

Title 11 – Utilities
Chapter 3 – Reservation Utility Improvement Districts

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Legislative History

Enacted:

Codifying Title 11, Ord. 195 (11/5/03), BIA (11/25/03).

Repealed or Superseded:

Amendment to Utility Ordinance, Ord. 121 (9/10/96), BIA (10/20/96) (promulgating additional enforcement measures to ensure timely payments of assessments).

Amendment to Utility Ordinance, Ord. 108 (1/10/95), BIA (2/2/95) (clarifying meaning of amendment 106).

Amending Ordinance No. 65, Utility Ordinance, Ord. 106 (7/12/94) (amending provision for collection of assessments).

Amending Ordinance No. 65, Utility Ordinance, Ord. 105 (6/22/94), BIA (6/29/94) (amending provisions regarding the final roll and the appeal of assessments).

Amendment to Ordinance 65, Ord. 67 (12/5/89), BIA (9/24/90) (amending the provision for an assessment lien).

Resolution to Adopt "Legislative Findings" as Appendix No. 1 to Utility Ordinance No. 65, Enacting Res. 89-12-97 (12/5/89).

Swinomish Indian Tribal Community Utility Ordinance, Ord. 65 (10/10/89), Enacting Res. 89-10-95, BIA (10/23/89) (repealing and superseding Ord. 51). Utility and Environmental Service Ordinance, Ord. 51, Enacting Res. 85-6-41 (06/04/85), BIA (7/10/85).

Setting New Water Rates for the Swinomish Tribal Community Water System, Res. 81-4-824 (4/14/81).

Rescinded:

Ord. 73 (7/19/90), BIA (disapproved).

[Ed. Note. Ord. 109 is signed, but not dated, by BIA Puget Sound Agency Superintendent Bill Black. The substantive provisions of Amendment to Tribal Utility Ordinance Relating to Appeals of Assessments, Res. 94-4-34 (4/26/94), are identical to the substantive provisions of Ord. 105. Tribal records do not contain an official copy of Ord. 73. Ord. 65 was originally numbered Ord. 62.]

Subchapter I -- Establishment

11-03.010 Authorization.

- (A) **Establishment.** The Senate shall have the power to establish Reservation Utility Improvement Districts ("RUIDs") within the exterior boundaries of the Reservation, and to levy special assessments under a method of regular installments extending over a period not to exceed thirty (30) years on all property specially benefited by any utility improvement on the basis of any special benefits to pay in whole or in part the costs of any improvements ordered within the jurisdiction of the Authority.
- (B) **Procedures.** The procedures for the levying, collection, and enforcement of all public assessments and the sale and issuance of bonds, warrants, notes, and other obligations to finance the Tribe's public utilities shall be in the manner now and hereafter provided by this Chapter: Provided, however, that in addition to a lien against the property benefiting from any improvement, the costs of such improvement, together with interest and penalties, shall be a joint and several personal obligation of the landowner or owners.
- (C) **Assessment.** The method of assessment shall be determined by the Senate by resolution. Assessments in any RUID may be made on the basis of special benefits up to but not in excess of the total of any comprehensive scheme or plan payable by the issuance of bonds, warrants, notes or other obligations incurred to pay the same.

- (D) **Collection.** The collection of principal and interest on all assessments in such RUID shall, when collected, be paid into one or more funds or accounts of the Authority. Money in such funds or accounts shall be used to pay the principal of, interest on, and premium, if any, and costs of issuance of the bonds, warrants, notes or other obligations of the Tribe issued to finance the Tribe's public utilities.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.020 Formation.

- (A) **Senate Resolution.** Formation of RUIDs to carry out all or any portion of the comprehensive plan, or additions and betterment thereof, shall be initiated by resolution of the Senate. Such resolution shall state the following:

- (1) The Senate's intention to order such improvements;
- (2) The nature and territorial extent of such proposed improvement;
- (3) The number of the proposed RUID;
- (4) The boundaries of the proposed RUID;
- (5) The estimated cost and expense of the improvement;
- (6) The proportionate amount thereof that will be borne by the property within the proposed district; and
- (7) The date, time and place for a public hearing on the formation of the proposed RUID, which date shall, unless there is an emergency, be no less than twenty (20) days and no more than sixty (60) days from the date the resolution of intention was adopted.

- (B) **Notice.**

- (1) **By Newspaper.** Notice of the adoption of the resolution of intention shall be published in at least two (2) consecutive issues of a local newspaper of suitable size and general circulation in the proposed RUID, the date of the first publication to be at least ten (10) days prior to the date fixed by such resolution for the public hearing.
- (2) **By Mail.** Notice of the adoption of the resolution of intention shall also be given to each owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed RUID by mailing said notice at least ten (10) days before the date fixed for the public hearing to the owner or reputed

owner of the property as shown by records of the Tribe, on the tax rolls of the Skagit County Treasurer at the address shown thereon, or by the records of the Bureau of Indian Affairs.

- (3) **Contents.** The notices shall refer to the resolution of intention and designate the proposed RUID by number. Said notice shall also state that all persons desiring to comment on the formation of the RUID may do so in writing before the time fixed for said public hearing.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.030 Hearing.

The Senate or its designee shall conduct a public hearing at the time and place designated in the notice to property owners. At this hearing comments shall be heard from any person affected by the formation of the RUID. Such hearing may be continued from time to time by the Senate or its designee. The boundaries of the RUID may not be changed to include property not previously included in it without the Senate first passing a new resolution of intention and giving a new notice to affected property owners in the manner and form and within the time herein provided for the original notice.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.040 Resolution Ordering Improvement.

- (A) **Determination.** After said hearing, the Senate shall determine, based on all information received and/or the recommendation of its designee, whether it would be in the best interests of the Tribe to proceed with any such improvement.
- (B) If the Senate finds that the RUID should be formed, it shall by resolution:
 - (1) Order the improvement;
 - (2) Direct the preparation of detailed plans for the RUID;
 - (3) Declare the estimated cost;
 - (4) Acquire all necessary land;
 - (5) Secure all necessary financing; and
 - (6) Direct the Authority to prepare the preliminary assessment roll, proceed with the work and file with the Comptroller its roll levying special assessments in the amount to be paid by special assessment against the property situated

within the RUID in proportion to the special benefits to be derived by the property therein from the improvement.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.050 Notice of Filing Roll.

Before the approval of the final assessment roll, the Authority shall cause to be published a notice once a week for two (2) consecutive weeks in a local newspaper of suitable size and general circulation, stating that the roll is on file and open to inspection in the office of the Authority, and fixing the time, not less than fifteen (15) nor more than thirty (30) days from the date of the first publication of the notice, within which protest must be filed with the Authority against any assessments shown thereon, and fixing a time when a hearing will be held by the Senate or its designee on the protests. The notice shall also be given by mailing at least fifteen (15) days before a hearing, a similar notice to the owners or reputed owners of the land in the district as they appear on the books of the Office of Planning and Community Development, the Treasurer of Skagit County or the Bureau of Indian Affairs.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.060 Hearing to Contest Assessment.

- (A) **Power to Modify Assessment.** At a hearing on a protest to an assessment, the Senate or its designee shall have power to correct, revise, raise, lower, change, or modify such roll, or any part thereof, and to set aside such roll, and order that such assessment be reassessed as to such body shall appear equitable and just. Thereafter the Senate by resolution shall approve the same.
- (B) **Assessment Raised.** If the Senate decides to raise the assessment, the Authority shall issue a new notice similar to such first one. Final approval of such roll may be made by the Senate.
- (C) **Assessment Not Raised.** Whenever any property shall have been entered originally upon such roll and the assessment upon any such property shall not be raised, no objection thereto shall be considered by the Senate, its designee, or any court on appeal unless such objection be made in writing at or prior to the date fixed for the original hearing upon such roll.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.070 Alteration of Boundary Lines.

In the event that any portion of the system after its installation in such RUID is not adequate for the purpose for which it was intended, or that for any reason changes, alterations or betterments are necessary in any portion of the system after its installation, then such district,

with boundaries that may include other service areas, may be created in the same manner as is provided herein for the creation of a Reservation Utility Improvement District.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.080 Final Roll.

- (A) **Finality of Assessment Roll.** Whenever any final assessment roll for local improvements shall have been confirmed by the Senate as herein provided, the regularity, validity and correctness of the proceedings relating to such improvement, and to the assessment thereof, including the action of the Senate upon such assessment roll and the confirmation thereof, shall be conclusive in all things upon all parties, and cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll in the manner and within the time provided in this Chapter.
- (B) **Action to Contest Assessment.** No person may bring any action to defeat or contest any such assessment, or the sale of any property to pay such assessment, or any certificate of delinquency issued therefor, or the foreclosure of any lien issued therefor, except in the manner and under the procedures set forth in this Chapter.
- (C) **Sale of Real Estate.** This Section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds:
 - (1) That the property about to be sold does not appear upon the assessment roll, or
 - (2) That said assessment has been paid.

[History] Ord. 195 (11/5/03); Ord. 105 (6/22/94); Ord. 65 (10/10/89).

11-03.090 Segregation of Special Assessment.

- (A) **Senate May Segregate.** Whenever any land against which there has been levied any special assessment under this Title shall have been sold in part or subdivided, the Senate shall have the power to order a segregation of the assessment.
- (B) **Segregation Procedure.**
 - (1) **Apply to Authority.** Any person desiring to have such special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the Authority for such segregation. If the Authority determines that such request for segregation is a reasonable and equitable one under the circumstances, it shall recommend to the Senate that such segregation be made. The segregation shall as nearly as possible be made on the same basis

as the original assessment, and the total of the segregated parts of the assessment shall equal the assessment before segregation.

- (2) **Senate Review and Resolution.** If the Senate after review concurs in the recommendation of the Authority, it shall by resolution instruct the manager to make segregation on the original assessment roll as directed in the resolution. The resolution shall describe the original tract, the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of assessment chargeable to each part. A certified copy of the resolution shall be delivered to the manager.
- (3) **Fee.** The person seeking the segregation shall pay the Authority a predetermined administrative fee for each tract of land into which the segregation is to be made. In addition to such administrative charge, the Authority may require payment of reasonable engineering, clerical, and legal costs incident to making the segregation.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.100 Assessments.

- (A) **Collection and Use.** All assessments for local improvements in RUIDs shall be collected by the Authority and deposited with the Comptroller. All assessments shall be kept in a separate fund to be known as "Reservation Utility Improvement Fund District No. ____" and shall be used for no other purpose than to redeem warrants drawn upon and bonds issued against the fund, or to pay for notes or other obligations otherwise incurred pursuant to the comprehensive scheme or plan referred to in Section 11-03.010.
- (B) **Notice (Newspaper).** As soon as the Authority delivers the approved assessment roll, it shall cause a notice to be published in a local newspaper of suitable size and general circulation once a week for two (2) consecutive weeks, stating that the roll has been received and that all or any portion of the assessment may be paid within thirty (30) days from the date of the first publication of the notice without penalty, interest or costs.
- (C) **Notice (Mail).** Within fifteen (15) days of the first newspaper publication, the Authority shall notify each owner or reputed owner whose name appears on the assessment roll, at the address shown on tribal records or the tax rolls of the county treasurer for each item of property described on the list, of the nature of the assessment, of the amount of his or her real property subject to such assessment, of the total amount of assessment due, and of the time during which such assessment may be paid without penalty, interest, or costs.

[History] Ord. 195 (11/5/03); Ord. 108 (1/10/95); Ord 106 (7/12/94); Ord. 65 (10/10/89).

11-03.110 Installment Payments.

In all cases where bonds are issued to pay the cost and expense of a RUID, the resolution levying the assessments shall provide that the sum charged against any lot, tract, and parcel of land or other property, or any portion thereof, may be paid during the thirty (30) day period allowed for the payment of assessments without penalty or interest and that thereafter the sum remaining unpaid may be paid in equal annual principal installments or in equal annual installments of principal and interest.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.120 Payment, Interest, and Penalties.

- (A) The Senate shall prescribe by resolution when assessments or installments thereof shall be paid, and shall provide for the payment and collection of interest thereon at a rate that shall be fixed by the Senate. Assessments or installments thereof, when delinquent, in addition to such interest, shall bear a penalty of not less than five percent (5%) as set by the Senate.
- (B) The manager may cease water services, as provided in Sections 11-02.490 and 11-02.500, if an owner is delinquent in payment of his or her assessment charges.

[History] Ord. 195 (11/5/03); Ord. 121 (9/10/96); Ord. 65 (10/10/89).

11-03.130 Payment Within Thirty Days.

The owner of any lot, tract, or parcel of land or other property charged with a RUID assessment may redeem it from all or any portion thereof by paying to the Authority all or any portion thereof without interest within thirty (30) days after the first publication of notice that the assessment roll has been finalized for collection.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.140 Prepayment.

The owner of any lot, tract, or parcel of land or other property charged with a local improvement assessment may redeem it from all liability for the unpaid amount of the assessment at any time after the thirty (30) day period allowed for payment of assessments without penalty or interest by paying the entire balance of the assessment to the Authority with interest thereon to the date of maturity of the installment next falling due.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.150 Assessment Lien.

The charge assessed upon the respective lots, tracts, or parcels of land and other property in the assessment roll established by resolution of the Senate for the purpose of paying the cost and expense in whole or in part of any RUID, shall be a lien, to the maximum extent allowed by law, upon the property assessed from the time the assessment roll has been finalized for collection. Interest and penalties shall be included in and shall be a part of the assessment lien. The assessment lien shall be paramount and superior to any other lien or encumbrance theretofore or thereafter created.

[History] Ord. 195 (11/5/03); Ord 67 (12/5/89); Ord. 65 (10/10/89).

Subchapter II – Foreclosure Procedure

11-03.160 Conditions Precedent to Foreclosure.

If two (2) installments of any RUID assessment are delinquent, or if the final installment thereof has been delinquent for more than one (1) year, the Tribe shall proceed with the foreclosure of the delinquent assessment or delinquent installments thereof by proceedings brought in its own name in Tribal Court.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.170 Foreclosure of Entire Assessment.

- (A) When the assessment is payable in installments, the enforcement of the lien of any installment shall not prevent the enforcement of the lien of any subsequent installment.
- (B) The failure to pay any installment due shall render the entire assessment due and payable and the collection thereof shall be enforced by foreclosure: Provided, that the payment of all delinquent installments together with interest, penalties, and costs at any time before entry of judgment in foreclosure shall extend the time of payment on the remainder of the assessments as if there had been no delinquency or foreclosure.
- (C) Where foreclosure of two (2) installments of the same assessment on any lot, tract, or parcel is sought, the Authority shall cause such lot, tract, or parcel to be dismissed from the action, if the installment first delinquent together with interest, penalties, costs, and charges is paid at any time before sale.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.180 Commencement of Action.

- (A) In foreclosing RUID assessment liens, the Tribe shall proceed by filing a complaint in Tribal Court.
- (B) It shall be sufficient to allege in the complaint:
 - (1) The passage of the ordinance authorizing the improvement;
 - (2) The making of the improvement;
 - (3) The levying of the assessment; and
 - (4) The date of delinquency of the installment or installments of the assessment for the enforcement of which the action is brought, and (5) that they have not been paid prior to delinquency or at all.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.190 Form of Summons.

In foreclosing RUID assessments, the summons shall be in substantially the following form:

IN THE SWINOMISH TRIBAL COURT

)	Cause No.
)	
Plaintiff,)	
)	
v.)	Summons For Foreclosure
)	Of Reservation Utility
)	Improvement District
)	Assessment Lien
)	
Defendant.)	
)	
)	

To the Defendant: A lawsuit has been started against you in the above entitled court by the Swinomish Indian Tribal Community, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons. The purpose of this suit is to foreclose on your interest in the following described property:

[legal description]

which is located at:

[street address]

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within twenty (20) days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

IMPORTANT NOTICE

If judgment is taken against you, either by default or after hearing by the court, your property will be sold at public auction.

You may prevent the sale by paying the amount of the judgment at any time prior to the sale.

If your property is sold, you may redeem the property at any time up to six (6) months after the date of the sale, by paying the amount for which the property was sold, plus interest and costs of the sale.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

[signed] _____

Print or Type Name

() Plaintiff

() Plaintiff's Attorney

P.O. Address _____

Telephone _____

Dated _____

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.200 Parties and Property.

In foreclosing RUID assessment liens, it is not necessary to bring a separate suit for each of the lots, tracts, or parcels of land or other property or for each separate RUID. All or any of the lots, tracts, or parcels of land or other property upon which RUID assessments are delinquent may be proceeded against in the same action. For all lots, tracts, or parcels that contain a residential structure with an assessed value of at least two thousand dollars (\$2,000), all persons owning or claiming to own the property shall be made defendants thereto. For all other lots, tracts, or parcels, the persons whose names appear on tribal records, the assessment roll, tax rolls or BIA Title Records as owners of the property charged with the assessments or taxes shall be made defendants thereto.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.210 Pleadings and Evidence.

In foreclosing RUID assessment liens, the assessment roll and resolution confirming it, or duly authenticated copies thereof, shall be prima facie evidence of the regularity and legality of the proceedings connected therewith. The burden of proof shall be on the defendants.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.220 Trial.

In foreclosing RUID assessments the action shall be tried to the court without a jury. If the parties interested in any particular lot, tract, or parcel default, the court may enter judgment of foreclosure and sale as to such parties and lots, tracts, or parcels and the action may proceed as to the remaining defendants and lots, tracts, or parcels. Judgment and order of sale may be entered as to any one or more separate lots, tracts, or parcels involved in the action and the court shall retain jurisdiction to others.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.230 Judgment.

The judgment shall specify separately the amount of the installments with interest, penalty, and all reasonable costs, including the title searches, chargeable to each lot, tract or parcel. The judgment shall have the effect of a separate judgment as to each lot, tract, or parcel described in the judgment, and any appeal shall not invalidate or delay the judgment except as to the property concerning which the appeal is taken. In the judgment, the court shall order the sale of the lots, tracts, or parcels therein described by the Authority or the Chief of Police and an order of sale shall issue pursuant thereto for the enforcement of the judgment.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-03.240 Sale.

- (A) **Title Search.** Prior to the sale of the property, if the property is shown on tribal records or the property tax rolls under unknown owner or if the property contains a residential structure having an assessed value of two thousand dollars (\$2,000) or more, the Authority shall order or conduct a title search of the property to determine the record title holders and all persons claiming a mortgage, deed of trust, or mechanic's, laborer's, materialmen's, or vendor's lien on the property.
- (B) **Notice of Sale.** At least thirty (30) days prior to the sale of the property, a copy of the notice of sale shall be mailed by certified and regular mail to all defendants in the foreclosure action as to that parcel, lot, or tract and, if the owner is unknown or the property contains a residential structure having an assessed value of two thousand dollars (\$2,000) or more, a copy of the notice of sale shall be mailed by regular and certified mail to any additional record title holders and persons claiming a mortgage, deed of trust, or mechanic's, laborer's, materialmen's, or vendor's lien on the property.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.250 Right of Redemption.

In foreclosing local improvement assessments, all sales shall be subject to the right of redemption within six (6) months from the date of sale.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).