

TITLE 20
LUMMI NATION CODE OF LAWS
LIQUOR CODE

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Table of Contents

Chapter 20.01 Findings and Purpose

20.01.010 Legislative Control.....	1
20.01.020 Prior Legislation.....	1
20.01.030 Control Desired.....	1
20.01.040 Goals of Regulation	1

Chapter 20.02 Definitions

20.02.010 Definitions of Words.....	1
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Chapter 20.03 Lummi Liquor Commissioner

20.03.010 Liquor Commissioner Established.....	2
20.03.020 Compensation of Commissioner.....	2
20.03.030 Commissioner Reports to Lummi Indian Business Council.....	2
20.03.040 Commissioner - Powers and Duties.....	3
20.03.050 Commissioner - Prohibited Actions.....	3
20.03.060 Warehouse Space	3
20.03.070 Inspection of Premises	3

Chapter 20.04 Sales

20.04.010 Only Tribal Sales Allowed.....	3
20.04.020 All Sales Cash.....	3
20.04.030 All Sales For Personal Use	3
20.04.040 Liquor Stock is Tribal Property	4

Chapter 20.05 Taxation of Liquor

20.05.010 Tax Imposed.....	4
20.05.020 Distribution of Taxes	4

Chapter 20.06 Illegal Activities

20.06.010 Lack of Liquor Stamp - Contraband.....	4
20.06.020 Proof of Unlawful Sale - Intent.....	4
20.06.030 Use of Seal	4
20.06.040 Illegal Sale of Liquor by Drink or Bottle.....	5
20.06.050 Illegal Transportation, Still, or Sale Without Permit	5
20.06.060 Illegal Possession of Liquor.....	5
20.06.070 Illegal Possession of Liquor - Intent to Sell.....	5
20.06.080 Sales to Persons Apparently Intoxicated.....	5
20.06.090 Drinking In a Public Conveyance.....	5
20.06.100 Furnishing Liquor to Minors.....	5
20.06.110 Sales of Liquor to Minors	5
20.06.120 Unlawful Transfer of Identification.....	5
20.06.130 Possession of False or Altered Identification.....	5

20.06.140	General Penalties	5
20.06.150	Identification - Proof of Minimum Age.....	6
20.06.160	Illegal Items Declared Contraband	6
20.06.170	Preservation and Forfeiture.....	6

Chapter 20.07 Abatement

20.07.010	Declaration of Nuisance.....	6
20.07.020	Institution of Action.....	6
20.07.030	Abatement of Nuisance.....	6

Chapter 20.08 Profits

20.08.010	Distribution of Profits	7
20.08.020	Expenditure of Profits.....	7

Chapter 20.09 Severability and Effective Date

20.09.010	Severability	7
20.09.020	Effective Date	7
20.09.030	Inconsistent Enactment Rescinded	7
20.09.040	Disclaimer	7
20.09.050	Application of 18 U.S.C. 1161.....	7

**TITLE 20
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Chapter 20.01 Findings and Purpose

20.01.010 Legislative Control

The introduction, possession, and sale of liquor on Indian reservations have, since treaty time, been clearly recognized as matters of special concern of Indian tribes and the United States Federal Government. The control of liquor on reservations remains exclusively subject to their legislative enactments.

20.01.020 Prior Legislation

Beginning with the Treaty of Point Elliott, Article X, to which the ancestors of the Lummi Indian Tribe were parties, the Federal Government has respected this tribe's determinations regarding liquor related transactions and activities on the Lummi Indian Reservation. At treaty time, the Lummi Tribe's ancestors desired to exclude "ardent spirits" from their reservation. This desire was honored by Congress in the enactment of 18 U.S.C. Section 1154 and 18 U.S.C. Section 1161, which prohibit the introduction of liquor into the Lummi Indian Reservation unless and until the Lummi Indian Tribe has decided when and to what extent liquor transactions shall be permitted. The Lummi Tribe has decided to open the Lummi Indian Reservation to the possession, consumption, and sale of liquor by enacting Resolution L-33 on March 14, 1972. Subsequent circumstances have made it clear that it is now necessary for the Lummi Indian Tribe to exert strict tribal regulation and control over all aspects of liquor sale, distribution, and use on the Lummi Indian Reservation.

20.01.030 Control Desired

The enactment of the tribal ordinance governing liquor sales on the Lummi Indian Reservation and providing for exclusive purchase and sale through tribally owned and operated establishments will increase the ability of the Tribal Government to control reservation liquor distribution and possession, and, at the same time, will provide an important source of revenue for the continued operation of essential tribal social services.

20.01.040 Goals of Regulation

Tribal regulation of the sale, possession, and consumption of liquor on the Lummi Indian Reservation is necessary to protect the health, security, and general welfare of the Lummi Indian Tribe. In order to further these goals and to provide for an urgently needed additional source of governmental revenue, the Lummi Indian Business Council adopts this liquor ordinance to be known as the "Lummi Liquor Ordinance." This ordinance shall be liberally construed to fulfill the purposes for which it has been adopted.

Chapter 20.02 Definitions

20.02.010 Definitions of Words

As used in this title, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, sugar, or other substances including all dilutions and mixtures of this substance.

(b) "Alcoholic Beverage" is synonymous with the term "liquor" as defined in Section 20.02.010(e) of this chapter.

(c) "Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt, or other wholesome grain or cereal in pure water containing not more than four percent (4%) of alcohol by volume. For the purposes of this title, any such beverage, including ale, stout, and porter, containing more than four percent (4%) of alcohol by weight shall be referred to as "strong beer."

(d) "Commissioner" means the Lummi Indian Liquor Commissioner as constituted under this title.

(e) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine, and beer), and all fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous, or malt liquor, or otherwise intoxicating, and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine, or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substance, which contains more than one percent (1%) of alcohol by weight shall be conclusively deemed to be intoxicating.

(f) "Malt Liquor" means beer, strong beer, ale, stout, and porter.

(g) "Package" means any container or receptacle used for holding liquor.

(h) "Public Place" includes streets and alleys of incorporated cities and towns, state or county or tribal or federal highways or roads, buildings and grounds used for school purposes, public dance halls and grounds adjacent thereto, those parts of establishments where beer may not be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls, and dining rooms of hotels, restaurants, theaters, stores, garages, and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access, railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public, publicly owned bathing beaches, parks, and/or playgrounds, and all other places of like or similar nature to which the general public has an unrestricted right of access, and which are generally used by the public.

(i) "Sale" and "Sell" shall include exchange, barter, and traffic; and also includes the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or wine by any person to any person.

(j) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent (17%) of alcohol by weight.

(k) "Tavern" means any establishment with special space and accommodations for sale by the glass and for consumption on the premises, of beer, as herein defined.

(l) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during, or after fermentation, and containing not more than seventeen percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding seventeen percent (17%) of alcohol by weight.

Chapter 20.03 Lummi Liquor Commissioner

20.03.010 Liquor Commissioner Established

There is hereby established a Lummi Liquor Commissioner. The Commissioner shall be selected by a vote of the Lummi Indian Business Council and shall serve at the pleasure of the Lummi Indian Business Council.

20.03.020 Compensation of Commissioner

The Commissioner shall serve without compensation unless otherwise directed by the Lummi Indian Business Council, but may receive reimbursement for necessary expenses and mileage actually incurred in the performance of his duties.

20.03.030 Commissioner Reports to Lummi Indian Business Council

The Commissioner shall prepare an annual report on liquor activities to be submitted to the Lummi Indian Business Council by January 1st of each year. The report shall include an accounting of all receipts and expenditures and such other information as shall seem appropriate to the Commissioner or

as shall be directed by the Lummi Indian Business Council. The Commissioner may submit such other and further reports as he deems appropriate or as the Lummi Indian Business Council shall direct.

20.03.040 Commissioner - Powers and Duties

The Commissioner shall have the following powers and duties:

- (a) To publish and enforce rules and regulations adopted by the Lummi Indian Business Council governing the sale, manufacture, and distribution of alcoholic beverages on the Lummi Indian Reservation.
- (b) To employ managers, warehousemen, accountants, security personnel, drivers, and such other persons as shall be reasonably necessary to allow the Commissioner to perform his functions. Such employees shall be tribal employees.
- (c) To lease or construct appropriate warehouse facilities.
- (d) To bring suit in the appropriate court with the consent of the Lummi Indian Business Council. The Commissioner shall not, without the specific consent of the Lummi Indian Business Council, waive the Commissioner's or the Lummi Indian Tribe's immunity from suit.
- (e) To contract with liquor wholesalers and distributors for the purchase and delivery of alcoholic beverages.
- (f) To make such reports as may be required by the Lummi Indian Business Council.
- (g) To take orders, receive, and distribute shipments of alcoholic beverages, establish wholesale base prices, collect taxes and fees levied or set by the Lummi Indian Business Council, and to keep accurate records, books, and accounts.
- (h) To exercise such other powers as are delegated by the Lummi Indian Business Council.

20.03.050 Commissioner - Prohibited Actions

In the exercise of his powers and duties, the Commissioner shall not:

- (a) accept any gratuity, compensation or other thing of value from any liquor wholesaler or distributor or from any licensee;
- (b) waive the immunity of the Lummi Indian Tribe from suit without the express consent of the Lummi Indian Business Council.

20.03.060 Warehouse Space

The commissioner shall purchase, lease, or construct an appropriate secure warehouse located on the Lummi Indian Reservation for the receipt, storage, and distribution of alcoholic beverages.

20.03.070 Inspection of Premises

The premises of the liquor operation shall be open by its employees for inspection by the Commissioner or by any member of the Lummi Indian Business Council to inspect, at all reasonable times, for the purpose of ascertaining whether the rules and regulations of the Lummi Indian Business Council and the liquor laws of the Lummi Indian Reservation are being complied with.

Chapter 20.04 Sales

20.04.010 Only Tribal Sales Allowed

No sales of alcoholic beverages shall be made within the exterior boundaries of the Lummi Indian Reservation, except at a tribal liquor store or by the glass or bottle at a tribally owned gaming facility, a tribally licensed restaurant, or at a tribally sponsored event.

20.04.020 All Sales Cash

All sales at tribal liquor stores shall be on a cash only basis and no credit shall be extended to any person, organization, or entity.

20.04.030 All Sales For Personal Use

All sales shall be for the personal use of the purchaser, and resale for profit of any alcoholic beverage purchased at a tribal liquor store is prohibited within the Lummi Indian Reservation. Any person who purchases an

alcoholic beverage at a tribal liquor store and resells that beverage for profit, whether in the original container or not, shall be guilty of an offense and punished in accordance with section 20.06.140 herein.

20.04.040 Liquor Stock is Tribal Property

The entire stock of liquor and alcoholic beverages referred to under this ordinance shall remain tribal property owned and possessed by the Lummi Indian Tribe until sold.

Chapter 20.05 Taxation of Liquor

20.05.010 Tax Imposed

There is hereby levied and shall be collected a tax on each retail sale of alcoholic beverages by a tribal liquor store on the Reservation in the amount of fifteen percent (15%) of the retail sales price. The tax imposed by this section shall apply to all retail sales of liquor by a tribal liquor store on the Reservation. No municipality, city, town, county, nor the State of Washington shall have any power to govern or license the sale or distribution of alcoholic beverages in any manner within the Lummi Indian Reservation, except as may be provided in a government-to-government agreement.

20.05.020 Distribution of Taxes

All taxes from the sale of alcoholic beverages on the Lummi Indian Reservation by or through the Board shall be paid over to the General Treasury of the Lummi Indian Tribe and be subject to distribution by the Lummi Indian Business Council in accordance with its usual appropriation procedures for essential governmental and social services; provided, however, that the following tribal programs shall have priority in funding in the percentages set out in this section upon demonstration of need and past performance in the normal tribal budgetary appropriation process:

(a) to the Lummi Tribal Alcohol Program in an amount of at least 15% of the total tax received;

(b) to the Lummi Tribal Elders Program in an amount of 15% of the total tax received;

(c) to the Lummi Tribal Youth Program in an amount of at least 15% of the total tax received;

(d) to the Lummi Tribal Law and Order Program in an amount of at least 15% of the total tax received;

(e) to the Lummi Tribal Education Program in an amount of at least 15% of the total tax received;

(f) to other tribal needs as designated by the Lummi Indian Business Council

Chapter 20.06 Illegal Activities

20.06.010 Lack of Liquor Stamp - Contraband

No alcoholic beverages shall be sold on the Lummi Indian Reservation unless there shall be affixed to the package a stamp of the Tribe. Any sales made in violation of this provision shall be a violation of this title and shall be punishable as set out in Section 20.06.140 herein. All alcoholic beverages not so stamped which are sold or held for sale on the Lummi Indian Reservation are hereby declared contraband and, in addition to any penalties imposed by the Court for violation of this section, shall be confiscated and forfeited in accordance with the procedures set out in Title 14 of the Lummi Code of Laws.

20.06.020 Proof of Unlawful Sale - Intent

In any proceeding under this title, proof of one unlawful sale of liquor shall suffice to establish *prima facie* intent or purpose of unlawfully keeping liquor for sale in violation of this title.

20.06.030 Use of Seal

No person other than a liquor operation employee of the Tribe shall keep or have in his possession any legal seal prescribed under this title unless the same is attached to a package which has been purchased from a tribal liquor store, nor shall any person keep or have in his possession any design in imitation of any official seal prescribed under this title or calculated to deceive by its resemblance to

any official seal, or any paper upon which such design is stamped, lithographed, printed, or otherwise marked. Any person who willfully violates any provision of this section shall be guilty of an offense.

20.06.040 Illegal Sale of Liquor By Drink or Bottle

Except as otherwise provided in this chapter, any person who sells by the drink or bottle any liquor shall be guilty of an offense.

20.06.050 Illegal Transportation, Still, or Sale Without Permit

Any person who shall sell or offer for sale or transport in any manner, any liquor in violation of this title, or who shall operate or shall have in his possession without a permit, any mash capable of being distilled into liquor, shall be guilty of an offense.

20.06.060 Illegal Possession of Liquor

Any person within the boundaries of the Lummi Indian Reservation who buys liquor from any person other than at a properly authorized tribal liquor store or tribally owned gaming facility, tribally licensed restaurant, or tribally sponsored event shall be guilty of an offense.

20.06.070 Illegal Possession of Liquor - Intent to Sell

Any person who keeps or possesses liquor upon his person or in any place or on premises conducted or maintained by him as a principal or agent with the intent to sell it contrary to the provisions of this title, shall be guilty of an offense.

20.06.080 Sales to Persons Apparently Intoxicated

Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of an offense.

20.06.090 Drinking in a Public Conveyance

Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person who shall knowingly permit any person to drink any liquor in any public

conveyance shall be guilty of an offense. Any person who shall drink any liquor in a public conveyance shall be guilty of an offense.

20.06.100 Furnishing Liquor to Minors

Except in the case of liquor given or permitted to be given to a person under the age of twenty-one (21) years by his parent or guardian for medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, no person under the age of twenty-one (21) years shall consume, acquire, or have in his possession any alcoholic beverages except when such beverage is being used in connection with religious observances. No person shall permit any other person under the age of twenty-one (21) to consume liquor on his premises or on any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of an offense.

20.06.110 Sales of Liquor to Minors

Any person who shall sell any liquor to any person under the age of twenty-one (21) years shall be guilty of an offense.

20.06.120 Unlawful Transfer of Identification

Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor shall be guilty of an offense; Provided, that corroborative testimony of a witness other than the minor shall be a requirement of conviction.

20.06.130 Possession of False or Altered Identification

Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of an offense.

20.06.140 General Penalties

Any Indian person guilty of a violation of this title for which no penalty has been specifically provided shall be liable upon conviction for imprisonment for a period not to exceed six (6) months, or a fine of not to exceed five

hundred dollars (\$500), or both such fine and imprisonment.

20.06.150 Identification - Proof of Minimum Age

Where there may be a question of a person's right to purchase liquor by reason of his age, such person shall be required to present any one of the following officially issued cards of identification which show his correct age and bears his signature and photograph:

- (a) Liquor control authority card of identification of any state.
- (b) Driver's license of any state or "Identocard" issued by any state Department of Motor Vehicles.
- (c) United States Active Duty Military identification.
- (d) Passport.
- (e) Lummi Tribal Identification or Enrollment Card.

20.06.160 Illegal Items Declared Contraband

Alcoholic beverages which are possessed contrary to the terms of this chapter are declared to be contraband. Any officer who shall make an arrest under this section shall seize all contraband which he shall have the authority to seize consistent with the Lummi Constitution.

20.06.170 Preservation and Forfeiture

Any officer seizing contraband shall preserve the contraband in accordance with the provisions established for the preservation of impounded property in Title 14 of this Code. Upon conviction, the guilty party shall forfeit all right, title, and interest in the items seized and when the conviction shall become final, the items shall be disposed of as provided for in Title 14 of this Code; Provided, however that the items so forfeited shall not be sold to any person not entitled to possess them under applicable law.

Chapter 20.07 Abatement

20.07.010 Declaration of Nuisance

Any room, house, building, boat, vessel, vehicle structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this title or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, and all property kept in and used in maintaining such place, are hereby declared to be a common nuisance.

20.07.020 Institution of Action

The Chairman of the Lummi Indian Business Council shall institute and maintain an action in the Tribal Court in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this title. The plaintiff shall not be required to give bond in the action, and restraining orders, temporary injunctions, and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant the Court may also order the room, house, building, boat, vessel, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum of not less than one thousand dollars (\$1,000.00) payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of thereof in violation of the provisions of this title or any other applicable tribal law, and that he will pay all fines, costs, and damages assessed against him for any violation of this title or other tribal liquor laws. If any conditions of the bond are violated, the whole amount may be recovered as a penalty for the use of the Tribe. Any action taken under this section shall be in addition to any criminal penalties provided under this title.

20.07.030 Abatement of Nuisance

In all cases where any person has been convicted of a violation of this title or tribal laws relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought in

Tribal Court to abate as a nuisance any real estate or other property involved in the commission of the offense, and in any such action a certified copy of the record of such conviction shall be admissible in evidence and prima facie evidence that the room, house, vessel, boat, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Chapter 20.08 Profits

20.08.010 Distribution of Profits

The gross proceeds collected by the Commissioner for all sales of alcoholic beverages on the Lummi Indian Reservation shall be distributed as follows:

- (a) for the cost of goods;
- (b) for the payment of taxes provided in Chapter 20.05 of this title;
- (c) for the payment of all necessary personnel, administrative costs, and legal fees for the operation and its activities;
- (d) the remainder shall be turned over to the General Fund of the Lummi Indian Tribe in monthly payments and expended by the Lummi Indian Business Council.

20.08.020 Expenditure of Profits

All profits transferred to the tribal General Fund by the Commissioner shall be expended by the Lummi Indian Business Council for the general governmental services of the Tribe.

Chapter 20.09 Severability and Effective Date

20.09.010 Severability

If any provision or application of this ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title or to render such provisions inapplicable to other persons or circumstances.

20.09.020 Effective Date

This title shall be effective on such date as the Secretary of the Interior certifies this title and

publishes the same in the Federal Register.

[Note: Published in Federal Register July 23, 1979].

20.09.030 Inconsistent Enactments Rescinded

Any and all prior enactments of the Lummi Indian Business Council which are inconsistent with the provisions of this title are hereby rescinded.

20.09.040 Disclaimer

Nothing in this title shall be construed to require or authorize the criminal trial and punishment by the Lummi Tribal Court of any non-Indian except to the extent allowed by any applicable present or future Act of Congress or any applicable decision of the United States Supreme Court.

20.09.050 Application of 18 U.S.C. 1161

All acts and transactions under this title shall be in "conformity with the laws of the State of Washington" as that term is used in 18 U.S.C. 1161.

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