

## Title 18 – Natural Resources

### Chapter 7 – Procedure

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#### Legislative History

Enacted:

Ordinance 353 Amending STC Title 18 – Natural Resources Enforcement Provisions (9/1/15), BIA (9/10/15).

Effective date: 9/1/15 (except as to cases brought under this Title pending in Swinomish Tribal Court on the effective date; see Ord. No. 353).

Repealed or Superseded:

Ord. 228 (4/5/05), BIA (4/20/05).

Ord. 249 (10/12/06), BIA (10/16/06).

Codifying Title 18, Ord. 207 (1/27/04), BIA (2/9/04).

Hunting Ordinance, Ord. 59 (1/10/89), and Enacting Res. 89-1-5, BIA (1/24/89) (modifying Ord. 57 with respect to the scope of tribal jurisdiction and repealing and superseding all previous hunting related ordinances).

Hunting Ordinance, Ord. 57, Enacting Res. 88-8-55 (8/31/88), BIA (1/24/89) (approved subject to the condition that it be modified regarding the scope of tribal jurisdiction; repealing and superseding all previous hunting ordinances).

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#### **18-07.010 Initiation of Charges.**

- (A) **Infractions.** All charges for infractions, including an offense committed during the exercise of Tribal treaty rights or an offense against an enforcement officer that is treated as a civil violation under the provisions of Section 18-01.030(E), shall be prosecuted under the terms and provisions of this Chapter.

- (B) **Offenses.** All prosecutions for offenses shall be prosecuted under the terms and provisions of Swinomish Tribal Code Chapter 3-03 – Rules of Criminal Procedure.

[History] Ord. 353 (9/1/15).

**18-07.020 Commencement and Service.**

- (A) **Commencement.** Proceedings involving infractions initiated under this Title may be commenced either:
  - (1) When an enforcement officer or the prosecutor issues a notice of violation to the defendant and delivers it to the defendant or serves it at the defendant's last known address by first class mail, and files a copy of the citation in Court; or
  - (2) When the Tribal prosecutor files a complaint upon receipt of evidence or a written statement from any enforcement officer that there is reasonable cause to believe that an infraction has been committed. The Court clerk shall cause the complaint and summons to be issued and served upon the defendant personally or at the defendant's last known address by first class mail.

(B) **Service of Other Documents.**

- (1) After the initial hearing all papers required to be served upon the defendant may be served by first class mail addressed to defendant's established address. Service is complete upon mailing. Proof of service need not be filed unless the Court so directs.
- (2) Any paper required to be served may also be served by (i) handing the paper to the defendant; (ii) leaving a copy at defendant's established address with a person of suitable age and discretion; or (iii) any other method as ordered by the Court.

[History] Ord. 353 (9/1/15).

**18-07.030 Evidence from Other Sources.**

- (A) In cases where evidence, including testimony of violations, has been provided to the Tribe's enforcement officers or the Tribal prosecutor by officers of state or federal governments or other tribal governments, such evidence may be used to initiate and prosecute any violation.

- (B) Evidence from other sources must be admissible in the Court under to Swinomish Tribal Code Section 3-02.250.

[History] Ord. 353 (9/1/15).

**18-07.040 Charging Document.**

- (A) **Contents of Notice of Violation or Complaint.** The notice of violation or complaint shall state the following:

- (1) The date and location of the alleged violation;
- (2) A brief description of the alleged violation and the provision of this Title or regulation allegedly violated;
- (3) The penalty range for the alleged violation;
- (4) The date, time and place for the initial hearing on the case, to be scheduled not less than fifteen (15) days after the charging document at a date and time established for such initial hearings by the Court on its calendar; and
- (5) The last known address of the defendant, if available.

(B) **Support for Charging Document.**

- (1) **Notice of Violation.** In all cases in which a notice of violation is issued, the information contained in the citation required by Subsection (A) shall constitute the support for the charge. The description of the violation shall be sufficient if it is limited to a phrase describing the offense, such as “crabbing out of season”.
- (2) **Complaint.** The complaint shall contain a short and plain statement of the information required for a notice of violation, along with the report or similar factual narrative of the enforcement officer with knowledge of the violation describing the support for the charge.

(C) **Additional Notifications.** Incorporated as part of the charging document, or in a separate document served upon defendant with the charging document, the defendant shall be provided with written notice of the following:

- (1) The defendant’s options for response to the charging document, as provided in Section 18-07.050, including the option to admit and pay in lieu of appearance as provided in Section 18-07.070;
- (2) that if the defendant does not admit and pay in lieu of appearance before the initial hearing, defendant must appear at the initial hearing;

- (3) The consequences for defendant if defendant fails to admit and pay or appear at the initial hearing;
- (4) that an enforcement officer will file an affidavit containing a factual narration of the charge prior to the initial hearing, and that defendant may obtain a copy upon request; and
- (5) that the defendant may be subject to separate habitual offender proceedings if the defendant has prior convictions for natural resources violations.

[History] Ord. 353 (9/1/15).

**18-07.050 Response to Charging Document.**

A defendant shall respond to a notice of violation or complaint in one of three ways:

- (A) Defendant may admit the violation and pay the fine. If the defendant admits and pays before the initial hearing as provided in Section 18-07.070, the defendant need not appear at the initial hearing. After the date for the initial hearing defendant must appear in court in order to admit the violation.
- (B) As provided by Section 18-07.100, the defendant may request a mitigation hearing to explain any mitigating circumstances without contesting that the defendant committed the violation.
- (C) As provided by Section 18-07.110, the defendant may request a hearing to contest whether the defendant committed the violation.

[History] Ord. 353 (9/1/15).

**18-07.060 Enforcement Officer Affidavit.** If a defendant has not admitted the violation and paid the fine in lieu of appearance, an enforcement officer with knowledge of the facts shall file an affidavit with the Court on or before the initial hearing date. The affidavit shall contain a brief factual narrative describing the circumstances and establishing the elements of the violation. The affidavit shall be made available to the defendant upon request.

[History] Ord. 353 (9/1/15).

**18-07.070 Admission and Payment in Lieu of Appearance.**

- (A) If a defendant does not contest the violation alleged in the charging document the defendant may, on or before the date set for the initial hearing, in lieu of appearing before the Court:

- (1) Pay one-half (1/2) the maximum fine specified for the alleged violation in the charging document; and
- (2) For Class A infractions only, agree not to contest the suspension of fishing, hunting or gathering privileges for three (3) months (the minimum period of time specified for Class A violations), and
- (3) Agree not to contest the forfeiture of any confiscated gear or catch; and
- (4) Sign a statement of defendant on the form provided to the defendant with the charging document, as follows:

*I, the defendant named below, admit that I have violated the Swinomish Tribal Code as charged in the notice of violation or complaint served on me. I have paid or now pay to the Court along with this statement, a fine of \$\_\_\_\_\_, which is 1/2 the maximum fine stated for the violation in the notice of violation or complaint. I agree to the forfeiture of all gear and catch, if any, seized by the enforcement officer. FOR CLASS A INFRACTIONS ONLY: I agree to a three (3) month suspension of my fishing, hunting, or gathering privileges.*

*I attest that the above statement is true and correct.*

*Dated:* \_\_\_\_\_  
\_\_\_\_\_  
*Signature of defendant*

*Printed name:* \_\_\_\_\_

- (B) The Clerk of the Court shall prepare for entry by the Court a judgment and order that:
  - (1) The defendant committed the violation alleged in the charging document;
  - (2) The defendant has paid in full a fine of one-half of the maximum fine for the violation;
  - (3) For Class A infractions only, the defendant's hunting, fishing or gathering privileges are suspended for three (3) months; and
  - (4) The defendant's confiscated property, if any, shall be forfeited.
- (C) The Court shall review the statement of defendant and the proposed judgment or order prepared by the clerk. If the Court finds based upon these materials that the judgment and order are sufficient, it shall enter the judgment or order and direct the clerk to accept payment.

[History] Ord. 353 (9/1/15).

**18-07.080 Initial Hearing.**

- (A) Appearance before the Court at the date and time set for the initial hearing is mandatory unless defendant has admitted and paid in lieu of appearance under Section 18-07.070 prior to the initial hearing.
- (B) At the initial hearing the Court shall:
  - (1) review the charges and read or summarize the enforcement officer's affidavit;
  - (2) review the defendant's options for responding to the charges;
  - (3) obtain the defendant's response;
  - (4) establish the defendant's mailing address; and
  - (5) take up such other matters as the Court deems appropriate.
- (C) If the defendant fails to appear, the Court may establish the defendant's address for purposes of service based upon Tribal records or other available information.
- (D) When a defendant at an initial hearing requests a mitigation hearing or a hearing to contest the charge, the Court shall set the date, time, and location for the hearing and provide the defendant with oral notice of the same. The defendant shall sign a written promise to appear on the date scheduled.
- (E) The Court shall hear all contested infractions within ninety (90) days from the date of the initial hearing, unless waived by the defendant or the Court extends the date for good cause shown.
- (F) The Court may grant the defendant discovery and require that the prosecutor provide additional documents or information to the defendant.

[History] Ord. 353 (9/1/15).

**18-07.090 Failure to Respond to a Charging Document.**

- (A) If a defendant fails to appear at the initial hearing or respond to a notice of violation or complaint as required by this Chapter, the Court shall enter a judgment and order, which shall find that the defendant committed the violation, assess the penalty as provided in Chapter 8, and enter judgment as provided in Section 18-07.110(B).

- (B) The defendant may also be prosecuted for failure to appear, or for contempt of court as provided in Swinomish Tribal Code Title 4.

[History] Ord. 353 (9/1/15).

**18-07.100 Mitigation Hearing.**

- (A) **Purpose.** The purpose of a mitigation hearing is to allow a defendant to explain any mitigating circumstances that might arguably lessen the amount of the penalty.
- (B) **Rules.** A mitigation hearing shall be an informal proceeding to which the following rules apply:
- (1) The defendant may not contest the determination that he or she committed the violation.
  - (2) The hearing shall be before the Court without a jury.
  - (3) The defendant shall have the right to be represented by an attorney or spokesperson at the defendant's own expense.
  - (4) Neither the Tribe nor the defendant may compel witnesses to attend.
  - (5) The defendant will have an opportunity to request time payments, community service hours in lieu of up to twenty-five percent (25%) of the fine, a reduced fine, a reduced suspension of fishing, hunting or gathering privileges, if applicable, or the return of any confiscated property.
  - (6) The right to appeal is limited to appealing a penalty imposed by the Court that is contrary to this Title.
- (C) **Determination.**
- (1) **Penalty.** After hearing the defendant's explanation of mitigating circumstances, the Court shall determine whether the defendant's explanation justifies a penalty in the lower end of the penalty range. The Court may not suspend a mandatory minimum fine but may grant a request for time payments or community service as provided under this Chapter. The Court may not suspend a mandatory minimum suspension of fishing, hunting, or gathering privileges, if applicable.
  - (2) **Judgment and Order.** The Court shall enter a judgment and order stating that the defendant committed the violation, assessing the appropriate penalties, and disposing of seized property, if any.

- (3) **Continuing Jurisdiction.** The Court has continuing jurisdiction and authority to supervise the judgment and order.

[History] Ord. 353 (9/1/15).

**18-07.110 Hearing to Contest a Charged Infraction.**

- (A) **Rules.** The following rules apply to hearings to contest the charge of an infraction:

- (1) The hearing shall be before the Court without a jury.
- (2) The defendant shall have the right to be represented by an attorney or a spokesperson at the defendant's own expense.
- (3) The Tribe and the defendant shall have the right to subpoena witnesses.
- (4) The defendant shall have the right to confront and cross-examine witnesses against him or her.
- (5) The defendant shall have the right to present evidence and examine witnesses.
- (6) The Tribe shall have the burden of proving the defendant committed the infraction by a preponderance of the evidence.
- (7) Any appeal shall be governed by Swinomish Tribal Code Chapter 3-04, Rules of Appellate Procedure.

- (B) **Determination and Judgment.**

- (1) After hearing the evidence and arguments, the Court shall determine whether the defendant committed the alleged violation.
- (2) Where the Tribe has not established by a preponderance of the evidence that the defendant committed the infraction, the Court shall enter a judgment and order dismissing the complaint or citation.
- (3) Where the Tribe has established that the defendant committed the infraction by a preponderance of the evidence, the Court shall enter a judgment and order accordingly. The terms of the judgment and order shall impose any penalty required by Chapter 8, and may include suspending part of the fine, ordering community service in lieu of part of the fine, ordering payments over time, or forfeiture of seized property.

- (4) The Court has continuing jurisdiction and authority to supervise the judgment and order.

[History] Ord. 353 (9/1/15).

**18-07.120 Statute of Limitations.**

No notice of violation or complaint shall be filed under this Chapter after three (3) years from the date the violation was committed or one (1) year from the date on which the violation was first discovered, whichever is earlier. The limitation period shall be tolled during any period that the defendant is not amenable to service under Swinomish Tribal Code Section 3-02.090 or is beyond the Court's jurisdiction.

[History] Ord. 353 (9/1/15).

**18-07.130 Reciprocity with Other Tribal Courts.**

In appropriate circumstances, persons committing a violation may be haled into other courts as provided for by agreement between the Swinomish Tribe and any other tribe.

[History] Ord. 353 (9/1/15).

**18-07.140 Habitual Offender Proceedings.**

- (A) When according to the record of convictions kept by the Enforcement Director it appears that a person has become a habitual offender under Section 18-08.040, the Enforcement Director shall provide written notice to the prosecutor, setting forth the date and points accumulated for each conviction.
- (B) The prosecutor shall examine the relevant records of the Court to verify the information provided by the Enforcement Director. If based upon that examination the person appears to be a habitual offender, the prosecutor shall file a complaint against the person seeking a determination that the person is a habitual offender and the imposition of penalties. The complaint shall identify each of the convictions upon which it is based, including the date the conviction was entered and the class of violation involved. The complaint shall also contain a notice of the time, date and place for the initial hearing.
- (C) If the defendant fails to appear at the initial hearing, the Court shall enter a default judgment and order as provided in sub. (G).
- (D) At the initial hearing the Court shall review the complaint with the defendant and inquire as to whether the defendant admits the facts or wishes to have a contested hearing on the complaint. If the defendant admits the facts, the Court shall enter a judgment and order as provided in sub. (G).

- (E) If the defendant requests a hearing, the Court shall hold the hearing within ninety (90) days of the initial hearing, unless the defendant waives the requirement or Court extends the date for good cause shown. The Court shall direct the prosecutor to provide the defendant with the documents establishing the convictions upon which the complaint is based.
- (F) The issues at the hearing shall be limited to the existence of the underlying convictions, whether the convictions were entered during the relevant time period, and the number of points arising from the convictions. Collateral attack upon an underlying conviction shall not be allowed. The hearing shall be conducted in accordance with the procedures in Section 18-07.110(A).
- (G) The Tribe has the burden to establish by a preponderance of the evidence that the defendant is a habitual offender. If the Tribe fails to meet this burden, the Court shall dismiss the complaint. If the Tribe meets its burden, the Court shall enter a judgment and order declaring that the defendant is a habitual offender and imposing the penalties required or allowed by Chapter 8.
- (H) If a defendant commits a violation during a period of suspension as a habitual offender, the prosecutor shall proceed by complaint under the procedures of this section, and upon conviction the Court shall impose the penalty required or allowed by Chapter 8.

[History] Ord. 353 (9/1/15).