

TITLE 7: TRAFFIC CODE

CHAPTER 1

State Motor Vehicle Laws Incorporated

§ 7.1.01 Provisions Incorporated

The following provisions of the Revised Code of Washington as presently constituted or hereafter amended are incorporated herein and redesignated as provisions of this Code and shall apply to an persons subject to the jurisdiction of the Makah Indian Tribe:

RCW Chapters 46.04, 46.12, 46.16, 46.20, 46.37, 46.44, 46.48, 46.52, and 46.61.

Chapters and Sections of the Revised Code of Washington, incorporated herein as tribal law, shall be designated and referred to as the Makah Traffic Code (MTC). The numbering system of the Revised Code of Washington shall be retained in the Tribal Code. Any of the provisions of the Revised Code of Washington listed above, which, by their nature, would not reasonably apply to the Makah Indian Tribe, Reservation or Tribal Court, are not incorporated herein.

§7.1.02 Amendments

Amendments, additions or deletions to or from such provisions by the State of Washington after the enactment of this Code shall become a part hereof for all purposes unless the Tribal Council by ordinance or resolution specifically provides otherwise.

§ 7.1.03 Definitions

As contained in the above-cited motor vehicle laws, "highways," "state highways," and "public highways" shall be construed to mean "all roads, public and private, within the jurisdiction of the Makah Indian Tribe," and "county jail" or "jail" shall be construed to mean "tribal or other jail authorized by the Tribe to receive prisoners." References to any "court" shall be construed to mean "the Makah Tribal Court."

CHAPTER 2

Traffic Infractions

§ 7.2.01 Legislative Intent

The Makah Tribal Council finds that non-Indians enter the Makah Indian Reservation and violate the traffic laws of the State of Washington and the Makah Indian Tribe. The State of Washington has jurisdiction over non-Indian traffic violators on the public highways of the Makah Reservation; however, because of the isolated location of the Reservation and other reasons, state law enforcement presence on the Reservation is almost non-existent. The federal courts have held that Indian tribes may not exercise criminal jurisdiction over non-Indian traffic offenders. While members of the Makah Tribal Police can detain and turn over non-Indian offenders to off-Reservation law enforcement officials, the cost of providing such protective service is not compensated by the collection of traffic fines from such violators.

The Makah Tribal Council thus finds that it is in the best interests of the Makah Tribe that non-Indian violators be subjected to the civil jurisdiction of the Tribal Court and that fines imposed on all violators be retained by the Tribe for the purpose of providing professional traffic enforcement and related services on the Reservation.

It is the intent of the Tribal Council in the adoption of this Chapter in decriminalizing certain traffic offenses to promote the public safety and welfare on the public highways within the Makah Indian Reservation and to facilitate the implementation of a uniform and expeditious system for the disposition of traffic infractions. Decriminalization of certain traffic offenses will allow the Tribe to exercise its civil jurisdiction over all persons within the boundaries of the Makah Indian Reservation, thus promoting the public safety and welfare of the members of the Makah Tribe as well as non-members while on the Reservation. Moneys derived from the imposition of civil fines for traffic infractions in Makah Tribal Court will help to provide necessary funds for the traffic enforcement efforts of the Makah Tribe and the Tribal Court. It is appropriate that persons who commit traffic violations while on the Makah Reservation should contribute towards traffic enforcement on the Reservation through the payment of civil fines imposed by the Tribal Court.

The procedures and fines established under this Chapter are intended to be remedial and not punitive and are designed to compensate the Tribe for damage to the Tribe by traffic violations and for costs incurred by the Tribe in enforcing this Traffic Code and protecting the health, safety and welfare of an persons on the Makah Reservation. These procedures and fines are also intended to coerce individuals into conforming with the requirements of this Traffic Code and not to punish them for violating its provisions.

§ 7.2.02 Violations as Traffic Infractions

- (a) Except as provided below, failure to perform any act required or the performance of any act prohibited by this Title is hereby designated a civil traffic infraction and shall no longer be classified as a criminal offense.
- (b) The following traffic offenses are Class AA criminal offenses under Title 2 of this Code:
 - (1) Violation of 5.1.05 ML&O, vehicular homicide;
 - (2) Violation of MTC 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs.
- (c) The following traffic offenses are Class A criminal offenses under Title 2 of this Code:
 - (1) Violation of MTC 46.52.020, relating to duty in case of injury or death of a person or damage to an attended vehicle;
 - (2) Violation of MTC 46.61.024, relating to attempting to elude pursuing police vehicles;
 - (3) Violation of MTC 46.61.522, relating to vehicular assault;
 - (4) Violation of MTC 46.61.500, relating to reckless driving.
- (d) The following traffic offenses are Class B criminal offenses under Title 2 of this Code:
 - (1) Violation of MTC 46.52.010, relating to duty on striking an unattended car or other property;
 - (2) Violation of MTC 46.61.525, relating to negligent driving.
 - (3) Violation of MTC 46.61.530, relating to racing of vehicles on highways.
- (e) The following traffic offenses are Class C criminal offenses under Title 2 of this Code:
 - (1) Violation of MTC 46.16.011, relating to permitting unauthorized persons to drive;
 - (2) Violation of MTC 46.20.021, relating to driving without a valid driver's license;

- (3) Violation of MTC 46.20.336, relating to the unlawful possession and use of a driver's license;
 - (4) Violation of MTC 46.20.342, relating to driving with a suspended or revoked license;
 - (5) Violation of MTC 46.20.416, relating to driving while in a suspended or revoked status;
 - (6) Violation of MTC 46.20.420, relating to the operation of a motor vehicle with a suspended or revoked license;
 - (7) Violation of MTC 46.61.015, relating to obedience to police officers, flagmen or firefighters;
 - (8) Violation of MTC 46.61.020, relating to refusal to give information to or cooperate with an officer;
 - (9) Violation of MTC 46.61.022, relating to failure to stop and give identification to an officer;
 - (10) Violation of MTC 46.61.685, relating to leaving children in an unattended vehicle with the motor running.
- (f) The Tribal Council may adopt regulations or ordinances governing parking on the Makah Indian Reservation. To the extent practical, the requirements and procedures under this Title 7 shall apply unless in conflict with such parking regulations or ordinance. In the event of a conflict between the incorporated provisions of the Revised Code of Washington with respect to parking violations and Tribal parking regulations or ordinances, the Tribal regulations or ordinance shall control.

§ 7.2.03 Notice of Traffic Infraction - Authority to Issue

- (a) A tribal law enforcement officer has the authority to issue a notice of traffic infraction:
- (1) When the infraction is committed in the officer's presence;
 - (2) When the officer is acting upon the request of a law enforcement officer in whose presence the traffic infraction was committed; or
 - (3) If an officer investigating at the scene of a motor vehicle accident has reasonable cause to believe that the driver of a motor vehicle involved in the accident has committed an infraction.

- (b) The Tribal Court may issue a notice of infraction upon receipt of a written statement of a tribal law enforcement officer that there is reasonable cause to believe an infraction was committed.

§ 7.2.04 Notice of Traffic Infraction - Effect - Form of Notice

- (a) A notice of infraction represents a determination that an infraction has been committed. The determination will be final unless contested as provided in this Chapter.
- (b) The form for the notice of infraction shall include the following:
 - (1) A statement that the notice represents a determination that a traffic infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this Chapter;
 - (2) A statement that a traffic infraction is a non-criminal offense for which imprisonment may not be imposed as a sanction;
 - (3) A statement of the specific traffic infraction for which the notice was issued;
 - (4) A statement of the monetary fine established for the traffic infraction;
 - (5) A statement of the options provided in this Chapter for responding to the notice and the procedures necessary to exercise these options;
 - (6) A statement that at any hearing to contest the determination, the Tribe has the burden of proving, by the preponderance of evidence, that the infraction was committed; and that the person may subpoena witnesses, including the officer who issued the notice of infraction;
 - (7) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction, the person will be deemed to have committed the infraction and may not subpoena witnesses;
 - (8) A statement that the person must respond to the notice as provided in this Chapter within 15 days or face additional sanctions as set forth in this Chapter;
 - (9) A statement that failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances will result in imposition of additional sanctions;

- (10) A statement, which the person shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this Chapter; and
- (11) A statement that failure to respond to the notice of infraction as promised will result in additional sanctions under this Chapter.

§ 7.2.05 Response to Notice - Contested Hearings - Mitigation Hearing - Failure to Respond or Appear

- (a) Any person who receives a notice of traffic infraction shall respond to such notice as provided in this Section within 15 days of the date of notice.
- (b) If the person determined to have committed the infraction does not contest the determination, the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, by mail or in person, to the Tribal Court. A certified check or money order for the amount of the fine prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the Tribal Court records.
- (c) If the person determined to have committed the infraction wishes to contest the determination, the person shall respond by completing the portion of the notice of infraction requesting the hearing and submitting it, either by mail or in person, to the Tribal Court. The Tribal Court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be sooner than seven days from the date of the notice, except by agreement.
- (d) If the person determined to have committed the infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the notice of infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the Tribal Court. The Tribal Court shall notify the person in writing of the time, place and date of the hearing.
- (e) If any person issued a notice of traffic infraction: (i) fails to respond to the notice of traffic infraction as provided in Subsection (b) of this Section; or (ii) fails to appear at a hearing requested pursuant to Subsection (c) or (d) of this Section; the Tribal Court shall enter an appropriate order assessing the monetary fine prescribed for the traffic infraction and such other sanctions for failure to respond, disobedience of a court order, prohibition from operating a vehicle on a road within the jurisdiction of the Makah Tribe for a period not to exceed one year, suspension or revocation of driver's license under this Title, and, in the appropriate case, expulsion from the Makah Reservation.

§7.2.06 Civil Procedures to Apply - Contested Bearings

- (a) Except as provided in this Title, the civil procedures of Title 3 of this Code shall be utilized for all traffic infraction hearings under this Chapter.
- (b) A hearing held for the purpose of contesting a determination that an infraction has been committed shall be without a jury. The person named in the notice may subpoena witnesses, including the officer who issued the notice of infraction, and has the right to present evidence and examine witnesses present in court.
- (c) The burden of proof is on the Tribe to establish the commission of the infraction by a preponderance of evidence.
- (d) After consideration of the evidence and argument, the Tribal Court shall determine whether the infraction was committed. Where it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the Court's records. Where it has been established that the infraction was committed, an appropriate order shall be entered in the Court's records.
- (e) An appeal from the Court's determination or order shall be taken as in any civil appeal pursuant to Chapter 1.9 of this Code.

§7.2.07 Hearings. Mitigating Circumstances

- (a) A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that an infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.
- (b) After the Court has heard the explanation of the circumstances surrounding the commission of the infraction, an appropriate order shall be entered in the Court's records.
- (c) There may be no appeal from the Court's determination or order under this Section.

§ 7.2.08 Monetary Fines

- (a) The provisions of Chapter 3.8 of this Code, Civil Fines and Forfeitures, shall not apply to this Title.
- (b) A person found to have committed a traffic infraction shall be assessed a monetary fine. No fine may exceed \$250 for each offense unless authorized under this Code.

- (c) The Tribal Court shall prescribe by rule a schedule of monetary fines for designated traffic infractions. The schedule of fines shall be adjusted periodically for inflation.
- (d) There shall be a civil fine of \$25 for failure to respond to a notice of traffic infraction.
- (e) Whenever a monetary fine is imposed by the Tribal Court under this Chapter, it is immediately payable. If the person is unable to pay at that time, the Court may, in its discretion, grant an extension of the period in which the fine may be paid. If the fine is not paid on or before the time established for payment, the Court shall after appropriate notice hold such hearing and impose such sanctions as may be appropriate under this Code for failure to obey a Tribal Court order.

§ 7.2.09 Criminal Procedures to Apply to Traffic Offenses

The criminal procedures of Title 2 of this Code shall be utilized for those traffic offenses designated as criminal offenses under this Chapter with respect to those persons over which the Makah Tribal Court exercises criminal jurisdiction pursuant to tribal and federal law.