

Title 15 – Business Regulations

Chapter 8 – Cannabis

Sec.

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Legislative History

Enacted:

Ordinance 374 Amending STC Title 15 Business Regulations, Chapter 8 Cannabis (10/25/17).

Ordinance 370 Establishing STC Title 15, Chapter 8 and Amending Title 4, Chapters 6, 7, and 10 (8/9/17).

15-08.010 Title.

This Chapter shall be known as the Swinomish Cannabis Code.

[History] Ord. 370 (8/9/17).

15-08.020 Purpose and Intent.

The general purposes of this Chapter are:

- (A) To establish a strict regulatory system for the production, possession, delivery, distribution and sale of cannabis that reduces the risk of harm to the health and welfare of the Tribe and Tribal members.

- (B) To establish and regulate the licensure of medical cannabis specialists.
- (C) To provide revenues for essential government services by levying a tax on the sale of cannabis products.

[History] Ord. 370 (8/9/17).

15-08.030 Authority.

This Chapter is enacted pursuant to Article VI, Section 1(k) and (s) of the Swinomish Constitution and By-Laws originally ratified by the Tribe on November 16, 1935 and approved by the Secretary of the Interior on January 27, 1936, and as most recently amended on May 23, 2017, and the inherent sovereign authority of the Swinomish Indian Tribal Community; rights reserved in the Treaty with the Dwamish, Suquamish, etc., (“Treaty of Point Elliott”), 12 Stat. 927 (January 22, 1855), and such other powers as have been delegated to, vested in, or confirmed in the Tribe through the actions of the United States.

[History] Ord. 370 (8/9/17).

15-08.040 Findings.

The Swinomish Indian Senate finds that:

- (A) The Tribe is a Federally-recognized sovereign with the right and responsibility to promote, protect and improve the health and welfare of its members, and to enhance the quality of the lives of all of its members by providing a combination of economic opportunities and a safety net of social services.
- (B) In 2012, Washington State legalized the production, processing and retail sale of cannabis products for recreational purposes. The federal Department of Justice issued a memorandum indicating that it would exercise prosecutorial discretion to interfere in states that legalize and strictly regulate cannabis within their jurisdictions, and in 2014 issued a memorandum indicating it would extend such prosecutorial discretion to Tribal governments.
- (C) The Swinomish Reservation is now surrounded by jurisdictions allowing legal cannabis possession, production and sales. As a result of these circumstances, the Tribe has determined that the continued total prohibition of cannabis on the Swinomish Reservation is ineffective, costly, and can result in disproportionate impacts on Native Americans.
- (D) The Tribe also recognizes that cannabis is a natural medicine that has the potential to help those who suffer from debilitating medical conditions. Numerous, well-controlled studies have proven the medical efficacy and safety of cannabis. In the interests of compassion, the Tribe desires to enable Tribal members, including Tribal elders, to access such medicines safely and legally.

- (E) The Tribe therefore enacts this Chapter in order to strictly regulate and control the production, processing, distribution, sale and use of cannabis in Indian Country consistent with (1) federal Department of Justice guidance, including the Policy Statement Regarding Marijuana Issues in Indian Country issued to all U.S. Attorneys on October 28, 2014; (2) the Marijuana Compact between the Tribe and the State of Washington; and (3) Tribal priorities to protect the health, safety, and general welfare of the Tribe, its members, its employees, residents and visitors.

[History] Ord. 370 (8/9/17).

15-08.050 Definitions.

- (A) **“Authorization”** means a form developed by the Washington State Department of Health or by the Tribe that is completed and signed by a qualifying patient’s health care professional, is printed on tamper-resistant paper, and includes a statement that in the health care professional’s opinion, the qualifying patient may benefit from the medical use of cannabis.
- (B) **“Cannabis”** means all parts of the *Cannabis* plant, also commonly known as “marijuana”, whether growing or not, with a THC concentration of greater than 0.3 percent on a dry weight basis; the resin extracted from any part of the plant; and any compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include industrial hemp. When used in this Chapter, “cannabis” also means cannabis products as defined below.
- (C) **“Cannabis concentrates”** means products consisting wholly or in part of the resin extracted from any part of the Cannabis plant and having a THC concentration greater than ten (10) percent.
- (D) **“Cannabis-infused products”** means products that contain cannabis or cannabis extracts, are intended for human use, and have a THC concentration of no greater than ten (10) percent. The term “cannabis-infused products” does not include useable cannabis.
- (E) **“Cannabis products”** means useable cannabis, cannabis concentrates and cannabis-infused products.
- (F) **“Designated Caregiver”** means a person who meets the definition of a “designated provider” under RCW 69.51A.010 or is:
- (1) The parent or guardian of a qualifying patient who is a Tribal member under the age of 21 with a Tribally-issued patient recognition card; or
 - (2) A family member or legal guardian of a qualifying patient and who has been designated in writing by the qualifying patient’s health care professional to be the designated caregiver of the qualifying patient.

- (G) **“Division of Licensing”** means the Swinomish Division of Licensing as defined in Swinomish Tribal Code (“STC”) Title 2, Chapter 10.
- (H) **"Industrial hemp"** means all parts and varieties of the genera *Cannabis*, whether growing or not, that contain a THC concentration of 0.3 percent or less by dry weight. Industrial hemp does not include plants that meet the definition of "cannabis" as defined in this Chapter.
- (I) **“Medical Cannabis Specialist”** means an individual licensed by the Tribe pursuant to this Chapter.
- (J) **“Health care professional”** means a licensed physician, a licensed physician assistant, a licensed osteopathic physician, a licensed osteopathic physician assistant, a licensed naturopath, or a licensed advanced registered nurse practitioner.
- (K) **“Qualifying Patient”** means a person who:
- (1) Meets the definition of a “Qualifying Patient” as in RCW 69.51A.010; or
 - (2) Is a Swinomish Tribal member who possesses valid documentation as defined in this Chapter, and is otherwise in compliance with the terms and conditions established in this Chapter.
 - (3) "Qualifying Patient" does not include a person who is actively being supervised for a criminal conviction by a governmental agency that has determined that the possession or use of cannabis is inconsistent with and contrary to his or her supervision.
- (L) **“Reservation”** means all lands and waters within the exterior boundaries of the Swinomish Indian Reservation of the Swinomish Indian Tribal Community.
- (M) **“SDA”** means the Swinomish Development Authority.
- (N) **“Senate”** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.
- (O) **“Tribe”** or **“Tribal Community”** shall mean the Swinomish Indian Tribal Community.
- (P) **“Tribal Enterprise”** means an enterprise owned in whole or in part by the Tribe that produces, processes or sells cannabis products under the Swinomish Tribal Code.
- (Q) **“Useable cannabis”** means dried cannabis flowers. The term “useable cannabis” does not include cannabis-infused products or cannabis concentrates.

(R) **“Valid documentation”** means:

- (1) Proof of identity, such as a Washington State driver’s license or identocard as defined in RCW 46.20.035, or a valid Tribal identification card; and either
- (2) A Tribal or State issued medical cannabis patient recognition card; or
- (3) A statement signed and dated by a qualifying patient’s health care professional written on tamper-resistant paper, which states that, in the health care professional’s professional opinion, the patient may benefit from the medical use of marijuana.

[History] Ord. 374 (10/25/17); Ord. 370 (8/9/17).

15-08.060 Sales.

(A) Authorized entities. The Swinomish Tribe and Tribal Enterprises are the only persons or entities authorized to deliver, distribute, or sell cannabis.

- (1) The Tribe or any Tribal Enterprise must obtain cannabis from the Tribe, a Tribal enterprise, a business operated by an Indian tribe that has entered into a compact with the State of Washington, or a business licensed by the State of Washington.
- (2) The SDA shall establish policies and procedures for Tribal Enterprises engaged in the sale of cannabis. At a minimum, such policies and procedures shall address inventory controls, disposal and waste, prevention of underage sales, and policies and procedures to satisfy the requirements of STC 15-08.080.

(B) Minors.

- (1) Sales of cannabis products to persons under 21 years of age is strictly prohibited.
- (2) No person under the age of 21 may be employed by or enter a retail facility.

(C) Location.

- (1) Except as provided in (2) of this subsection, cannabis may not be bought or sold outside the North End Economic Zone as defined in STC 17-03.030(G) or within one thousand (1,000) feet of:
 - i. a school or a college;
 - ii. a childcare center;
 - iii. a playground;

- iv. a housing facility owned by a public housing authority; or
- v. a youth recreation center.

(2) The Tribe may permit a Tribal Enterprise to operate within the North End Economic Zone within 1,000 feet but not less than 100 feet of the facilities listed above, except elementary schools and secondary schools, by Senate resolution, if such distance reduction will not negatively impact the interests of public safety or public health.

(D) Transaction Limits.

(1) No retail facility may sell more than the following amounts of cannabis in a single transaction:

- (a) One (1) ounce of useable cannabis;
- (b) Sixteen (16) ounces of cannabis-infused product meant to be eaten or swallowed in solid form;
- (c) Seven (7) grams of cannabis-infused extract or marijuana concentrate for inhalation; and
- (d) Seventy-two (72) ounces of cannabis-infused product in liquid form meant to be eaten or swallowed.

(2) No retail facility may sell more than the following amounts of cannabis in a single transaction to Qualifying Patients or Designated Caregivers with Valid Documentation:

- (a) Three (3) ounces of useable cannabis;
- (b) Forty-eight (48) ounces of cannabis-infused product meant to be eaten or swallowed in solid form;
- (c) Twenty-one (21) grams of cannabis-infused extract or marijuana concentrate for inhalation; and
- (d) Two hundred sixteen (216) ounces of cannabis-infused product in liquid form meant to be eaten or swallowed.

(E) Serving Limits.

(1) A single serving of a cannabis-infused product may not exceed 10 milligrams active tetrahydrocannabinol (“THC”) or Delta 9.

- (2) The maximum number of servings in any one single unit of cannabis-infused product meant to be eaten or swallowed is 10 servings or 100 milligrams of active THC, or Delta 9.
- (F) Medical Cannabis Requirement. All Tribal Enterprises engaged in the sale of cannabis products must employ at least one Tribally-licensed Medical Cannabis Specialist, or Medical Cannabis Specialist in training.
- (G) Compliance Checks. The Tribal Police may conduct compliance checks in Swinomish Indian Country using minors ages 18, 19 or 20 in accordance with Tribal policies and procedures. No criminal action may be taken against any minor who purchases cannabis as part of such a compliance check.

[History] Ord. 374 (10/25/17); Ord. 370 (8/9/17).

15-08.070 Production and Processing.

- (A) Authorized entities. The Swinomish Tribe and Tribal Enterprises are the only persons or entities authorized to grow, produce or process cannabis or cannabis products. The SDA shall establish and document policies and procedures for Tribal Enterprises engaged in the production or processing of cannabis governing, at a minimum, the use of propagation materials, equipment and tools, inventory controls, pesticides, fertilizers, disposal and waste, indoor air quality, and worker safety.
- (B) Production and processing facilities shall:
 - (1) Comply with all Tribal laws and regulations, including but not limited to building codes, land use and zoning restrictions;
 - (2) Be secure against unauthorized entry, including locking doors and windows;
 - (3) Minimize unnecessary external evidence of cannabis production and/or processing; and
 - (4) Meet the safety and security protocols as outlined more specifically by SDA policies and procedures.
- (C) All processing facilities engaged in processing cannabis products intended to be eaten or swallowed must meet the standards as would be required for food handling under Indian Health Board requirements.
- (D) Before sale to any retailer, cannabis products shall be tested by a Tribally or State-licensed laboratory that follows quality assurance testing protocols that meet the minimum requirements provided under State law.

- (E) All cannabis products sold by a Tribal Enterprise to a State licensee must meet the testing, packaging, and labeling requirements otherwise required under State law.
- (F) No persons under 21 years of age may enter or be employed at a producing or processing facility.
- (G) Location.
 - (1) Except as provided in (2) of this subsection, cannabis products may not be produced or processed within one thousand (1,000) feet of:
 - i. a school or a college;
 - ii. a childcare center;
 - iii. a playground;
 - iv. a housing facility owned by a public housing authority; or
 - v. a youth recreation center.
 - (2) The Tribe may permit a Tribal Enterprise to operate within the North End Economic Zone within 1,000 feet but not less than 100 feet of the facilities listed above, except elementary schools and secondary schools, by Senate resolution, if such distance reduction will not negatively impact the interests of public safety or public health.

[History] Ord. 374 (10/25/17); Ord. 370 (8/9/17).

15-08.080 Security Procedures.

All Tribal Enterprises shall employ reasonable and effective security procedures and systems that safeguard cannabis from theft and diversion, including cannabis intended for destruction as waste. On an annual basis, any Tribal Enterprise engaged in the sale, production or processing of cannabis shall submit a security plan to the Law and Order Committee.

[History] Ord. 370 (8/9/17).

15-08.090 Tracking.

All Tribal Enterprises shall employ reasonable and effective inventory methods that allow cannabis to be tracked from seed to sale.

[History] Ord. 370 (8/9/17).

15-08.100 Packaging, Labeling and Advertising.

- (A) Cannabis products sold or advertised within the jurisdiction of the Tribe may not contain any statement or illustration that:
 - (1) Is false or misleading;
 - (2) Promotes over consumption;
 - (3) Depicts a child or other person under legal age to consume cannabis, or includes objects, such as toys, characters, or cartoon characters suggesting the presence of a child, or any other depiction designed in any manner to be especially appealing to children or other persons under legal age to consume cannabis; or
 - (4) Is designed in any manner that would be especially appealing to children or other persons under twenty-one (21) years of age.
- (B) Cannabis products may not be advertised within one thousand (1,000) feet of:
 - (1) a school or a college;
 - (2) a childcare center;
 - (3) a playground;
 - (4) a housing facility owned by a public housing authority; or
 - (5) a youth recreation center.
- (C) Cannabis products when sold at retail must include accompanying material that contains warnings regarding the potential intoxicating and health effects.
- (D) All cannabis products sold by a Tribal Enterprise to a State Licensee must meet the packaging and labeling requirements otherwise required under State law.

[History] Ord. 370 (8/9/17).

15-08.110 Tax.

- (A) There is levied a Tribal Cannabis Tax on the retail sale of cannabis products. The Tribal Cannabis Tax shall be equal to one hundred (100) percent of the State marijuana excise tax set forth in RCW 69.50.535. This tax is separate and in addition to the retail sales tax imposed by STC Title 17, Chapter 3 and is not part of the measure of the sales and use tax.

- (B) All revenues from taxes levied under this section shall be used for essential government services, including but not limited to youth education and law enforcement.
- (C) Sales of cannabis products that are grown, produced or processed in Indian country are exempt from the tax levied under this section.
- (D) The following sales may be exempted from the Tribal sales tax:
 - (1) Sales to Qualifying Patients;
 - (2) Sales of cannabis products identified by the Washington State Department of Health to have a low THC, high CBD ratio; or
 - (3) Sales that would otherwise be exempt from tax under state or federal law.

[History] Ord. 370 (8/9/17).

15-08.120 Community Education.

The Health, Education and Social Services (“HESS”) Committee shall oversee a community education program to provide evidence-based information about cannabis to protect public health and safety and prevent underage use. The HESS Committee may partner with other committees, Tribal departments or enterprises to carry out the program.

[History] Ord. 370 (8/9/17).

15-08.130 Medical Cannabis Specialist Licensing.

- (A) A Medical Cannabis Specialist license is hereby established.
- (B) Practice parameters. When acting in the capacity of an employee of the Tribe or Tribal Enterprise, a licensed Medical Cannabis Specialist may engage in the following activities:
 - (1) Provide customers with evidence-based information on the medical use of cannabis;
 - (2) Assist customers with the selection of cannabis products that may benefit the customer’s medical condition;
 - (3) Receive and process authorizations by health care providers for Qualifying Patients;
 - (4) Describe the medical risks and benefits of cannabis products sold at retail;
 - (5) Advise customers about the safe handling and storage of cannabis products, including strategies to reduce access by minors;

- (6) Provide information about substance use treatment services;
 - (7) Take steps to safeguard the privacy of Qualifying Patients' health information;
 - (8) Provide instruction to customers about proper use and application of cannabis products;
 - (9) Issue Tribal medical cannabis patient recognition cards to Swinomish Tribal members who present valid documentation; and
 - (10) Any other activities authorized by the Licensing Board.
- (C) License Requirements. The Division of Licensing shall issue a license to any applicant who demonstrates to the Division's satisfaction that the following requirements have been met:
- (1) Completion of an educational program approved by the Board, or successful completion of alternate training that meets established criteria;
 - (2) Successful completion of an approved examination, based on core competencies identified by the Board; and
 - (3) Successful completion of any additional requirements as established by the Board.
- (D) Medical Cannabis Specialist licenses are subject to annual renewals and continuing education requirements established by the Board.
- (E) There is established a Medical Cannabis Licensing Board, which shall:
- (1) Adopt rules in accordance with this Chapter;
 - (2) Establish forms and procedures necessary to administer this Chapter;
 - (3) Establish or approve medical cannabis specialist training or education programs that meet the requirements of this section and any rules adopted to implement it;
 - (4) Establish administrative procedures, administrative requirements, and fees in accordance with this Chapter;
 - (5) Consult with persons or entities with specialized expertise or experience that may be beneficial to the Board in carrying out its responsibilities; and
 - (6) Advise the Division of Licensing regarding matters related to the purposes and implementation of this Chapter.

- (F) The Medical Cannabis Licensing Board, shall be made up of five (5) members appointed by the Chairman of the Senate as follows:
- (1) One physician, nurse or other licensed health care provider, or medical researcher;
 - (2) One licensed mental health professional;
 - (3) One licensed chemical dependency professional;
 - (4) The senior health policy advisor for the Tribe; and
 - (5) The Chair of the Health, Education and Social Services (“HESS”) Committee.

The Board shall be advised by Tribal staff designated by the Chairman of the Senate.

- (G) The Board shall meet as often as necessary to carry out its responsibilities in a timely manner and no less than once annually. Meetings shall be scheduled at the call of the Board chairperson or the request of the Division of Licensing.
- (H) The Division of Licensing shall have the power to refuse, suspend, or revoke the license of any Medical Cannabis Specialist upon proof that:
- (1) The license was procured through fraud, misrepresentation, or deceit;
 - (2) The license holder has committed acts in violation of this Chapter; or
 - (3) The license holder has violated or has permitted any employee or volunteer to violate any of the laws of the Tribe relating to controlled substances.
- (I) Licensees or candidates may appeal adverse license actions by the Division of Licensing. Requests for appeals must be in writing and must comply with appeal procedures that shall be established by the Board. Appeals decisions by the Board are final.
- (J) Nothing in this section authorizes a Medical Cannabis Specialist to:
- (1) Offer medical advice;
 - (2) Diagnose or attempt to diagnose or treat any physical or mental condition; or
 - (3) Recommend or suggest modification or elimination of any course of treatment that does not involve the medical use of cannabis.

[History] Ord. 370 (8/9/17).

15-08.140 Permitted Acts.

- (A) The following acts, when performed by employees or contractors of the Swinomish Tribe or Tribal Enterprises in compliance with this Chapter, shall not constitute criminal or civil violations of Tribal law:
- (1) Production or possession of marijuana within the scope of employment duties.
 - (2) Possession, processing, packaging and labeling of quantities of marijuana, useable marijuana, and marijuana-infused products within the scope of employment duties.
 - (3) Delivery, distribution and sale of cannabis within the scope of employment duties for retail sales by the Tribe or a Tribal Enterprise.
- (B) No Liability for Health Care Professionals. A health care professional shall not be subject to criminal or civil liability under Tribal law for:
- (1) Advising a patient about the risks and benefits of medical use of cannabis or that the patient may benefit from the medical use of cannabis; or
 - (2) Providing a patient with authorization, based upon the health care professional's assessment of the patient's medical history and current medical condition that cannabis use is necessary in the individual health care professional's medical judgment.

[History] Ord. 370 (8/9/17).

15-08.150 Industrial Hemp.

[Reserved]

15-08.160 Repealer.

[Reserved]

15-08.170 Severability.

The invalidity of any section, clause, sentence, or provision of this Chapter shall not affect the validity of any part of this Chapter that can be given effect without such invalid part or parts.

[History] Ord. 370 (8/9/17).

15-08.180 Effective Date.

This Chapter shall take effect upon approval by the Senate.

[History] Ord. 370 (8/9/17).