

## Title 20 – Land Use and Zoning

### Chapter 3 – Zoning

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### **Legislative History**

Enacted:

- Ordinance 419 Amending Title 20, Chapter 3 Zoning, (5/4/21).
- Ordinance 409 Amending Title 20, Chapter 3 Zoning (9/15/20).
- Ordinance 394 Amending Title 20, Chapter 3 Zoning (9/12/19).
- Ordinance 371 Amending Title 20, Chapter 3 Zoning (9/11/17).

Ordinance 227 Amending Title 20, Chapter 3 of Ordinance 176, Zoning, By Removing Existing Moratorium on Land Divisions and Enacting Revisions to Zoning Ordinance (4/5/05), BIA (4/20/05).  
Ordinance 176 Codifying Title 20 Land Use and Zoning and Repealing and Superseding Ordinance Nos. 173, 164, 43B, 43, Ordinance Unnumbered (1/11/78), and 21 and Repealing and Superseding Resolution Nos. 2001-6-075 and 97-8-46 (9/5/03), BIA (9/12/03).  
Ordinance 173 Amending Ordinance 164 by Extending the Moratorium on Land Subdivision Applications (6/30/03).  
Ordinance 164 Amending the Zoning Ordinance by Imposing a 180-Day Moratorium on Land Subdivision Applications (1/7/03), BIA (1/15/03).  
Amending Ordinance 43, Title 17, Zoning to Add Section 17-4.090 Accessory Dwelling Units, Res. 2001-6-075 (6/5/01).  
Ordinance 127A Amendment to Ordinance 43 (9/8/98).  
Amending the Swinomish Zoning Ordinance Nos. 43A and 43B and Zoning Map Designations, Res. 97-8-46 (8/5/97).  
Amendments to Zoning Ordinance 43, Ord. unnumbered (1/11/78), BIA (2/3/78).  
Ordinance 43 Swinomish Zoning Ordinance (2/1/77), BIA (2/24/77) (further approved, authorized, and certified by Res. 77-04-433 (4/7/77).  
Interim Zoning Ordinance, unnumbered (7/2/76).

[Ed. Note. The archived copy of Ord. 43 is neither numbered nor executed. However, Office of Tribal Attorney (“OTA”) files contain a copy of the ordinance with a BIA approval date of 2/24/77. OTA files also contain an executed signature page dated 2/1/77 with an effective date of 7/2/76 and a BIA date of 3/10/77. The archived copy of Res. 77-04-433 does “further approve, authorize, and certify” Ord. 43. The first reference to the zoning ord. as number 43 is contained in a memo from the BIA Area Director to the BIA Regional Superintendent, 3/9/77. Tribal archives do not contain a copy of the Interim Zoning Ord. However, OTA and Planning Department files contain references to the Interim Zoning Ordinance.]

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### **20-03.010 Title.**

This Chapter may be referred to as the Zoning Code.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03).

### **20-03.020 Authority.**

This Chapter is adopted pursuant to the authority found in Article VI, Section 5(a) of the Constitution of the Swinomish Indian Tribal Community, as most recently amended.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03).

### **20-03.030 Purpose and Scope.**

(A) The purpose of this Chapter is to implement and enforce the Comprehensive Plan of the Swinomish Indian Tribal Community and to promote the health, safety, and general

welfare of Tribal members and others living within the exterior boundaries of the Reservation by providing consistent land use rules that will further the following objectives:

- (1) To protect and ensure a healthy and sustainable environment that is compatible with the culture and practices, past, present and future of the Swinomish Indian Tribal Community.
- (2) To establish and protect a desirable and predictable pattern of land uses that will be harmonious with surrounding uses of land.
- (3) To ensure adequate community facilities, roads and utilities to promote the present and future health, safety and welfare of Reservation residents and visitors and to establish ultimate development densities so that public facilities can be properly scaled to serve present and future development.
- (4) To provide clear development policies that promote and ensure the growth and stability of land values.
- (5) To provide development procedures that will stimulate creativity and variation but at the same time maintain sufficient control to achieve the objectives of this title.
- (6) To encourage quality development and protect the investment of those who finance quality development.
- (7) To encourage the grouping of uses that are functionally and aesthetically compatible.
- (8) To ensure adequate light, air, and open space and to prevent the spread of fire by establishing adequate building setback and building bulk regulations.
- (9) To ensure proper management of natural resources including forests and other vegetation, soils, tidelands, shorelands, water, birds, animals and marine life.
- (10) To protect areas of archeological and cultural significance.
- (11) To protect the beauty and maintain the environment of the Reservation.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

#### **20-03.040 Jurisdiction.**

The land use and zoning jurisdiction of the Tribe shall apply to the fullest extent allowed by law, including, without restriction, to all lands and waters owned by the Tribe, whether in fee or trust.

[History] Ord. 371 (9/11/17); Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.050 Definitions.**

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

- (1) **“Accessory Dwelling Unit”** means a residential structure built pursuant to the terms and conditions of 20-03.510, and any regulations promulgated thereunder.
- (2) **“Accessory Use”** means a use that services the principal use, located on the same lot or in the same building as the principal use.
- (3) **“Adjacent Property”** means those parcels of property with a boundary line nearer than three hundred (300) feet to the boundary line of the subject property.
- (4) **“Adjoining Property”** means any parcel of property having contact with the subject property.
- (5) **“Agricultural Use”** means the primary production of foodstuff or products in excess of the needs of the residents of the lot. This does not include the processing, handling, or packaging of these foodstuffs for the use of the residents of the lot.
- (6) **“Aquifers”** means areas of loose soil, gravel, or rock where water collects in large quantities underground.
- (7) **“Building Setback”** or **“Setback”** means the distance that any portion of a building must be set back from a property line pursuant to Section 20-03.240.
- (8) **“Commercial Use”** means the use of land for activities that provide goods, merchandise, or services for compensation.
- (9) **“Comprehensive Plan”** means the Comprehensive Plan of the Swinomish Indian Tribal Community.
- (10) **“Conditional Use”** means a land use permitted by the Planning Commission subject to certain restrictions and conditions.
- (11) **“Decision”** means a written determination.
- (12) **“Density”** means the ratio of residential units allowed for each acre of property; e.g., four (4) single family residences per acre.
- (13) **“Developed Land Area”** means that portion of a parcel of property that has undergone extensive improvement such as grading, landscaping, or construction of structures for residential, commercial or industrial use.

- (14) **“District Boundaries”** means boundaries determined by the adoption of the official zoning map and interpreted as directed in Section 20-03.200 of this Chapter.
- (15) **“Easement”** means an interest in land owned by another person, consisting of the right to use the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road). An easement does not give the holder the right to possess, take from, improve, or convey the land.
- (16) **“Floor Area Ratio”** means the amount of land required for each square foot of building area. For instance, 1:3 equals one (1) square foot of building allowed for each three (3) square feet of buildable lot area.
- (17) **“Greenbelt”** means a strip of land that provides a visual screen and buffer between different land uses or land use districts, or that marks the edge of an urban or developed area.
- (18) **“Industrial Use”** means the use of land for activities that create economic value by storing or processing raw or bulk materials, systematic or large-scale fabrication, construction, manufacturing, or transportation.
- (19) **“Lot”** means a site that is described by reference to a recorded plat, by metes and bounds, or by section, township, and range that has direct legal access to a street or has access to a street over an easement.
- (20) **“Lot Size”** means the total area within the boundary lines of a lot.
- (21) **“Manufactured Home”** means any dwelling unit built after June 15, 1976 that is transportable in one or more sections, which, in the traveling mode, is eight (8) feet or more in width or forty (40) feet or more in length, or, when erected on the building site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation, when connected to the required utilities.
- (22) **“Minimum Yard”** means an open space on a lot that is created by the building setbacks required by this Chapter.
- (23) **“Mobile Home”** means any dwelling unit built before June 15, 1976 that is transportable in one or more sections, built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities.
- (24) **“Motel”** means a structure or structures designed and used for the accommodation of transients, the units of which are used as individual sleeping units having their own private toilet facilities and may or may not have their own kitchen facilities.

- (25) **“Non-Conforming Use”** means the use of a building, structure, or parcel of land that does not conform to the regulations of the zone in which it is located. A non-conforming use may be allowed if it preceded the effective date of the zoning ordinance.
- (26) **“Official Zoning Map”** or **“Zoning Map”** means the Official Zoning Map of the Swinomish Indian Reservation as identified by Section 20-04.200 and approved by the Senate that sets out the boundaries of the various zones provided by this Chapter.
- (27) **“Open Space”** means a zone or area where the construction of buildings or structures is limited or prohibited.
- (28) **“Planning Commission”** or **“Commission”** means the Planning Commission of the Swinomish Indian Tribal Community.
- (29) **“Planning Department”** or **“Department”** means the Office of Planning and Community Development of the Swinomish Indian Tribal Community.
- (30) **“Planning Director”** or **“Director”** means the Director of the Swinomish Office of Planning and Community Development.
- (31) **“Planting Buffer”** means a landscaped area between different types of land uses designed to shield or buffer one land use from another and reduce incompatibilities of the different uses.
- (32) **“Public Utility Installations”** means the pipes and other infrastructure designed to carry water, sewage, or other utilities.
- (33) **“Reservation”** means all lands and waters within the Swinomish Indian Reservation.
- (34) **“Residential Use”** means a land use zone intended to provide space for the construction and maintenance of living accommodations for a person or person(s).
- (35) **“Residential Unit”** means a dwelling that is designed for habitation by one (1) family. An apartment building is made up of several residential units.
- (36) **“Review”** means request for opinions only. This does not necessarily grant authority to approve or deny action.
- (37) **“Senate”** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.
- (38) **“Sensitive Areas”** means any of the following designated areas or ecosystems: wetlands sensitive areas, fish and wildlife sensitive areas and geological hazard sensitive areas.

- (39) **“Sign”** means any object, display, structure, or part thereof used to advertise, identify or display a product, service, person, organization, or idea by any means, including but not limited to words, images, logos, and symbols.
- (40) **“Site Development Standards”** means the standards required on a proposed building site such as, but not limited to, parking, recreational facilities, landscaping buffering devices, etc. These standards may vary from site to site.
- (41) **“Subdivided Property”** means any parcel of property that has been divided by a duly registered subdivision plat, or any lot as shown on an officially recorded plat or subdivision, or a parcel of land, the deed of which is officially recorded, considered as a unit or property, and described by metes and bounds.
- (42) **“Swinomish”** means the Swinomish Indian Tribal Community.
- (43) **“Temporary Housing”** means residential accommodations that are not permanently attached to the ground, or buildings that have no required permanent attachment to the ground.
- (44) **“Tidelands”** means land surface that is exposed at extreme low tide but covered by an extreme high tide.
- (45) **“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.
- (46) **“Tribal Court”** or **“Court”** means the Swinomish Tribal Court.
- (47) **“Wetlands”** means any lands that fit the criteria established by the U.S. Army Corps of Engineers Wetlands Delineation Manual (1987). Generally, wetlands are those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation.
- (48) **“Zone”** means an area or district within the exterior boundaries of the Reservation where certain land uses are proscribed, others are required, and yet others may be either encouraged or discouraged. Each zone has its own set of rules and regulations governing the use, placement, spacing, and size of the allowable lots, buildings, signs, roadways, buffers, and other improvements.
- (49) **“Zoning Administrator”** means the Planning Director or the person he or she designates to review applications for land use permits pursuant to this Chapter.
- (50) **“Zoning Code”** means Chapter 20-03 of the Swinomish Tribal Code.

(B) Other words and phrases shall have their common and ordinary meanings.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

### *Subchapter I – Administration*

#### **20-03.060 Planning Department.**

The Planning Commission and/or Senate shall establish a Planning Department to administer and enforce this Chapter.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

#### **20-03.070 Regulations.**

The Senate shall cause official controls to be prepared that will further the objectives and goals of the Comprehensive Plan. The Senate or Planning Commission may also draft regulations, programs and legislation that, in its judgment, are required to preserve the integrity of the Comprehensive Plan and assure its systematic execution.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

#### **20-03.080 Fee Schedule.**

- (A) The Planning Department shall maintain a schedule of fees for the various permits established in this Chapter.
- (B) The purpose of the fee is to offset costs incurred in the administration of this Chapter. Because administrative costs vary with the size and complexity of the request, some fees are related to the number of added units or size of the site under consideration.
- (C) The Planning Department may propose to the Senate appropriate changes in the Uniform Fee Schedule from time to time.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

#### **20-03.090 Development Permit.**

The Planning Department shall not issue a development permit pursuant to the provisions of this Chapter unless the use or structure to be established, or structurally altered, is in conformance with this Chapter or is one for which a variance has been obtained under the provisions of this Chapter.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

### **20-03.100 Application for Development Permit.**

Applications for development permits issued in accordance with this Chapter shall include information regarding existing or proposed uses of the building and land, and such other matters as may be required by the Planning Commission to determine conformance with this Chapter, along with required application fees. The Planning Department will furnish applicant with information and application forms.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

### **20-03.110 Notice of Development Permit.**

- (A) **Public Copy.** Upon receipt of a complete application, the Planning Department will make the full application available for public review at the Planning Department.
- (B) **Public Notice.** The application and any public hearing required by this Chapter shall be advertised in a local newspaper of suitable size and general circulation or posted to the Swinomish Indian Tribal Community website and notices shall be posted on the respective properties. The notice shall provide for a hearing no earlier than ten (10) days from the date of publication of the notice.

[History] Ord. 394 (9/12/19); Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

### **20-03.120 Decision.**

After the Planning Commission holds a public hearing on the date advertised in Section 20-03.110 above, it shall then consider all evidence and opinions, and issue a written decision on the proposed action. A copy of the decision will be mailed to the applicant.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. Unnumbered (1/11/78); Ord. 43 (2/1/77).

### **20-03.130 Application for Zoning Change.**

No application for a change of zoning of any lot, parcel, or portion thereof shall be considered by the Planning Commission within one (1) year of the date of the final action upon a prior application covering any of the same described land. This provision, however, shall not restrict the Senate or Planning Commission from proposing a change in the boundaries of any of the districts in this Chapter on its own motion.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

### **20-03.140 Violations.**

- (A) No oversight or error on the part of the Senate or any person vested with the authority to issue permits or licenses shall legalize or validate the violation of any of the provisions of this Chapter, and shall not constitute a waiver of any of the provisions of this Chapter.

- (B) Any permit or license issued in conflict with the provisions of this Chapter or its parts shall be null and void.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.150 Violations Found by Planning Department.**

- (A) **In Writing.** If the Planning Department finds that any of the provisions of this Chapter are being violated, it shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it.
- (B) **Right to Hearing.** The notice shall also inform the recipient of his or her right to request a hearing before the Planning Commission.
- (C) **Corrections.** Said notice shall inform the alleged violator that he or she has an appropriate number of days to correct the alleged defect or violation. Appropriateness depends on the seriousness of the alleged offense in relation to the health, morals, and safety of the Reservation.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. Unnumbered (1/11/78); Ord. 43 (2/1/77).

**20-03.160 Violations Found by Citizens.**

- (A) **Citizen's Complaint.** Wherever a violation of this Chapter occurs, or is alleged to have occurred, any person may file a written complaint with the Planning Commission, stating fully the alleged violations and the basis for believing them to be true.
- (B) **Investigation.** The Planning Commission shall investigate the complaint.
- (C) **Notice.** Upon determining that the provisions of this Title have been violated, the Planning Department shall notify the owner of the subject property by certified mail within seven (7) days, specifying the nature of the violation and the date by which the violation shall be corrected.
- (D) **Right to Hearing.** The notice of violation shall inform the recipient of his or her right to request a hearing before the Planning Commission.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.170 Enforcement.**

- (A) **General.** The Planning Department, Planning Commission, and Senate shall take any action authorized by law to ensure compliance with or to prevent violation of this Chapter or regulations issued hereunder.
- (B) **Entry Upon Private Property.**

- (1) The Planning Department may enter any land or parcel, including fee land and trust land, within the exterior boundaries of the Reservation to inspect the property to determine whether the land is being used in conformance with the provisions of this Chapter.
  - (2) Before entering the land, the Planning Department shall make reasonable efforts to locate the owner and notify him or her of the pending inspection.
  - (3) The Planning Department shall carry out the inspections authorized by this Section at reasonable times in a reasonable manner.
- (C) **Court Action.** In the event the Planning Commission, Senate, or staff determines that a landowner is in violation of this Title, failure to correct the violation within the stated time period shall make the property and any structures thereon a public nuisance and shall subject the violator to civil remedies set forth in Section 20-03.180.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

#### **20-03.180 Civil Remedies.**

- (A) Violations of any provision of this Chapter or failure to comply with any rules or regulations promulgated hereunder may result in imposition of a civil fine not to exceed \$500, the issuance of Tribal Court ordered injunctive relief to stop any work or development not in compliance with this Chapter or amendments hereto, or the issuance of a Tribal Court order requiring payment of civil damages to any aggrieved party, or a combination of any of the above.
- (B) The owner or tenant of any building, structure, premises, or part thereof, and any architect, engineer, building contractor agent, or other person who commits, participates in, assists in, or maintains such violation may each be found to have thereby violated this Chapter and to be subjected to the remedies set forth in 20-03.180(A).
- (C) Nothing herein contained shall prevent the Tribe from taking such other lawful action as is necessary to prevent or remedy any violation.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. Unnumbered (1/11/78); Ord. 43 (2/1/77).

### ***Subchapter II – General Principles***

#### **20-03.200 Official Zoning Map.**

- (A) The Swinomish Indian Reservation is hereby divided into zones as shown on the Official Zoning Map which, together with all explanatory matter thereon, is adopted and declared to be a part of this Chapter. The Official Zoning Map shall be signed by the Senate Chair and Vice Chair and attested to by the Secretary of the Senate.

- (B) If, in accordance with the provisions of this Title, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Senate.
- (C) The Official Zoning Map, which shall be located in the Planning Department, shall be the final authority on the current zoning status of the land and water areas and the buildings and other structures on the Reservation.
- (D) Except as hereinafter provided, allowable land uses in each district shall be as specified in Subchapter III of this Chapter and as further specified in Table I of the Appendices to this Chapter.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.210 Official Development Plan.**

The Comprehensive Plan for the Reservation is herein declared the Official Development Plan for purposes of limiting the development of properties that are designated for future parks, schools, streets and other public uses.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.220 Boundary Interpretation.**

Where the boundaries shown on the Zoning Map or Comprehensive Plan are uncertain, the following rules shall apply:

- (A) Where district boundaries are indicated as approximately following street centerlines, alley centerlines, maintained channels or lot lines, such lines shall be the boundaries.
- (B) The location of a boundary shall be determined by use of the scale appearing on the Zoning Map. Where the district line is a topographic variation, the toe of the slope as identified on the Zoning Map will be the division line.
- (C) Where any street, road or alley is officially vacated or abandoned, the regulations applicable to abutting property shall apply to that portion of such street, road, or alley officially vacated or abandoned.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.230 Regulations and Standards.**

- (A) Except as hereinafter provided, no building shall be erected, reconstructed, or structurally altered except in compliance with the regulations established by this Chapter and for the district in which the building or land is located.

- (B) Where site development standards are established by this Chapter no building permit shall be issued for new construction or reconstruction until a site development plan has been approved by the designated person or body. Site development plans shall conform to standards as contained in Subchapter V of this Chapter and as contained in Tables II and III in the Appendices to this Chapter.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.240 Setback and Building Placement Requirements.**

- (A) Except as specified otherwise in this Chapter, setback and building placement requirements shall be as specified for each zoning district in Subchapter III of this Chapter and as specified in Table II of the Appendices to this Chapter.
- (B) In the case of a conflict between setback requirements specified in this Chapter and setback requirements specified under any other provision or chapter of the Swinomish Tribal Code, the greater of the applicable setback requirements shall apply.
- (C) **Architectural Features.**
  - (1) Cornices, canopies, eaves, sills, fireplaces, flues, ornamental features and other similar architectural features may extend or project into a required setback not more than 30% of the required distance, and in no case shall they be closer than 2 feet to any lot line.
  - (2) Uncovered and unenclosed ground story porches and decks less than 30 inches above grade may project into a required setback up to 1 foot from the property line.
- (D) **Administrative Reduction of Setbacks.** The Zoning Administrator may reduce the required front, side or rear setbacks where topography, sensitive areas, or the lot's size and configuration impact the reasonable development of the property. To reduce the front or rear setback, the Director or designated official must determine that the public health, safety, and welfare will be maintained.

[History] Ord. 227 (4/5/05).

**20-03.250 Yard or Open Space Requirements.**

The minimum yards or other open spaces required by this Chapter shall not be encroached upon or considered as meeting the yard or open space requirements of the density provisions for any other building. In the event of any such unlawful encroachment or reduction, such building shall be deemed to be in violation of the provisions of this Chapter and the occupancy of such building shall be illegal.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.260 Grandfathered Lots.**

Any lot of any size may be used for a building site, subject to the regulations governing the use district in which it is located, if it was officially recorded with the Bureau of Indian Affairs or Skagit County as a separately owned single lot prior to February 1, 1977, the date of initial adoption of this Chapter, provided it has a minimum thirty (30) foot frontage on a public street or access to a public street by a minimum twenty (20) foot wide private lane.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.270 Non-Conforming Uses.**

- (A) Where a structure or land use existed as of February 1, 1977, the effective date of initial adoption of this Chapter, that could not be built under the terms of this Chapter, such structure or land use shall be non-conforming and may be continued, so long as it remains lawful in other ways. The non-conforming use of a structure and/or land shall not be enlarged after passage of this Chapter except when permitted under the variance procedures contained in Sections 20-03.530 and any rules or regulations promulgated thereunder, nor shall additional signs be permitted. All changes in non-conforming uses shall conform with the provisions of this Chapter.
- (B) A non-conforming use shall be considered abandoned if discontinued for a period of six (6) months and any future use of such land or buildings shall conform to the provisions of this Chapter.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

***Subchapter III – Description of Districts***

**20-03.280 Agricultural (A).**

- (A) The purpose of the Agricultural District is to protect the agricultural activities of the Reservation from the encroachment of residential and commercial land uses and to encourage agricultural landowners to maintain their properties in parcels of sufficient size so that it is economically feasible to farm the land.
- (B) To accomplish these objectives this Section requires a minimum lot size of thirty (30) acres but allows two (2) houses on the lot, which provides a second residence for family or employees. Temporary housing for seasonal workers is also permitted. Barns and outbuildings are permitted as accessory uses.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.290 Forest (F).**

The purpose of the Forest District is to allow low density residential development in areas not adequate for agricultural activity but where natural forest growth and harvest are to be preserved. The minimum lot size of twenty (20) acres may allow continued use of septic systems and minimal public services. A one hundred twenty-five (125) foot setback is required adjacent to all arterials to provide a one hundred (100) foot greenbelt on each side of the road.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Res. 97-8-46 (8/5/97), Ord. 43 (2/1/77).

**20-03.300 Rural Residential (RR).**

- (A) The purpose of the Rural Residential district is to retain a rural character that does not require public sewers or fully developed roads. A minimum lot size of five (5) acres is required.
- (B) A one hundred twenty-five (125) foot setback of buildings is required adjacent to all arterials to provide a one hundred (100) foot greenbelt along each side of the road.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.310 Suburban Residential (SR).**

- (A) The purpose of the Suburban Residential district is twofold: first, to provide a suburban atmosphere in areas that have good soil for septic tanks, second, as a transitional zone for areas that are scheduled for higher density single-family residence at a later time if urban services are provided.
- (B) Minimum lot size is two (2) acres.
- (C) A seventy-five (75) foot setback is required along all arterials to provide a fifty (50) foot wide greenbelt along each side of the road.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.320 Urban Residential (UR).**

- (A) The purpose of the Urban Residential district is to provide urban single-family tracts of nine thousand (9,000) square feet minimum lot size when lots are served by community sewerage systems. A rural type development with a minimum lot size of one (1) acre is required when lots are served by an approved septic tank or other individual system.
- (B) It is also the intent of this Chapter to relate non-residential uses in this district to the pattern of land uses recommended by the Comprehensive Plan so that well-balanced,

well-organized residential communities will develop and all future urban services may be efficiently provided.

- (C) A seventy-five (75) foot building setback is required along all arterials to provide for a fifty (50) foot greenbelt along each side of the road.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

#### **20-03.330 Limited Commercial (LC).**

The purpose of the Limited Commercial District is to provide a location for businesses that provide household amenities and local services together with some tourist facilities in an area that is well-landscaped and complimentary to adjacent districts. Uses encouraged to cluster in these areas include grocery stores, drug stores, barber and beauty shops, medical clinics, small clothes shop, restaurants, service stations, laundrettes and motels.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

#### **20-03.340 General Commercial (GC).**

- (A) The purpose of the General Commercial District is to provide an open commercial district for commercial and light industrial activities, from gas stations and supermarkets to warehousing and light manufacturing. This district should be separated from residential districts or uses.
- (B) Permitted uses include grocery stores, drug stores, self-service laundries, general retail and specialty shops, banks, offices, cafes, restaurants, motels, boat moorage, appropriate entertainment and recreations facilities, parks and boat launches, government buildings, museums, post offices, police and fire stations. Auto repair, boat repair and construction, seafood processing and merchandising, and marinas are also classified as commercial activities. Medical clinics and daycare centers are permitted.
- (C) Shopping centers may be formed using the General Commercial District under the provisions of this Chapter and under policies applying specific land uses and special performance or site development standards.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

#### **20-03.350 Swinomish Village (SV).**

The purpose of the Swinomish Village District is to establish a zone for those lands comprising the Swinomish Village. Residential, governmental, recreational, community service, light industrial, and commercial activities are encouraged in this district.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.360 Tribal Economic District.**

The purpose of the Tribal Economic District is to provide an economic development district for residential, commercial and industrial activities that support the tribal and federal self-determination policy and economic self-sufficiency policy. Development within these areas must be consistent with the tribal economic development plan and strategic economic policy.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03).

**20-03.370 Open Space (OS).**

The purpose of the Open Space District is to establish uses for land that is regarded as unbuildable, tidelands, and land that is being held or used for recreation, conservation, or open space purposes. Land uses recommended for this zone include agriculture, timber, aquaculture, horse riding stables, hunting areas, camping and picnic areas, various recreational trail systems, wildlife sanctuaries, and forest preserves. All tribal tidelands will be held in this open space zone.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

*Subchapter IV – Overlay Districts*

**20-03.380 Purpose.**

The provisions of this Section relate to natural or special features that may occur in any land use district. The customary uses of the land use district will be permitted within an overlay district pursuant to the procedures established under this Chapter and any rules or regulations promulgated thereunder. Development will only be approved when the preservation of desirable social, cultural, historical and environmental characteristics of the land are assured.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.390 Cultural and Historical.**

A cultural and historical overlay district shall be established at all sites that have historical significance to the Tribe or are used in religious or cultural activities. No development shall occur in these districts until the Tribe is assured that the proposed project will not affect the historic, religious or cultural use of the site or area.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.400 Water Preservation.**

A water preservation overlay district shall be established at all sites exhibiting potable high water tables, places of known aquifers or ponding of fresh water. Such districts shall extend two hundred (200) feet beyond the area exhibiting these characteristics. No development shall be

permitted in a water preservation overlay district unless the Planning Department approves appropriate requirements for such development to ensure that the purity and availability of the water will be preserved.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

#### **20-03.410 Scenic Highways.**

A scenic highway overlay district shall be established adjacent to all arterials passing through all districts except commercial and industrial land use districts. The scenic district extends one hundred twenty-five (125) feet from all arterial rights-of-way except in urban residential districts where it shall be fifty (50) feet. These districts shall be planted in native trees and foliage and preserved as natural forest areas. Tree cutting, installation of access roads, utilities and other development shall be in conformance with the provisions of this Chapter and any and all other applicable provisions of the Swinomish Tribal Code.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

### ***Subchapter V – Site Development Standards***

#### **20-03.420 Off-Street Parking.**

- (A) **Surfacing.** All parking areas, except single-family residential, shall be surfaced with a minimum of two (2) inches of asphalt or four (4) inches of concrete with parking stalls clearly marked. Crushed rock surfacing may be used on a temporary basis upon approval of the Planning Commission. No part of any street, alley, public right-of-way or property with a different zone than the primary use shall be considered a part of any required off-street parking space.
- (B) **Display and Storage.** No required parking space shall be used for displaying autos or merchandise for sale, or for the storage of boats, trailers, or other similar devices.
- (C) **Parking Plan Required.** No building permits for new construction or remodeling shall be issued for building except for single-family residences until the Planning Commission has approved a parking plan.
- (D) **Design Criteria.** All parking spaces shall be so designed that autos do not back into a public right-of-way or sidewalk when parking or exiting. Parking lot design criteria and parking stall requirements may be obtained from the Planning Department.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

#### **20-03.430 Public Right-of-Way.**

- (A) **Minimum Standards.** This Chapter hereby establishes the circulation element of the Tribe's comprehensive plan as the Official Arterial Map. Minimum standards for street right-of-way shall be sixty (60) feet for collector streets, seventy (70) feet for secondary

arterials and eighty (80) feet for primary arterials. Said standards shall be decreased only upon approval of the Planning Commission.

- (B) **Setbacks.** Building setbacks shall be measured from the edge of the right-of-way. No building permit shall be issued for construction upon any property where the required right-of-way has not been deeded for public use. Buildings that exist at the time this Chapter is approved shall be unaffected by this Section.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

#### **20-03.440 Driveways.**

- (A) Driveway design standards shall conform to the provisions of the Uniform Fire Code as amended and codified at Subsection 12-04.080(E) of the Swinomish Tribal Code.
- (B) Driveway construction standards shall conform to the Tribal road standards manual on file and designated as such in the Planning Department.
- (C) In the event of a conflict between a provision in the Uniform Fire Code and the Tribal road standards manual, the more restrictive provision shall control.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

#### **20-03.450 Gas Stations.**

- (A) The edge of the pump island shall be thirty (30) feet or more from any property line.
- (B) Permitted building area or floor area ratio (F.A.R.) shall be one-half the area allowed for other uses in the respective district.
- (C) Heavy auto repair and major bodywork are not permitted in auto service stations unless the station is located in a general commercial or light industrial zone.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

#### **20-03.460 Air, Light and Odor for Non-Agricultural Land Uses.**

- (A) All air emissions shall conform to Chapter 19-02, the Clean Air Act, other Tribal law, and federal regulations.
- (B) Any odor or glaring light from normal operations detectable beyond the property boundary is prohibited, and ground vibration shall be imperceptible without instruments at any point on the property line except in industrial districts. These odor, light and ground vibration standards shall apply to the industrial district boundary instead of individual property lines within the district.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.470 Signs.**

- (A) The combined square footage of all permanent signs on any land parcel in a commercial or business district shall not exceed one hundredth (1%) times the combined square footage of all developed land in the parcel.
- (B) Permanent signs in a residential area shall not exceed two (2) square feet per land parcel or twenty-five (25) square feet in multiple family residential districts. Surface area of a sign shall include spaces and voids within a perimeter that connects the outermost points of the advertising sign's lettering or device. When frames or supports are used as design elements, the area of such frame or support shall be included in the calculated area.
- (C) All lighting apparatus shall be enclosed within the sign structure, with the exception of bent neon tubing, except where special permission is granted by the Planning Commission.
- (D) All signs shall conform to the building height standards of the districts in which they are located and shall not exceed the height specified in Appendix II.
- (E) Dimensional plans and elevations of proposed permanent signs shall be submitted to the Planning Commission with a scale of one-half inch (1/2'') equals one foot (1') or larger.
- (F) The above restrictions do not apply to the temporary signs advertising the sale of real property, fruit and produce, or other similar activities on the conditions that such signs do not exceed a total of twenty-five (25) square feet and are located on the property: (1) that is for sale; or (2) from which the temporary sales are being made.
- (G) Temporary signs for political candidates or special civic issues or events may be posted on private property by or with the consent of the property owner. Temporary signs for political candidates, propositions or questions in elections other than those for Swinomish Senate, and temporary signs for special civic issues or events, may be posted on trust or fee simple property owned by the Tribe with the prior authorization of the Senate. Each political candidate or agency sponsoring the special events or issues shall post with the Planning Commission a bond or \$200 to ensure the removal of the temporary signs following the respective election or event.
- (H) No signs shall be placed, posted, or located except as permitted in this Section. Flags, symbols or insignias of national, state or other districts, tribal organizations, or fraternal organizations legally recognized by the Swinomish Planning Commission shall not be considered signs for the purposes of this Chapter. Private traffic or directional signs shall not be included when less than two (2) feet in area and located and designed so they cannot be construed as advertising. All public signs shall be exempt from the conditions of this Chapter.

[History] Ord. 409 (9/15/20); Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.480 Landscape Buffers.**

- (A) Inconsistent adjacent land uses shall be mitigated through the use of landscaping.
- (B) Planting areas of evergreen shrubs, plants and trees shall be installed (or preserved) along property lines that delineate zoning districts as deemed necessary by the Planning Commission. Such planting areas shall be designated to provide an effective sight barrier at least six (6) feet high within four (4) years.
- (C) The width of the planting area shall vary with the degree of inconsistency in the adjacent uses. Required widths may be obtained by locating the two adjacent zoning districts on the following list, counting the number of districts between the two districts, and multiplying the number by ten (10) feet:
  - (1) Single-Family Residential, Agricultural, Forestry, and Open Space.
  - (2) Limited Commercial District.
  - (3) Commercial General District.
  - (4) Industrial District.
- (D) The above planting buffers are not required in front yards within twenty (20) feet of a developed road right-of-way.
- (E) Landscaping shall be installed on the property that is located in the higher or more permissive district (higher number on the list).
- (F) No building permit shall be issued where landscaping is required until the landscaping plan has been submitted to and approved by the Planning Commission and a bond of a sum equal to fifty (50) cents per square foot of required landscaping has been filed with the Planning Department.
  - (1) Said plan shall show plant location and species, be drawn to scale no smaller than one inch equals thirty feet (1' = 30") and be signed by a landscape architect or practicing nurseryman.
  - (2) Said bond shall be released one (1) year after plant installation on the condition that plants are in a healthy, growing condition.
- (G) Plants shall be installed within one (1) year of building occupancy unless the Planning Commission approves a time extension. Undeveloped adjacent properties may be grounds for a time extension.
- (H) No required landscaping area shall be used to store materials or for other uses that may harm the plants.

- (I) These standards shall not apply to properties that are substantially developed prior to the enactment of this Chapter.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.490 Fences.**

- (A) No fence shall exceed six (6) feet in height measured from the adjoining property in residential zones.
- (B) Fences should not be constructed in a manner that creates a safety hazard or devalues adjacent property.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.500 Greenbelts.**

- (A) The Planning Department may require a property owner to plant or maintain a greenbelt as a condition of issuing a building permit, provided that the greenbelt bears a reasonable relationship to the anticipated impacts of the proposed construction.
- (B) A greenbelt may consist of existing natural vegetation, such as woodlands, new plantings of native plants, or non-native plants, as approved by the Planning Department after consideration of the existing vegetation, adjacent native plant communities, topography, available water and soils.
- (C) If the property owner fails to maintain the greenbelt, the Tribe may maintain the greenbelt itself and recover the reasonable costs of doing so from the landowner in Tribal Court.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03).

**20-03.510 Accessory Dwelling Units.**

- (A) The Planning Commission may approve one (1) accessory dwelling unit as an accessory to an existing single-family dwelling.
- (B) All accessory dwellings shall comply with the following requirements:
  - (1) **Owner Occupancy.** Either the principal unit of the single-family dwelling or the accessory dwelling unit must be occupied by an owner of the property or an immediate family member of the property owner.
  - (2) **Family Defined.** No more than one (1) family as defined in the Uniform Building Code shall be allowed to occupy an accessory dwelling unit.

- (3) **Subdivision.** Accessory dwelling units shall not be subdivided or otherwise segregated in ownership from the principal unit of the single-family dwelling, unless allowed by the zoning code.
- (4) **Size and scale.** The square footage of the accessory dwelling unit shall be the minimum allowed by the building code, excluding any garage area; provided, however, the square footage of the accessory dwelling unit shall not exceed fifty percent (50%) of the total square footage of the principal unit of the single family dwelling, excluding the garage area as it exists or as it may be modified.
- (5) **Location.** The accessory dwelling unit may be attached to, included within the principal unit of the single-family dwelling, or located in a detached structure. All requirements of the Uniform Building Code regarding fire separation shall be met.
- (6) **Entrances.** The principal unit of the single family dwelling containing the accessory dwelling unit shall have only one (1) obvious entrance visible to the street except where more than one (1) entrance existed on or before adoption of this Section.
- (7) **Design.** Additions to an existing structure or newly constructed detached structures created for developing an accessory dwelling unit shall be designed consistent with the existing roof pitch, siding and windows of the principal dwelling unit.
- (8) **Parking.** The owner shall provide three (3) off-street parking spaces for the combination of the main and accessory dwelling units.
- (9) **Application.** The property owner shall apply for an accessory dwelling permit with the Swinomish Office of Planning and Community Development. The application shall include an affidavit signed by the property owner affirming that the owner or an immediate family member will occupy the principal dwelling unit or accessory dwelling unit for more than seven (7) months per year.
- (10) **Recording.**
  - (a) The Planning Department shall not issue an accessory dwelling permit until the applicant has recorded a Document of Accessory Dwelling Unit with either the Skagit County Auditor or the Bureau of Indian Affairs, as appropriate
  - (b) The Document of Accessory Dwelling Unit shall contain the following:
    - (i) The address of the property;

- (ii) A statement that the owner(s) resides in either the principal dwelling unit or the accessory dwelling unit;
  - (iii) A statement that the owner(s) will notify any prospective purchasers of the limitations of this Section,
  - (iv) A statement that the Tribe may require the owner to remove the accessory dwelling unit if of the owner violates the requirements of this Chapter.
- (c) The encumbrances memorialized in the Document of Accessory Dwelling Unit shall run with the land.
- (11) **Removal.** A landowner may clear the Document of Accessory Dwelling Unit from the title to his or her property according to the following procedure:
- (a) The owner shall obtain either a demolition permit or a change of use permit from the Planning Department;
  - (b) The owner shall demolish the accessory dwelling unit;
  - (c) The owner shall cause the Planning Department to inspect the property and confirm that the accessory dwelling unit has been demolished;
  - (d) The owner shall record a certificate with the Skagit County Auditor or the Bureau of Indian Affairs stating that the accessory dwelling unit no longer exists on the property, with written confirmation by the Planning Department of a final inspection by the Planning Department.

[History] Ord. 419 (5/4/21); Ord. 227 (4/5/05); Ord. 176 (9/5/03); Res. 2001-6-075 (6/5/01).

***Subchapter VI – Rezones, Variances, Mobile Homes, and Home Businesses***

**20-03.520 Rezones.**

- (A) The purpose of this Section is to define the process by which zoning of one (1) or more parcels of property may be changed.
- (B) Rezoning may be initiated by:
  - (1) A proper petition filed by the landowner(s); or

- (2) A motion of the Planning Commission or Senate requesting that the Planning Commission initiate rezone procedures.
- (C) Full applications for rezones shall be advertised, reviewed and subjected to public hearing pursuant to the terms of Sections 20-03.100 through 20-03.120 and any rules or regulations promulgated thereunder.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.530 Variances.**

- (A) The purpose of this Section is to provide a procedure for varying the requirements of this Chapter when they create unreasonable hardship for a particular landowner.
- (B) Variances may be initiated by a proper petition by the landowner(s).
- (C) The granting of a variance is a matter of discretion, and no landowner is entitled to a variance as a matter of right.
- (D) The Planning Commission shall review a request for a variance and may grant a variance only upon a determination that:
  - (1) The variance is not a grant of special privilege that is inconsistent with the limitations upon other properties in the vicinity and in the zone where the property is located;
  - (2) The strict application of Chapter 20-03, the Zoning Code deprives the subject property of rights and privileges enjoyed by other properties in the vicinity under the same zone classification, because of special circumstances related to property size, shape, topography, surroundings or non-conventional ownership status; and
  - (3) The granting of the variance will not hinder community goals or injure property or improvements in the neighborhood and zone in which the property is located.
- (E) **Indian Heirship.** This Subsection acknowledges the unique problems posed by fractionated Indian ownership of allotments. In cases where multiple ownership of a parcel makes agreement on a single land use impossible, the owners of the parcel may apply to the Planning Commission for a variance. In cases where a variance would increase residential density in a zone, the Planning Commission shall require the development of a residential plan that minimizes the impact of this increased density on the surrounding properties in the zone.
- (F) The Planning Commission shall hold a public hearing on the request for a variance within sixty (60) days after proper advertisement and review pursuant to the terms of Sections 20-03.100 through 20-03.120 and any rules or regulations promulgated thereunder.

- (G) The Planning Commission may, in the exercise of its discretion, approve or deny a request for variance, or may refer a request for variance to the Senate for consideration.. The Senate shall make a final decision upon the request for variance when such request is referred from the Planning Commission. The Senate shall approve the request for variance only if the variance meets the criteria set forth in subsection (D) of this Section and the Senate finds that the variance is in the best interests of the Tribe. An aggrieved party may appeal the decision of the Planning Commission or Senate regarding a request for variance in accordance with Section 20-03.560 or 20-03.570, as applicable.

[History] Ord. 394 (9/12/19); Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.540 Manufactured Structures and Mobile Homes.**

- (A) All manufactured homes and structures shall meet or exceed the design and construction standards established by the Manufactured Home Construction and Safety Standards Act, as most recently amended, at 42 USC §§ 5401 – 5426, and any rules or regulations promulgated thereunder.
- (B) No mobile homes as defined in Section 20-03.050 of this chapter shall be installed on the Reservation.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.550 Home Businesses.**

- (A) Small businesses are permitted in single-family residences under the following conditions:
- (1) There is no external evidence of the activity other than a small unlit sign;
  - (2) The activity takes no more than one-fourth (1/4) of the floor area of the residential structure; and
- (B) If the business becomes a nuisance and affects the neighbors right to quiet enjoyment of their property, the neighbors have a right to seek redress from to the Planning Commission, in addition to any other rights or remedies that the neighbors may possess.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

***Subchapter VII – Appeals, Computation of Time and Law Applicable***

**20-03.560 Appeals of Planning Commission Decisions.**

- (A) Any party aggrieved by a decision of the Planning Commission pursuant to this Chapter may appeal that decision to the Senate within thirty calendar days from the date of notice of the decision.

- (B) The Senate shall make a decision on appeal based on the administrative record of the proceedings before the Planning Commission. The Senate shall not receive or consider any additional evidence not contained in the administrative record of the proceedings before the Planning Commission, and shall not consider any issue that was not raised by the appealing party in the administrative proceedings before the Planning Commission.
- (C) The Senate shall affirm the decision of the Planning Commission unless the appealing party demonstrates to the Senate both (1) and (2) below:
  - (1) The decision of the Planning Commission is either:
    - (a) Contrary to Swinomish or Federal law; or
    - (b) Arbitrary or capricious; or
    - (c) Not supported by substantial evidence in the record of proceedings held before the Planning Commission; or
    - (d) Not in the best interests of the Tribe; and
  - (2) The appealing party has been or will be substantially prejudiced by the challenged action.
- (D) If the Senate determines that the aggrieved party has met the burden set forth in Subsection (C)(1) and (2), then the Senate, in its discretion, may issue a decision on the merits or may send the matter back to the Planning Commission for further proceedings in accordance with the Senate's ruling.

[History] Ord. 227 (4/5/05).

**20-03.570 Appeals of Senate Decisions.**

- (A) Any party aggrieved by a decision of the Senate pursuant to this Chapter may appeal such decision to Tribal Court within thirty (30) calendar days from the date of notice of the decision. Any appeal to the Tribal Court shall identify the name of the party petitioning for review, the interest of the petitioning party in the decision appealed from, and shall name as respondent only the Planning Director, in his or her official capacity.
- (B) The review by the Tribal Court shall be limited to the evidentiary record made in the administrative proceedings held before the Senate. The Department may charge an appealing party the reasonable costs of preparing copies of the administrative record or of transcribing a recording of a hearing for the Tribal Court and for the appealing party.
- (C) The Tribal Court shall not receive or consider any additional evidence not contained in the administrative record of the proceedings before the Senate. The Tribal Court shall not consider any issue that was not raised by the appealing party in the administrative proceedings before the Senate.

- (D) The Tribal Court review shall be conducted by the Court, without a jury. The review shall be in accordance with those provisions of the Swinomish Rules of Civil Procedure that are determined to be applicable by the Tribal Court.
- (E) Any appeal from a decision of the Tribal Court shall be filed and adjudicated in accordance with the Swinomish Rules of Appellate Procedure.
- (F) The review by the Swinomish Tribal Court of Appeals shall be limited to the evidentiary record made in the administrative proceedings held before the Senate. The Court of Appeals shall not consider any issue that was not raised by the appealing party in both the administrative proceedings before the Senate and in the record of proceedings before the Tribal Court.
- (G) The Tribal Court and the Court of Appeals shall affirm the decision of the Senate upon review unless the appealing party demonstrates to the Court both (1) and (2):
  - (1) The decision of the Senate either:
    - (a) Is contrary to Swinomish or Federal law;
    - (b) Is arbitrary or capricious; or
    - (c) Is not supported by substantial evidence in the record of proceedings held before the Senate; and
  - (2) The appealing party has been or will be substantially prejudiced by the challenged action.
- (H) If the Court determines that the aggrieved party has met the burden set forth in Subsection (G)(1) and (2), then the Court shall reverse the decision appealed from and shall remand the matter to the Senate for further proceedings in accordance with the Court's ruling. The Senate, in its discretion, may send the matter to the Planning Commission for further proceedings in accordance with the Court's ruling. The Tribal Court and the Court of Appeals shall not have authority to issue a permit or to grant an exemption, exception or a variance under this Chapter, and shall not have authority to grant any relief other than an order reversing the decision appealed from and remanding the matter to the Senate for further proceedings.
- (I) The decision of the Court of Appeals shall be final, and is not subject to further review.

[History] Ord. 227 (4/5/05).

**20-03.580 Time and Finality.**

- (A) The date of notice of any decision shall be the date on which the decision is mailed by the body making the decision to the last known address of the applicant. The date of notice shall be stated in the decision.
- (B) All time periods set forth in Sections 20-03.560 to 20-03.570 shall be calculated in accordance with Rule 3-02.080(A), “Computation and Extension of Time”, of the Swinomish Rules of Civil Procedure.
- (C) If a decision of the Department, Planning Commission, Senate, or Tribal Court is not appealed within the time period set forth in this Subchapter, then that decision is final and conclusive, and is not subject to further review.

[History] Ord. 227 (4/5/05).

**20-03.590 Tribal Administrative Remedies and Tribal Court.**

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 Subchapter. An applicant or other aggrieved party must exhaust any and all administrative remedies provided in this Chapter before seeking review in Tribal Court.

[History] Ord. 227 (4/5/05).

**20-03.600 Sovereign Immunity.**

The sovereign immunity of the Tribe is not in any way waived or limited by this Chapter, or by any appeal commenced pursuant to 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 Planning Commission, the Department, the Director, all tribal officials, employees, staff, and agents, as to all actions taken in, 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. 227 (4/5/05).

***Subchapter VIII – Repealer and Severability***

**20-03.610 Repealer.**

This Chapter repeals and supersedes Ord. 43, Ord. 173, Ord. 164, and Ord. unnumbered (1/11/78), and Res. 2001-6-075 and 97-8-46.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03); Ord. 43 (2/1/77).

**20-03.620 Severability.**

- (A) If any court of competent jurisdiction finds the application of any provision of this Chapter to be invalid, such judgment shall not affect the application of said provision to any property or structure not specifically included in said finding.
- (B) If any court of competent jurisdiction finds any Section or Subsection of this Chapter invalid, such finding shall not affect the validity of other Sections or Subsections of this Chapter.

[History] Ord. 227 (4/5/05); Ord. 176 (9/5/03).

## Appendices

### Table I – Land Use Permitted in Each District

LAND USE	ZONING DISTRICT								
	Agricultural	Forest	Rural Residential	Suburban Residential	Urban Residential	Limited Commercial	General Commercial	Industrial	Open Space
X = permitted outright upon issuance of a building permit. P = Permitted by Planning Commission only. A = Permitted as accessory use only.									
<b>RESIDENTIAL ACTIVITIES</b>									
Single Family, 30-acre minimum lot	X								
Single Family, 20-acre minimum lot	P	X							
Single Family, 5-acre minimum lot		P	X						
Single Family, 2-acre minimum lot			P	X					
Single Family, A./9000				P	X	X	X		
Home Businesses	X	X	X	X	X	X	X	X	P
Housing for Seasonal Employees	X								
Nursing/Retirement Homes					P	X			
<b>COMMERCIAL ACTIVITIES</b>									
Auto Parts Sales						X	X	P	
Auto Repair Garage						P	X	X	
Auto Service/Laundry Station						X	X	P	
Auto Trailer/Truck Rentals			P	P	P	P	X	X	
Banks & Lending Institutions						X	X		
Barber & Beauty Shops						X	X		
Boat or Auto Sales						P	X		
Cocktail Lounges						A	X		
Day Nurseries					P	X	X		
Drive-In Businesses						X	X		
Drive-In Theaters							X		
Drug Stores						X	X		
Florist						X	X		
Grocery Stores						X	X		
Hardware Stores						X	X	P	
Hotels						X	X		
Kennels, Commercial	X	P					X	X	
Liquor Stores						A	X		
Machinery Rental, Heavy Mach.							X	X	
Machinery Rental, Light Tools						P	X	X	
Marinas	P	P	P	P	P	P	X	X	P
Medical Clinics						X	X		
Motels						X	X		
Nursery, Landscaping & Floral	X	P				X	X		
Offices						P	X	X	
Produce Stands, Temporary <sup>1</sup>	X	P			P	X	X	X	P
Real Estate & Insurance Offices						X	X	P	
Restaurants						X	X	A	P
Taverns						X	X		
U-Wash/Laundrette						X	X		
Wearing Apparel Sales						X	X		
<b>INDUSTIAL ACTIVITIES</b>									
Agriculture	X	X	X	X	X	X	X	X	X

LAND USE	ZONING DISTRICT								
	Agricultural	Forest	Rural Residential	Suburban Residential	Urban Residential	Limited Commercial	General Commercial	Industrial	Open Space
X = permitted outright upon issuance of a building permit. P = Permitted by Planning Commission only. A = Permitted as accessory use only.									
Auto Wrecking, Junk Yard							P	X	
Industrial, Heavy								X	
Industrial, Light	P	P			P	P	X	X	P
Mills, Lumber & Shake		P						X	
Mineral Extraction	P	P						X	P
Timber Harvesting & Tree Cutting	X	X	X <sup>3</sup>	X <sup>3</sup>	X <sup>3</sup>	X <sup>3</sup>	X <sup>3</sup>	X <sup>3</sup>	X <sup>3</sup>
Warehousing	P	P				P	X	X	P
<b>PUBLIC &amp; SEMI-PUBLIC SERVICES</b>									
Camping, Commercial & Public	P	P							P
Churches	X	P	P	P	P	X	X		P
Commercial Recreation – Indoor/Outdoor	P					X	X	P	P
Commercial Recreation – Outdoor Only	X	P		P	P		X		X
Golf Courses	X	P	X	X	X				P
Hospitals						P	P		
Parks, Public Recreational	X	X	X	X	X	P	P	X	X
Public Buildings & Land Uses (other)	P	P	P	P	P	P	P	X	P
Quasi-Public Buildings, Non-Profit	P	P				P	X	X	P
<b>OTHER</b>									
Airport or Heliport	P	P	P	P	P	P	P	P	P
Cemeteries, Mausoleums & Crematoriums	X	P	P	P	P				
Garage, Parking	A	A			A	X	X	A	
Go-Cart & Motorcycle/Auto Track	P						P	P	
Horse Riding Stables	X	P	P	P	P		X	X	P
Kennels, Private (<6 of one species)	X	P			P	P	X	X	P
Land Fills, Solid Waste Disposal	P	P	P	P	P	P	P	P	P
Mortuaries						P	X		
Parking Lots	A	A	A	A	A	X	X	A	
Public Utility Installations	P	P	P	P	P	P	P	P	P
Radio & TV Stations & Towers	P	P	P	P	P	P	X	P	P
Shelter Stations (Pedestrian Waiting)	X	P	P	P	X	A	A	A	P
Swimming Pools	P	P	P	P	P	P	X	X	P

<sup>1</sup> Produce stands selling produce grown on the respective properties only.

<sup>2</sup> Approved for not more than six (6) months.

<sup>3</sup> In conformance with approved site plan only.

**Table II – Lot Standards and Building Placement**

Zoning Districts	Minimum Lot Area	Minimum Lot Width at Building Line	Minimum Lot Frontage on Public Road	Minimum Building Setbacks from Property Lines			Maximum Building Height from M.G.L. <sup>1</sup>	Maximum Building Coverage of Site	Maximum Ratio of Building Area to Lot Area
				Front	Side	Rear			
Agricultural	30 acres per 2 dwelling units <sup>2</sup>	100		35'	8'	25'			
	30 acres per dwelling unit	100	30'	25' <sup>3</sup>	8' <sup>3</sup>	25' <sup>3</sup>			
Urban Residential	1 dwelling unit on septic system	70'	20'	25' <sup>3</sup>	8' <sup>3</sup>	25' <sup>3</sup>	30' <sup>4</sup>	15%	
	1 dwelling unit/9,000 sq. ft. on public sewer	70'	20'	25' <sup>3</sup>	5' <sup>3</sup>	25' <sup>3</sup>	30' <sup>4</sup>	35%	1:3
Suburban Residential	2 acres per dwelling unit	70'	20'	25' <sup>3</sup>	8' <sup>3</sup>	25' <sup>3</sup>	30' <sup>4</sup>	35%	1:3
Rural Residential	5 acres per dwelling unit	70'	20'	25' <sup>3</sup>	8' <sup>3</sup>	25' <sup>3</sup>	30' <sup>4</sup>		
Forest	20 acres per dwelling unit	70'	20'	25' <sup>3</sup>	8' <sup>3</sup>	25' <sup>3</sup>	30' <sup>4</sup>		
Limited Commercial	1 acre	100'	100'	80'	35' <sup>5</sup>	25' <sup>5</sup>	30' <sup>4</sup>	20%	1:4 <sup>6</sup>
General Commercial	½ acre		100'	80'	35' <sup>5</sup>	25' <sup>5</sup>	30' <sup>4</sup>	20%	1:4 <sup>6</sup>
Industrial	By Planning Commission approval								

<sup>1</sup> M.G.L is "mean ground level".

<sup>2</sup> See description of district for reason two (2) units are permitted.

<sup>3</sup> Add distance required for greenbelt when adjoining arterials.

<sup>4</sup> Heights may exceed written standard but building setbacks shall be increased one (1) foot for every additional foot in height.

<sup>5</sup> Building may be placed closer to the lot line (in fact on the lot line) when lot adjoins a commercial or industrial district if:

(1) permission is obtained from the owner of the adjoining lot; and

(2) provisions of the Uniform Building Code regarding fire resistive construction are carefully followed.

<sup>6</sup> Ratio can be increased up to one hundred (100) percent in major developments when approved.

**Table III – Additional Standards for Major Developments**

Land Use	Minimum Site Size	Minimum Paved Street Widths	Street Lighting Standards	Maximum Distance Building to Hydrant	Maximum Distance to Garbage Collection Center	Utilities	Minimum Landscaping Standards
Mobile Home Park (not allowed)	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Other Residential Parks	5 acres	25' two way 14' one way	By approved plan	350 feet	200 feet	Under-ground	All building setback areas shall be fully landscaped, with fence of plantings to provide visual 6' high within a reasonable time period: 20% of remaining site shall be landscaped or natural open space.
Commercial or Office Park	1 acre	25' two way 14' one way	By approved plan	350 feet	300 feet	Under-ground	10' planting width along all lot sides plus undeveloped street right-of-way 10' width around all buildings except for driveways and walkways. 10% of parking area in plantings.
Industrial Parks	2 acres	25' two way 14' one way	By approved plan	Entire developed portion within a 300' radius of hydrant excluding parking lots.			All setback areas except for driveways and walkways plus 10% of remaining site. 8' sight screen of all exterior service or storage areas.