

TOBACCO ORDINANCE
Habematolel Pomo of Upper Lake

TITLE

This ordinance shall be known as the Tobacco Ordinance.

PURPOSE

The purpose of this ordinance is to regulate the sale and distribution of cigarettes and other tobacco products on trust lands and otherwise to ensure the general welfare of the Habematolel Pomo of Upper Lake Tribe.

DEFINITIONS

(a) 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 a different meaning:

- (1) Cigarette: means any roll for smoking, made wholly or in part of tobacco, irrespective of 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 Executive Council of the Habematolel Pomo of Upper Lake.
- (3) Operator: shall mean any person licensed by the Tribe to operate a tobacco outlet on the Habematolel Pomo of Upper Lake trust lands.
- (4) Person: means any individual, "firm", co-partnership, joint venture, association, social club, corporation, syndicate or any other group or combination acting as a unit.
- (5) 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.
- (6) Tribe: shall mean the Habematolel Pomo of Upper Lake

ESTABLISHMENT OF TOBACCO OUTLETS

The Tribe may establish one or more tobacco outlets on trust lands as the Council in its sole discretion deems necessary to provide adequate service to consumers of tobacco products.

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. Such operator shall be an independent contractor.

APPLICATION FOR TOBACCO OUTLET LICENSE

Any person/ entity may apply for a tobacco outlet license upon an application form approved 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 two years, for which the license is requested, a description of any other retail or commercial business conducted or to be conducted by the applicant at the location of the proposed outlet, such other information as the Council may require, and shall be signed by the applicant under oath.

CONDITIONS FOR APPLICATION AND APPROVAL OF TOBACCO OUTLET LICENSE

- (a) No application for a tobacco outlet license shall be granted unless:
- (1) The applicant pays an application fee established by the Council not exceed \$100.00.
 - (2) The applicant is at least 21 years of age.
 - (3) The location proposed for such tobacco outlet complies with all applicable Tribal building codes and zoning ordinances.
 - (4) The Council determines that there is adequate demand for a tobacco outlet at the location proposed.
 - (5) The Tribal Council determines that the applicant is of good moral character.
- (b) The conditions described in this section are not exclusive and the Council may impose by regulation 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 thereof shall be final and conclusive on all persons.

THE TOBACCO OUTLET LICENSE

Upon approval of an application, the Council shall issue the applicant a tobacco license which shall be effective for a period stated therein, not in excess of two years, and shall entitle the Operator to establish and maintain one tobacco outlet on the trust lands and at the location described in the license. The license shall be nontransferable.

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, and any additional conditions and requirements deemed necessary by the Council.

REVENUE STAMP REQUIREMENT

No cigarette package shall be sold which does not bear a revenue stamp approved by the Habematolel Pomo of Upper Lake, State of California.

RESTRICTED SALES TO MINORS:

No person shall distribute any tobacco products on trust lands to any person under the age of eighteen years (18).

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.

OPERATING WITHOUT LICENSE

No person shall engage in the business of selling or distributing tobacco products on trust lands without having in effect a valid tobacco outlet license issued pursuant to this ordinance.

REVOCAION 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 in Section – Violation – Penalties.

VIOLATION - PENALTIES

(a) Upon allegation of violation of this ordinance by a member of the Council, the Council shall issue an order directing the seizure of all tobacco products from wherever purchased and by whomever owned from any tobacco outlet being operated in violation of this ordinance. The person operating such outlet shall be given reasonable and adequate notice that a hearing shall be held at the next Council meeting at which time such person shall be given an opportunity to present evidence in defense of his or her activities.

(b) If the Tribal Council shall determine by a preponderance of the evidence that such tobacco outlet was being operated in violation of this ordinance, the Council may impose a penalty in an amount not to exceed \$50.00 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 trust lands.

NON-APPLICATION TO TRIBE

The provisions of this ordinance requiring a tobacco outlet license shall apply to any direct sales of tobacco products by the Habematolel Pomo of Upper Lake and all of its wholly-owned businesses or enterprises, including but not limited to the Running Creek Casino.

SEVERABILITY

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

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

We the undersigned Officers of the Habematolel Pomo of Upper Lake (the "Tribe"), being the Chairperson and Secretary of the Executive Council (EC) of the Tribe, do hereby certify that the Executive Council is composed of seven (7) Council Members, of which 7 were present, constituting a quorum, at a *monthly* meeting thereof, duly called, noticed and conducted on this day of AUGUST 11, 2012 and that this Resolution was adopted by an affirmative vote of 6 YEAS, 0 NAYS, and 1 ABSTENTIONS. We further certify that since its adoption this Resolution has not been rescinded, amended, or modified in any way.

DATE SIGNED: _____, 2012

ATTEST:

SHERRY TREPPA,

Executive Council (EC) Chairperson

IRIS PICTON,

Executive Council (EC) Secretary