

Title 15 – Business Regulations

Chapter 3 – Tobacco

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Legislative History

Enacted:

Ordinance 398 Amending STC Title 8, Chapter 13 Minors in Possession of Tobacco Products and STC Title 15, Chapter 3 Tobacco (2/4/20).

Ordinance 260 Amending STC Title 15, Chapter 3 Tobacco and Ordinance 258 (7/9/07), BIA (7/25/07).

Ordinance 258 Amending STC Title 15, Chapter 3 Tobacco and Ordinance 241 (6/6/07), BIA (6/7/07).

Ordinance 241 Amending STC Title 15 Business Regulations, Chapter 3 Tobacco and Ordinance 180 (9/7/05), BIA (10/7/05).

Ordinance 180 Regulating Tobacco and Taxing Tobacco and Repealing and Superseding Ordinance 140 (9/30/03), BIA (10/8/03).

Repealed or Superseded:

Tobacco Ordinance, Ord. 140 (5/5/00), BIA (6/16/00) (repealing Amended Ord. 29).

Tobacco Ordinance, Amended Ord. 29 (10/3/78), BIA (11/6/78) (superseding any previous tobacco ordinance).

Res. 78-07-525 (7/7/78) (temporarily amending Ord. 29).

Tobacco Ordinance, Ord. 29 (4/14/72), BIA (1/5/73).

15-03.010 Title.

This Chapter shall be known and referred to as the “Swinomish Tobacco Code.”

[History] Ord. 180 (9/30/03); Ord. 140 (5/5/00).

15-03.020 Purpose and Scope.

The Senate makes the following findings:

- (A) The levying of taxes, regulation of the conduct of persons within the Reservation, and regulation of the conduct of trade within the Reservation for the purpose of safeguarding and promoting the peace, safety, health, morals, and general welfare of the Tribe and its members are essential incidents of sovereignty.
- (B) The use of tobacco products within the Reservation and by minors has the potential to harm the health and welfare of the Tribe, Tribal members and minors.
- (C) Revenues from the adoption and enforcement of this Ordinance and Ordinance No. 259 are necessary for the Tribe to provide essential governmental services and to finance economic development for the benefit of the Tribe and its members, and others who live or work on, or who may visit, the Reservation.
- (D) Strict regulation of the sale of tobacco products within the Reservation as provided in this Ordinance and active enforcement of this Ordinance are necessary to reduce the risk of harm to the health and welfare of the Tribe and Tribal members associated with the use of tobacco products, particularly by minors; to ensure the proper assessment and collection of tax revenues that are necessary for essential governmental services; and thereby to safeguard and promote the health and general welfare of the Tribe and its members.
- (E) Increasing the mechanisms for ensuring compliance with this Ordinance to include criminal sanctions as well as civil remedies will facilitate active enforcement of the Ordinance.
- (F) The Tribe entered a contract with the State of Washington on October 3, 2003 regarding the sale of cigarettes within the Reservation and the levying of taxes thereupon (“Contract”), in consideration for which the Tribe agreed to certain undertakings concerning compliance with, and enforcement and administration of, the Contract.

- (G) Compliance with, and enforcement and administration of, the Contract by the Tribe are vital to the health and general welfare of the Tribe and its members.
- (H) Strict regulation of the sale of tobacco products within the Reservation as provided in this Ordinance and active enforcement of this Ordinance will continue to satisfy Tribal obligations under the Contract.
- (I) Strict regulation of the sale of tobacco products within the Reservation as provided in this Ordinance and active enforcement of this Ordinance can best be accomplished by allowing only retail establishments wholly owned and operated by the Tribe to engage in the sale of cigarettes and tobacco products.
- (J) The need for Tribal resources to enforce and assure compliance with this Ordinance and the Contract will be less, and the Tribe's ability to ensure and demonstrate compliance with this Ordinance and the Contract will be greater, if only retail establishments wholly owned and operated by the Tribe are allowed to engage in the sale of cigarettes and tobacco products.

[History] Ord. 258 (6/6/07); Ord. 241 (9/7/05); Ord. 180 (9/30/03); Ord. 140 (5/5/00).

15-03.030 Authority.

This Chapter is enacted pursuant to authority provided by the following provisions of the Swinomish Constitution and By-Laws: Article VI, Sections 1(h), 1(k), and 1(l) of the Swinomish Constitution, as most recently amended on October 22, 1985.

[History] Ord. 241 (9/7/05); Ord. 180 (9/30/03); Ord. 140 (5/5/00).

15-03.040 Jurisdiction.

- (A) **Application.** This Chapter shall apply to the full extent of the sovereign jurisdiction of the Swinomish Indian Tribal Community. Compliance with this Chapter is hereby made a condition of the use of any land, structure or other property in Swinomish Indian Country.
- (B) **Deemed to Consent.** Any person who resides, conducts business, engages in a business transaction, receives benefits from the Tribal government, including police, fire or emergency services, acts under Tribal authority, or enters the Swinomish Indian Country under the jurisdiction of the Tribe, shall be deemed thereby to have consented to the following:
 - (1) To be bound by the terms of this Chapter;
 - (2) To the exercise of jurisdiction by the Tribal Court over said person, and over cigarettes, tobacco products and other property in the possession, custody and control of said person, in legal actions arising pursuant to this Chapter; and

- (3) To detention, service of summons and process, search and seizure, and forfeiture of property in conjunction with legal actions arising pursuant to this Chapter.

[History] Ord. 241 (9/7/05); Ord. 180 (9/30/03).

15-03.050 Definitions.

For purposes of this Chapter, the following definitions shall apply:

- (A) **“Cigarette”** means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.
- (B) **“Cigarette Seller”** means a person or entity that sells cigarettes within Swinomish Indian Country.
- (C) **“Contract”** means the contract entered into by the State of Washington and the Swinomish Tribe concerning cigarette sales and taxes.
- (D) **“Department”** means the Washington State Department of Revenue.
- (E) **“Manager”** means the General Manager of the Tribe or an individual designated by the General Manager.
- (F) **“Member”** means an enrolled member of the Swinomish Indian Tribal Community.
- (G) **“Owner”** or **“Owners”** means the person or persons who owns all or part of a Tribal member business.
- (H) **“Person”** means any natural person, corporation, trust, unincorporated association, general or limited partnership, limited liability company or other legal entity.
- (I) **“Reservation”** means all lands and waters within the exterior boundaries of the Swinomish Indian Reservation, including the area recognized as the Swinomish Indian Reservation by the United States Department of the Interior.
- (J) **“Retail Cigarette Selling Price”** means the ordinary, customary, or usual price paid by the consumer for each package of cigarettes, which price includes the Tribal cigarette tax.

- (K) **“Retail Sales Tax”** means the retail sales tax or taxes enacted as a provision of Tribal law on the cigarettes and tobacco products sold and on the purchase of cigarettes and tobacco products by retail buyers.
- (L) **“Retail Tobacco Products Selling Price”** means the ordinary, customary, or usual price paid by the consumer for each package or container of tobacco products.
- (M) **“Senate”** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.
- (N) **“State”** means the State of Washington.
- (O) **“Swinomish Indian Country,”** consistent with the meaning given in 18 U.S.C. 1151 means:
- (1) All land within the limits of the Swinomish Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights of way running through the Reservation; and
 - (2) All Indian allotments or other lands held in trust for a Swinomish Tribal member or the Tribe, or otherwise subject to a restriction against alienation imposed by the United States, and the Indian titles to which have not been extinguished, including rights-of-way running through the same.
- (P) **“Tobacco Products”** means cigars, cheroots, stogies, periques, granulated, plug-cut, crim-cut, ready-rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. “Tobacco product” does not include cigarettes.
- (Q) **“Tobacco Products Seller”** shall mean a person or entity that sells tobacco products within Swinomish Indian Country.
- (R) **“Tribal Cigarette Tax”** means the tax or taxes enacted as a provision of Tribal law on the cigarettes sold and on the purchase of cigarettes by retail buyers.
- (S) **“Tribal Member Business”** means a commercial or industrial enterprise that is owned in whole or in part by a member of the Swinomish Tribe, that is not wholly owned by the Swinomish Tribe, and that is providing services or wholesale or retail goods in Swinomish Indian Country.

- (T) **“Tribal Retailer”** means a cigarette or tobacco products seller wholly owned by the Swinomish Tribe and located in Swinomish Indian Country.
- (U) **“Tribal Tax Stamp”** means the stamp or stamps that indicate the Swinomish Tribal cigarette tax imposed under Title 17, Chapter 4 of the Swinomish Tribal Code and the Contract is paid, or that identify those cigarettes with respect to which no tax is imposed.
- (V) **“Tribal Tobacco Products Tax”** means the tax or taxes enacted as a provision of Tribal law on the tobacco products sold and on the purchase of tobacco products by retail buyers.
- (W) **“Tribe”** or **“Tribal”** means or refers to the Swinomish Indian Tribal Community, a Federally recognized Indian Tribe reorganized pursuant to Section 16 of the Indian Reorganization Act of 1934, which is composed of members tracing their ancestry to the aboriginal Swinomish, Samish, Kikiallus and Lower Skagit bands of Indians.

[History] Ord. 258 (6/6/07); Ord. 241 (9/7/05); Ord. 180 (9/30/03); Ord. 140 (5/5/00).

15-03.060 Tobacco and Cigarette Sales by Tribal Retailers Authorized.

Tribal retailers are authorized to sell cigarettes or tobacco products within Swinomish Indian country.

[History] Ord. 258 (6/6/07); Ord. 241 (9/7/05); Ord. 180 (9/30/03); Ord. 140 (5/5/00).

15-03.070 Tobacco and Cigarette Sales By Persons Other Than Tribal Retailers Prohibited

- (A) No person, other than a Tribal Retailer, shall sell any cigarettes or tobacco products within Swinomish Indian Country.
- (B) No person, other than a Tribal Retailer, shall possess with intent to sell any cigarettes or tobacco products within Swinomish Indian Country.

[History] Ord. 258 (6/6/07);

15-03.080 Sales to Minors Prohibited.

No person shall sell or distribute any cigarettes, vapor products containing nicotine (“e-cigarettes”) or tobacco products to any person under the age of twenty-one (21) years, in accordance with Title 8 of the Swinomish Tribal Code.

[History] Ord. 398 (2/4/20); Ord. 258 (6/6/07); Ord. 241 (9/7/05); Ord. 180 (9/30/03); Ord. 140 (5/5/00).

15-03.090 Civil Penalties and Forfeiture.

- (A) In addition to any other civil or criminal penalty that may be provided in any other section of the Swinomish Tribal Code, any person found by the Tribal Court to have violated any provision of this Chapter shall be subject to any or all of the following civil penalties:
- (1) a fine imposed by the Tribal Court in an amount not less than fifty dollars (\$50.00) or more than five thousand dollars (\$5,000.00) per violation; provided that for the purpose of assessing a fine, each day that the person is in violation of this Chapter is a separate violation;
 - (2) forfeiture of all cigarettes or tobacco products in the person's possession, custody or control, whether or not the cigarettes bear a Tribal tax stamp; or
 - (3) forfeiture of any property as otherwise provided in the Swinomish Tribal Code.
- (B) In addition to any civil or criminal fine, forfeiture or other penalty, any person found to have violated any provision of this Chapter shall be required to pay any unpaid cigarette and tobacco products taxes and any unpaid cigarette and tobacco products retail sales taxes, plus interest from the date such tax payment was due at a rate of eighteen percent (18%) per year compounded monthly.

[History] Ord. 258 (0/6/07); Ord. 241 (9/7/05); Ord. 180 (9/30/03); Ord. 140 (5/5/00).

15-03.100 Civil Enforcement.

- (A) The provisions and remedies in this Chapter may be enforced by the Tribe through civil proceedings against:
- (1) any person who has violated or is violating any provision of this Chapter;
 - (2) any person who owns in whole or in part any Tribal member business in Swinomish Indian Country that has violated or is violating any provision of this Chapter or at which any person employed at the Tribal member business has violated or is violating any provision of this Chapter;
 - (3) the property of any person identified in Subsection (A)(1) or (2) of this Section; or
 - (4) as otherwise may be provided in the Swinomish Tribal Code.

- (B) In addition to relief provided by any other provision of this Chapter or the Swinomish Tribal Code, this Chapter may be enforced through declaratory and injunctive relief requiring:
- (1) any person to come into compliance with, or to cease non-compliance with, this Chapter; or
 - (2) any person who owns in whole or in part a Tribal member business in Swinomish Indian Country to assure that the Tribal member business and/or persons employed at the Tribal member business come into compliance with, or cease non-compliance with, this Chapter.

[History] Ord. 258 (6/6/07); Ord. 241 (9/7/05).

15-03.110 Duties and Civil Liabilities of an Owner of a Tribal Member Business.

- (A) Each owner of a Tribal member business shall comply, and shall assure that the Tribal member business and all persons employed at the Tribal member business comply, at all times with all provisions of this Chapter.
- (B) Each owner of a Tribal member business is responsible for any violation of, or non-compliance with, any provision of this Chapter by the Tribal member business or by any person employed at the Tribal business, and is jointly and severally liable for any civil fine, forfeiture or other penalty imposed as a result of any such violation or non-compliance by the Tribal member business or by any person employed at the Tribal member business.

[History] Ord. 258 (6/6/07); Ord. 241 (9/7/05).

15-03.120 Criminal Offenses

- (A) Any person who knowingly or recklessly violates STC 15-03.060, 15-03.070, or 15-03.080 is guilty of a criminal offense. The first violation is a Class B offense punishable in accordance with STC 4-12.020. A second or subsequent violation is a Class A offense punishable in accordance with STC 4-12.020.
- (B) Each owner, agent, manager, or other person charged with the responsibility of operating a Tribal member business who knowingly or recklessly operates such business in violation of STC 15-03.060, 15-03.070, or 15-03.080 is guilty of a criminal offense. The first violation is a Class B offense punishable in accordance with STC 4-12.020. A second or subsequent violation is a Class A offense punishable in accordance with STC 4-12.020.
- (C) Each individual employed by a Tribal retailer, whose duties include either management of the operations of the Tribal retailer or supervision of other individuals

employed by the Tribal retailer, and who knowingly or recklessly operates such business in violation of STC 15-03.080 is guilty of a criminal offense. The first violation is a Class B offense punishable in accordance with STC 4-12.020. A second or subsequent violation is a Class A offense punishable in accordance with STC 4-12.020.

(D) For purposes of this Section:

- (1) “Knowingly” means that the person had actual knowledge of a fact, facts, circumstances, or result which constitutes a violation of STC 15-03.060, 15-03.070, 15-03.080, or 15-03.110. Actual knowledge may be inferred from the circumstances.
- (2) “Recklessly” means being aware of a substantial risk that a violation of STC 15-03.060, 15-03.070, 15-03.080, or 15-03.110 will occur and disregarding the risk when such disregard is a gross deviation from the conduct of a reasonable person.

[History] Ord. 206 (7/9/07); Ord. 258 (6/6/07);

15-03.130 General Manager's Duties.

Unless otherwise specified, the General Manager, or an individual designated by the General Manager, shall perform all of the acts required by this Chapter to be performed by the Tribe.

[History] Ord. 258 (6/6/07); Ord. 241 (9/7/05); Ord. 180 (9/30/03); Ord. 140 (5/5/00).

15-03.140 Tribal Court and Tribal Law

All cases or controversies arising under the terms and provisions of this Chapter shall be heard only in the Swinomish Tribal Court, and only as provided in this Chapter.

[History] Ord. 258 (6/6/07); Ord. 241 (9/7/05).

15-03.150 Sovereign Immunity.

The sovereign immunity of the Tribe is not in any way waived or limited by this Chapter, and nothing in this Chapter shall constitute or be construed as a waiver of the sovereign immunity of the Tribe. Such sovereign immunity shall extend to the Tribe, the Senate, the General Manager, all Tribal officials, employees, staff, and agents, as to all actions taken pursuant to this Chapter, or taken in, pursuant to, or concerning, the administration or enforcement of this Chapter, and as to all actions taken pursuant to any authority of any action, decision or order authorized by this Chapter.

[History] Ord. 258 (6/6/07); Ord. 241 (9/7/05).

15-03.160 Effective Date.

- (A) This Chapter shall become effective immediately upon approval of the Secretary of the Interior or his or her designee; provided, however, that the amendments to Ordinance 241 adopted in Ordinance No. 258 shall not apply to any person who, on the date of passage of Ordinance No. 258 by the Swinomish Senate, possesses a current and valid license issued under STC Title 15 Chapter 3 as it existed prior to the effective date of Ordinance No. 258; provided further, however, that as to such a person the amendments to Ordinance 241 in Ordinance No. 258 shall become effective on the first day after the expiration of such person's license.
- (B) Nothing in any amendment of Ordinance 241 by Ordinance No. 258 shall terminate, diminish, or otherwise alter any duties imposed upon any person by Ordinance 241, including but not limited to a duty to maintain records, retain records, produce records, allow inspection, submit reports and collect, retain and pay applicable taxes.

[History] Ord. 258 (6/6/07); Ord. 241 (9/7/05); Ord. 180 (9/30/03).

15-03.170 Repealer.

This Chapter repeals and replaces Ordinances No. 140, 180 and 241 and any prior tobacco ordinance enacted by the Senate.

[History] Ord. 258 (6/6/07); Ord. 241 (9/7/05); Ord. 180 (9/30/03); Ord. 140 (5/5/00).

15-03.180 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 shall remain in effect.

[History] Ord. 258 (6/6/07); Ord. 241 (9/7/05); Ord. 180 (9/30/03); Ord. 140 (5/5/00).