

**Dry Creek Rancheria
Band of Pomo Indians**

Business Code

TITLE 7. BUSINESS LICENSE AND STANDARDS CODE

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CHAPTER 1. LEGISLATIVE FINDINGS AND PURPOSE

SECTION 1. Sovereign Power to Regulate Business, Impose Taxes, and License Fees

The power to regulate business conducted within the Rancheria by all persons, Indian and non-Indian, is an inherent and an essential part of the authority of tribal government. Business regulatory power is an aspect of retained sovereignty of the Tribe except where it has been limited or withdrawn by applicable laws of the United States. This Title is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Tribal Council in the Articles of Association. The primary responsibility to determine the meaning of the Articles of Association and Bylaws lies with the Tribal Council. The Council finds that Articles of Association sufficiently empowers the Tribal Council to regulate the conduct of trade on the Rancheria by both members and non-members alike.

SECTION 2. Purpose

The Tribal Council finds that the regulation of persons engaged in trade and business on the Rancheria is necessary to safeguard and promote the peace, safety, morals, and general welfare of the Tribe. Accordingly, the Council declares that the Tribe has the sole and exclusive authority to grant, deny, or, withdraw the privilege of doing business within the Rancheria, except where such authority is limited or withdrawn from the Tribe by the applicable laws of the United States.

SECTION 3. Pre-Existing Businesses, Special Purpose Projects, Benefits

(A) Any business that is pre-existing as of the date of enactment of this Code is not effected by this and other Titles of the Tribal Business Code unless such business elected to utilize the provisions of the Code, except as prescribed in (C) below.

(B) Any business that elects not to utilize the Tribal Business Codes shall not be entitled to any of its protections and benefits except as may be directed by the Tribal Council on a case-by-case basis, except as prescribed in Section 3(D) below.

(C) The business license requirements contained in this Title shall not apply to special purpose fund raising projects, such as educational field trip or recreational projects.

(D) Nothing in this section may be construed as a waiver of sovereign authority over any business activities within the Tribe's jurisdiction when the exercise of Tribal powers is necessary to safeguard and promote the peace, safety, morals, and general welfare of the Tribe and Rancheria as prescribed by law.

SECTION 4. Definitions

The following terms, whenever used or referred to in this Title, shall have the following meanings, unless a different meaning clearly appears from the context:

- (A) "Agent" means the individual or individuals designated by any "licensee" to receive and accept "service of process".
- (B) "Applicant" means any "person" who submits an application to the Tribe for a business license and who has not yet received such license.
- (C) "Business" means any regular or 'temporary business' activity engaged in by any "person" for the purpose of conducting a trade, profession, or commercial activity involving the "sale" of any "property" or "services"; provided, however, that an isolated sale of property or services shall not be considered to be "business" under this Title. Business does not include special projects as defined in Section 3(C).
- (D) "Title" means the Business Licensing Title as enacted and amended by the "Council."
- (E) "Company" means any "person" or group of people engaged in "business."
- (F) "Council" means the Dry Creek Rancheria Tribal Council.
- (G) "Director" means the Tribal Department of Commerce Director acting in his or her official capacity.
- (H) "Governmental Entity" means the United States, the "Tribe," a state or any political subdivision, agency, or any subordinate organization of the foregoing, including economic enterprises or other entities owned or controlled by the Tribe.
- (I) "Licensee" means any "person" who is granted a business license by the Tribe.
- (J) "Notice" means actual notice by hand delivery or by certified mail. For time computations as provided for in this Title, which are to begin upon "notice," such notice shall be at delivery except that where delivery is not possible after three consecutive postal days due to the inaction of the "agent," notice shall be at the time of the first attempted delivery. Upon return of the forms of notice to the Director, the forms shall be mailed by regular mail.
- (K) "Person" means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, partnership, joint venture, public utility, club, business trust, nonprofit corporation, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and includes any instrumentality thereof. The term includes members and nonmembers of the "Tribe," but excludes any "governmental entity".

(L) "Property" means any existing and identified real or personal property, including, but limited to "goods" as that term is defined by Section 5 of the Sales Title.

(M) "Sale" means the transfer, exchange or barter, conditional or otherwise, of the ownership of, title to, or possession of real or personal property for consideration. The term shall also include leases, conditional sales contracts, leases, with the option to purchase, and any other contract under which possession of the property is given to the purchaser but title is retained by the seller as security. It shall also include the furnishing of food, drink, or meals for compensation, whether or not consumed on the premises. It shall also include any conditional or unconditional provision of services for consideration.

(N) "Service of Process" includes the delivery of show-cause orders, cease and desist orders, summonses, complaints and other documents of the "Director" or "Tribal Council".

(O) "Services" means the performance of labor for the benefit of another for consideration. It excludes labor performed by an employee for the benefit of his or her employer.

(P) "Tribal member" or "member of the Tribe" means an enrolled member of the Tribe. A corporation, partnership or other entity shall be considered a Tribal member, for purposes of this Title only, if 51% or more of the entity is owned by Tribal members.

SECTION 5. Administration of Title

The Tribal Department of Commerce is hereby delegated the responsibility to administer the provisions of this Title. The Department of Commerce is hereby delegated all powers of which are specifically provided for in this Title, or impliedly necessary to implement its provisions, subject to Council review of any action taken by virtue of such delegated powers.

SECTION 6. Administrative Actions

The Director shall promulgate regulations pursuant to this Title, formulate recommendations to submit to the Council for revisions of or amendments to this Title, and take other actions necessary for the administration of the provisions of this Title.

SECTION 7. Agreements with Federal, State, and Local Governments

In the event it is deemed appropriate to effectuate the provisions of this Title, the Tribal Council may negotiate Memoranda of Agreement or other instruments concerning this Title with federal, state, and local governments.

CHAPTER 2. BUSINESS LICENSES

SECTION 1. Applicability

This Title shall be applicable to all persons engaged in business within the exterior boundaries of the Rancheria. No person shall engage in business upon the Rancheria without a valid business license issued by the Tribe, except as provided in Section 4(A) of Chapter 2.

SECTION 2. Application and Issuance

An application for a business license shall be submitted in writing to the Tribal Department of Commerce, using forms which it shall provide. Any person engaged in business at the time this Title is enacted shall have 30 days in which to obtain and submit to the Tribe an application for a license. All applications shall include:

- (A) A description of the type of business;
- (B) The name and address of the owner or owners of the business;
- (C) The trade name, if any, to be used by the company;
- (D) The locations on the Rancheria at which the business will be conducted;
- (E) A sworn statement that the applicant will comply with all Tribal law applicable to the applicant's business;
- (F) A statement that the applicant consents to Tribal Court jurisdiction and service of process in matters arising from the conduct of business;
- (G) The name, address, and signature of the agent who will accept service of process on behalf of the company.

The Director shall notify the applicant by regular mail within 14 days after receipt of the application whether a license shall be issued. If a license is issued, the licensee shall post the license in a conspicuous manner at its primary business location.

SECTION 3. Denial of License and Appeal

A license will be denied if it is determined that:

- (A) The applicant has materially misrepresented facts contained in the application,
- (B) The applicant presently is in non-compliance with tribal law, or

(C) The business will threaten the peace, safety, morals, or general welfare of the Tribe, the Director shall issue an order of denial to the applicant by certified mail, return receipt requested, within 14 days after receipt of the application. The order of denial shall set forth the reasons for such denial and shall state that the applicant has three days from receipt of the order of denial to file a notice of appeal with the Tribal Department of Commerce for an expedited administrative hearing under Section 5(A) of Chapter 3 of this Title, or 30 days from receipt of the order of denial to file a notice of appeal with the Tribal Court under Section 5(B) of this Title.

SECTION 4. Exemptions

(A) The following shall not be required to obtain a license under this Title:

- (1) Governmental entities;
- (2) Tribal members engaged in the creation of traditional Indian art or handicrafts in their home;
- (3) Tribal members engaged in the traditional practice of medicine;
- (4) Any church engaged in raising funds for religious or charitable purposes;
- (5) 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
- (6) Any accredited school, no part of the income of which accrues to the personal benefit of any individual.

(B) A business that is pre-existing as of the date of enactment of this Code that elects not take advantage of any provisions of the Tribe Comprehensive Business Codes, provided, however, nothing in this section may be construed as a waiver of sovereign authority over any business activities within the Tribe's jurisdiction when the exercise of Tribal powers is necessary to safeguard and promote the peace, safety, morals, and general welfare of the Tribe and Rancheria as prescribed by law.

SECTION 5. Classes of Licenses

(A) Temporary Business License: All persons engaged in business on the Rancheria for a period of seven days or less shall have a temporary business license. The fee for a temporary business license is \$10.00.

(B) Seasonal Business License: All persons engaged in business on the Rancheria for a period of three months or less shall have a seasonal business license. The fee for a seasonal business license is \$25.00.

(C) Permanent Business License: All persons engaged in business for a period exceeding three months shall have a permanent business license. The fee for a permanent business license is \$50.00. A licensee holding a permanent business license need not apply for renewal each year, but the licensee must notify the Tribal Revenue Department of any change in the licensee's business activities, which render inaccurate the information previously provided to the Tribal Department of Commerce.

SECTION 6. Conditions of License

Each licensee shall comply with all applicable tribal laws, including but not limited to: Indian employment and contracting preference laws, health and sanitation laws, and consumer protection laws. The Tribe may, but need not, notify each licensee by regular mail of any additional tribal laws with which the licensee must comply as such laws are enacted by the Council.

Each licensee consents to the jurisdiction of the Tribal Court as to any cause of action arising in connection with the transaction of any business within the Rancheria, or any tortuous acts committed in connection with the transaction of any business within the Rancheria.

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 Tribal Department of Commence for information about the licensee's business for the purpose of establishing whether the licensee is in compliance with the terms of this Title.

CHAPTER 3. SANCTIONS

SECTION 1. Revocation of License; Failure to Obtain License; Show Cause Hearing

(A) Whenever it is brought to the attention of the Tribal Department of Commerce that any person is in noncompliance with any condition of his license or has failed to obtain a license within the time requirements of this Title, the Director may serve upon such person or any agent of such person an order to show-cause why his or her license should not be revoked or why he should not be enjoined from doing business on the Rancheria without a license. Such notice shall state the reason for the order, the time and place for the show cause hearing before the Tribal Court, and that the person shall have an opportunity to present testimony and cross examine opposing witnesses and to present any other evidence which he or she shall deem appropriate as to why a revocation order or an injunction should not be issued. The hearing shall be set for a time not exceeding 14 days and not less than 10 days from the date of the notice. The hearing shall be governed in all respects in accordance with the Rules of Civil Procedure of the Tribal Court.

(B) In the event it is determined that any person's non-compliance with this Title is a direct and immediate threat to the peace, safety, morals, or general welfare of the residents of the Rancheria, the Director shall issue a cease and desist order which shall be served upon the person or any agent of the person. The person shall cease and desist business immediately upon service of the order and may file a notice of appeal with the Tribal Court, within three days for an expedited appeal, or within 30 days for a regular appeal to Tribal Court.

SECTION 2. Civil Penalties and Restitution

(A) If it is determined that any person failed to comply with the conditions of his license or failed to secure a license within the time requirements of this Title, the Director may bring an action in Tribal Court for an order requiring the person to appear and show cause why a monetary penalty should not be imposed and restitution should not be ordered; provided, the amount-of the penalty shall not exceed \$1,000.00 for each violation.

(B) The Director may submit a recommendation to the Tribal Court regarding any restitution which the person should pay to any person or persons injured by his or her failure to comply with the conditions of his or her license or his failure to secure a license within the time requirements of this Title.

(C) The Director may submit a recommendation to the Tribal Court regarding the amount of any civil penalty which the person should pay for failure to comply with the conditions of his or her license or failure to secure a license within the time requirements of this Title. If the Director submits a suggested penalty amount, the Director shall expressly address in writing each and all of the following criteria:

- (1) The good or bad faith of the violator;
- (2) The injury to the public resulting from the violation;
- (3) The benefits derived by the violator from the violation;
- (4) The violator's ability to pay;
- (5) The administrative costs of prosecution; and
- (6) The need to deter similar behavior by the violator and others and to vindicate the Tribe's authority and the integrity of the Director's orders.

The purpose of the civil penalty provided for herein shall be primarily to defray the costs of administration and enforcement of this Title, and secondarily, to deter continued violations of this Title by the violator or others; provided, however, that all funds collected by the Tribal Court under this section shall be subject to disposition by the Tribal Council.

SECTION 3. Removal and Exclusion of Non-Indians

If any non-Indian, except any person authorized by federal law to be present on tribal land or any person who owns real property on the Rancheria, fails to comply with any order of the Director without appealing the order or fails to appear for any hearing, the Director may petition the Tribal Court for an order directing the Tribal police to remove the non-Indian physically from the Rancheria in accordance with Tribal law. The Director may also petition the Tribal Court for an order permanently excluding the non-Indian, except any person authorized by federal law to be present on tribal land, or any person who owns real property on the Rancheria, and an order authorizing the seizure and sale of any business property necessary to satisfy restitution and civil penalties imposed under this Title.

SECTION 4. Other Remedies

The Director may petition the Tribal Court for other remedies provided for in this Code which are necessary to enforce the provisions of this Title, including but not limited to temporary restraining orders and preliminary and permanent injunctions. The Director may also petition a court of competent jurisdiction for a writ of execution to enforce an order, judgment or decree of Tribal Court off-Rancheria. The order, judgment or decree must include findings showing:

- (A) The basis for the Tribal Court's jurisdiction over the subject matter and the Parties;
- (B) The order, judgment or decree was not obtained fraudulently; and
- (C) The defendant was afforded due process.

SECTION 5. Appeals

(A) Expedited Administrative Appeal.

(1) If an applicant for a business license seeks an administrative hearing, the Tribal Department of Commerce, upon receipt of the notice of appeal, shall notify the applicant in person or by telephone, e-mail, or other electronic means, of the time set for the expedited hearing which shall be not less than three or more than five working days thereafter.

(2) At the hearing the applicant shall be entitled to present testimony and cross examine opposing witnesses, and present any other evidence which the applicant shall deem appropriate. All oral testimony shall be recorded and retained until expiration of the time within which the applicant could appeal to Tribal Court. In the event of such an appeal, the Director shall immediately certify the record and deliver the recordings and all other

evidence in the record to the Tribal Court. If no appeal is filed, all evidence, except recordings, submitted by the applicant shall be returned.

(3) The Director shall rule upon the appeal within three working days after the hearing, and shall set forth in writing the factual findings and the reasons for his or her decision. If the appeal is denied, the ruling shall state that the applicant has 30 days from receipt thereof to file a notice of appeal with the Tribal Court under this subsection. The notice shall state in a conspicuous manner that the appeal sought is an expedited appeal pursuant to this subsection.

(4) Upon receipt of a notice of appeal from an expedited administrative hearing, the Tribal Court shall notify the applicant in person or by telephone, telegraph or other electronic means, of the time set for the expedited hearing which shall be not less than three nor more than five working days thereafter.

(5) The appeal shall be decided by the Tribal Court sitting without a jury, and shall be heard solely on the record established at the hearing as certified by the Director. No new or additional evidence may be introduced during the appeal.

(6) The Tribal Court shall uphold all factual findings of the Director unless the Court determines that such findings are not supported by substantial evidence in the record established before the Director. In reviewing reasons for denial of the license by the Director, the Court shall give proper weight to the Director's interpretation of this Title and any regulations promulgated hereunder.

(B) Direct Appeal to the Tribal Court. If any person entitled to an appeal pursuant to this Title seeks a direct appeal to the Tribal Court, the appellant shall be deemed to have waived any right he may otherwise have to an expedited administrative hearing or an expedited appeal to the Tribal Court, and the appeal shall be governed in all respects in accordance with the Rules of Civil Procedure of the Tribal Court.

(C) Expedited Direct Appeal to the Tribal Court.

(1) Any person seeking an expedited appeal shall file a notice of appeal which states in a conspicuous manner that the appeal sought is an expedited appeal pursuant to this subsection. Upon receipt of the notice of appeal the Tribal Court shall notify the appellant in person or by telephone, telegram or other electronic means, of the time set for the expedited hearing which shall be held no later than five working days after receipt by the Tribal court of the notice of appeal.

(2) The expedited appeal hearing by the Tribal Court shall be by trial de novo and shall be governed in all respects in accordance with the rules of procedures of the Tribal Court, except that the Tribal Court shall rule upon the expedited appeal within three working days after completion of the hearing.

CHAPTER 4. BUSINESS STANDARDS

SECTION 1. In-Home Sales

(A) Every door-to-door salesperson is obligated to inform each prospective consumer of the following information at the beginning of any sales visit:

- (1) The salesperson's name;
- (2) The name of the company that the salesperson represents;
- (3) The salesperson's business address and the address of the company that the salesperson represents;
- (4) The salesperson's business license number;
- (5) An address or phone number where a consumer may inform the salesperson of a decision to reconsider a sale, address questions and concerns regarding sale products, and any other information that is of interest to the consumer and salesperson.

(B) Consumers of merchandise purchased at their residence from salespersons are entitled to reconsideration of any purchase within 3 workdays from the date of purchase. Reconsideration of sales will be fully credited or reimbursed to the consumer by the salesperson within 5 working days after the date such salesperson is informed of such reconsideration of the purchase.

(C) No door-to-door sales person may misrepresent any product to a prospective consumer in any manner that an ordinary person of reasonable aptitude, capability, and instruction will not be able to perform the product in a like manner.

SECTION 2. Food Sanitation

(A) Every person involved with the sale of products to be consumed shall take reasonable care to ensure that such food products are prepared and sold in a sanitary environment.

(B) The business licensee is responsible for the preparation and sale of any food product that is sold under the authority of his or her license, regardless of whether the licensee prepared such food products.

SECTION 3. Non-Consumer Property Damage Protections

(A) Any business, whether or not licensed by the Tribe, that damages to private property of any individual is responsible for replace or repair of such property at the actual cost of repair and replacement of such property.

(B) Any business, whether or not licensed by the Tribe, shall make prompt payment or repair of damaged property within 30 days from the date from the date the damage occurred unless another agreement is made between the business and the property owner.

(C) A property owner may file an appeal in accordance with Section 5 of Chapter 3 of this Code for failure of the business to repair or replace damage property within 30 days, as prescribed in this Section.

SECTION 4. Informal Complaint Procedures

(A) A person may file a written complaint with the Department of Commerce regarding alleged violations of Business License and/or Standards.

(B) Upon receipt of a complaint, the Director of Commerce shall conduct an investigation of the alleged violation within 5 days. The Director of Commerce shall report any findings to the person filing the complaint no later than 10 days from the date the complaint was filed.

(C) Based in information received as a result of the complaint, subsequent investigation, and from other sources, the Director of Commerce may take whatever action that he or she deems appropriate to address the situation.

(D) The action or inaction by the Tribal Department of Commerce with respect to any formal complaints may be subject to review by the Tribal Court.

CHAPTER 5. SAVINGS CLAUSE

SECTION 1. Savings Clause

In event that any provision of this Title shall be found or declared to be invalid, the remaining provisions of this Title shall be unaffected thereby, and shall remain in full force and effect.