at the business owner's last known address of record and depositing such into the U.S. certified mail, return receipt requested. Notice by certified mail shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery; (b) the date of mailing by certified mail; or (c) the day delivery is verified. Actual notice, however and from whoever received, shall always be effective.

A notice of violation shall be the final decision of the Director. A person receiving a notice of violation may protest the notice of violation. Any protest shall be filed within thirty (30) days from the date of issuance of the notice of violation. Protests shall be filed in Tribal Court in accordance with Tribal Law and the rules of the Tribal Court.

Section 1-115.        License Not Transferable.

The license provided for in this Article is not transferable, and is valid only for the person in whose name it is issued and for the transaction of business of the same type and at the place or places designated therein.

Section 1-116.        Posting of Licenses.

Each business shall post its tribal business license in a conspicuous location at its place of business.

Section 1-117.        Sovereign Immunity.

Nothing herein shall be construed as a waiver of the Tribes' sovereign immunity from suit.