# Title 3 – Tribal Court
## Chapter 5 – Exclusion and Expulsion

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**Legislative History**

Enacted:

Swinomish Exclusion and Expulsion Code, Ord. 192 (10/24/03), BIA (11/7/03).

Amended:

Swinomish Exclusion and Expulsion Code, Ordinance 246 (03/07/06), BIA (03/31/06)

Repealed or Superseded:

Swinomish Law and Order Code, Ord. 32, Articles XV, XVII (3/4/75), BIA (5/30/75).
Amending Ord. 32, Ord. 73A (9/11/90), BIA (10/22/90).
The Swinomish Law and Order Code, Ord. 7 (3/23/38), BIA (3/24/38).
Approving Adoption of Swinomish Law and Order Code, Ord. 1 (undated).

[Ed. Note. Ordinance 1 is undated and adopts the Law and Order Regulations approved by the Secretary of the Interior November 27, 1935 as part of the fundamental law governing the Swinomish Reservation. The referenced "regulations" are not located in tribal records.]

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### 3-05.010 Authority.

This Chapter is enacted pursuant to authority provided by Article VI, Section 1(b), (i), (k), (l), (r) and (s), and Article VI, Section 3 of the Swinomish Constitution.

[History] Ord. 192 (10/24/03).

**3-05.020 Definitions.**

(A) **"Reservation"** means all the lands and waters within the exterior boundaries of the Swinomish Indian Reservation.

(B) **"Senate"** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.

(C) **"Tribe"** or **"Tribal Community"** means the Swinomish Indian Tribal Community, a federally recognized Indian Tribe organized pursuant to Section Sixteen of the Indian Reorganization Act of 1934.

(D) **"Tribal Court"** or **"Court"** means the Swinomish Tribal Court.

[History] Ord. 192 (10/24/03).

**3-05.030 Who May be Excluded.**

Any non-member of the Swinomish Tribe, except persons authorized by federal law to be present on tribal land, may be excluded from the Swinomish Indian Reservation. Owners of non-trust land may not be excluded from the land they own.

[History] Ord. 192 (10/24/03); Ord. 32 (3/4/75).

**3-05.040 Grounds for Exclusion.**

Non-members may be excluded for commission of one or more of the following acts within the exterior boundaries of the Reservation:

(A) Breach of the peace;

(B) Repeated public drunkenness;

(C) Entering an area of the Reservation in violation of any order of the Senate designating such area as closed because of fire hazard or closed for any other reason;

(D) Failure or refusal to pay any taxes, rents, or other charges justly due the Tribe, after reasonable notice and opportunity to pay;

(E) Unauthorized cutting of timber or vegetation;

(F) Any act causing physical loss or damage of any nature to tribal property or property of any enrolled member;

(G) Commission of a crime as proscribed by state or federal law;

(H) Violation of any tribal law or Title 5, Criminal Code;

(I) Immorality;

(J) Forcible entry into any Swinomish home without consent of the occupant or occupants;

(K) Unauthorized prospecting;

(L) Committing frauds, confidence games, or usury against any enrolled member;

(M) Inducing any enrolled member to enter into grossly unfavorable contracts of any nature;

(N) Defrauding any enrolled member of just compensation for his or her labor or service of any nature at the request of the non-member;

(O) Unauthorized taking of any property from the Reservation; or

(P) Use, possession, or sale of any drug, narcotic drug, or controlled substance as defined by the State Uniform Controlled Substances Act or the Swinomish Criminal Code.

[History] Ord. 192 (10/24/03); Ord. 32 (3/4/75).

**3-05.050 Senate Authorization, Senate Proceedings, Petition for Exclusion, Summons, & Hearing.**

(A) **Senate Authorization.** The Senate may authorize the prosecuting attorney to file a petition for the exclusion of a person who is not an enrolled member of the Swinomish Indian Tribal Community when the Senate finds that:

(1) it is probable that cause exists for the exclusion as defined in STC 3-05.040; and

(2) the exclusion would be in the best interest of the community.

(B) **Senate Proceedings.** The Senate proceedings shall be conducted in executive session with the prosecuting attorney, and the person whose exclusion is proposed shall not have a right to notice of, or attendance at, any such Senate proceedings.

(C) **Petition for Exclusion.** Upon the direction of the Senate, the prosecuting attorney shall promptly file a petition for exclusion with the Tribal Court. The petition shall contain the non-member's name, the alleged grounds or basis for exclusion, and the grounds for tribal court jurisdiction.

(D) **Summons.** The Court shall issue a summons upon the filing of the petition for exclusion. The summons shall name a time and place where the non-member may appear before the Tribal Court to show cause why he or she should not be excluded from the Reservation. A copy of the petition for exclusion and the summons shall be served in accordance with STC 3-02.070.

(E) **Hearing.** The hearing shall be not less than five (5) days after service of the notice, provided that if the judge shall have reasonable cause to believe an emergency exists, and the notice so states, the hearing may be held after twenty-four (24) hours from the time of service or mailing, whichever is later.

[History] Ord. 246 (03/31/2006); Ord. 192 (10/24/03); Ord. 90-9-108 (9/11/90); Ord. 32 (3/4/75).

**3-05.060 Hearing on Exclusion before Tribal Court.**

(A) After the non-member is given notice of the proposed exclusion, the Tribal Court shall hold a hearing to decide whether the non-member shall be excluded from the Reservation. The non-member shall be given an opportunity to present his or her defense at such hearing and may be represented by counsel.

(B) The Tribal Court may, in its discretion, grant a continuance of the hearing on request by the non-member. If after notice, the non-member does not appear or if it is found at the hearing that cause does exist for exclusion, the Tribal Court may order him or her excluded from the Reservation or may permit him or her to remain on the Reservation on such conditions as the Tribal Court sees fit to impose.

(C) All orders of exclusion shall remain in force until revoked by the Tribal Court unless the order specifically provides otherwise.

[History] Ord. 192 (10/24/03); Ord. 32 (3/4/75).

**3-05.070 Appellate Proceedings.**

Any person aggrieved by the decision of the Tribal Court shall have the right to appeal such decision as prescribed in Chapter 4 of this Title.

[History] Ord. 192 (10/24/03); Ord. 32 (3/4/75).

**3-05.080 Proceedings for Enforcement of Orders of Exclusion.**

If any non-member ordered excluded from tribal land by the Tribal Court does not promptly obey the order, the Court shall deliver an order of removal to any member of the tribal police force, who may bodily remove the person from the Reservation.

[History] Ord. 192 (10/24/03); Ord. 32 (3/4/75).

**3-05.090 Physical Removal of Trespassers.**

(A) In cases involving immediate danger to the life, health, morals, or property of the Tribe or any of its members, and where a delay would result in irreparable damage,

the Tribal Court may order any tribal police officer to remove a non-member and/or any property of such non-member from tribal land, either before or after the non-member has been ordered excluded by the Tribal Court as provided in Section 3-05.050.

(B) The officer executing the order shall use only so much force as is necessary to effect the removal.

(C) If service of the notice provided for in Section 3-05.040 has not already been made on the non-member, the Court shall cause the officer to serve the notice upon the non-member at the time of removal, or the Court shall cause the notice to be served as soon after removal as possible.

(D) In all cases where the non-member has not already been ordered excluded by the Tribal Court, the judge shall notify the non-member of a place on the Reservation boundary where he or she may re-enter in the company of a tribal law enforcement officer for the purpose of attending the hearing before the Tribal Court. The Court shall order the officer to accompany the non-member while he or she is on the Reservation coming to and leaving the hearing.

[History] Ord. 192 (10/24/03); Ord. 32 (3/4/75).

**3-05.100 Repealer.**

This Chapter repeals and supersedes all prior expulsion and exclusion ordinances, including, but not limited to Articles XV and XVII of Ordinance 32.

[History] Ord. 192 (10/24/03).

**3-05.110 Severability.**

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

[History] Ord. 192 (10/24/03); Ord. 32 (3/4/75).

**3-05.120 Effective Date.**

This Chapter shall take effect and be enforced immediately from and after its adoption by the Senate.

[History] Ord. 192 (10/24/03); Ord. 32 (3/4/75).