

Title 2 – Tribal Government

Chapter 11 – Port Authority

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Legislative History

Enacted:

Ordinance 399 Establishing STC Title 2, Chapter 11 (3/9/20).

2-11.010 Title.

This Chapter shall be known as the “Swinomish Port Authority Code”.

[History] Ord. 399 (3/9/20).

2-11.020 Authority.

This Chapter is enacted pursuant to authority provided by Article VI, Section 1(c), (f), (g), (h), (k), (l), (m) and (r), and Article VI, Section 3 and Section 5 of the Swinomish Constitution.

[History] Ord. 399 (3/9/20).

2-11.030 Definitions.

Unless specifically stated elsewhere in this Chapter, the meaning of the terms used in this Chapter shall be as follows:

- (A) “Board” means the Swinomish Port Authority Board created pursuant to this Chapter.
- (B) “Jurisdictional Area” means the area identified in Appendix A over which the Port Authority shall have jurisdiction and duties in the management and regulation of tribal lands. The following general descriptions identify the areas that are included within the Jurisdictional Area:
 - (1) The village waterfront;
 - (2) Waterfront area north of the village, currently or formerly leased for wet and dry log storage, located in the Tribal Economic Zone;
 - (3) A portion of McGlenn Island, including the self-help boat repair facility, the area that has been leased as a boat repair facility; and
 - (4) A portion of the Summer’s Court property.
- (C) “Pier” means a fixed platform above the water which abuts the shoreline which is generally used as a landing or moorage place for industrial, commercial, and/or pleasure craft.

- (D) “Piling” means a column of wood or steel or concrete that is driven into the ground to provide support for a structure.
- (E) “Reservation” means the Swinomish Indian Reservation and all lands, waters, and any interests therein, notwithstanding the issuance of any patent or right-of-way, within the exterior boundaries of the Swinomish Indian Reservation.
- (F) “Senate” means the elected Senate of the Tribe, the federally recognized governing body of the Tribe.
- (G) “Swinomish Port Authority” or “Port Authority” means the entity chartered under this Chapter.
- (H) “Tribe” or “Tribal Community” means the Swinomish Indian Tribal Community, a federally recognized Indian Tribe organized pursuant to Section Sixteen of the Indian Reorganization Act of 1934.

[History] Ord. 399 (3/9/20).

2-11.040 Swinomish Port Authority Charter.

There is hereby chartered the Swinomish Port Authority as a governmental Subdivision of the Swinomish Indian Tribal Community, and as an instrumentality created, wholly owned and controlled by the Swinomish Indian Tribal Community.

[History] Ord. 399 (3/9/20).

Subchapter I – Swinomish Port Authority Board

2-11.100 Establishment of Swinomish Port Authority Board.

- (A) There is hereby established a Swinomish Port Authority Board, which shall have authority over the Jurisdictional Area and operate under the supervision and guidance of the Senate.
- (B) The Board shall consist of five members, all appointed by the Senate.
- (C) Qualification. Each member of the Board shall be twenty-one (21) years of age or older. At least one member of the Board must be a Fish Commission member; at least one member of the Board must be a sitting Senator; at least one member of the Board must be a sitting member of the Swinomish Development Authority.

- (D) In selecting Board members, the Senate shall give due consideration to:
- (1) The qualities of experience, industry, responsibility, integrity, judgment, and sensitivity to the unique cultural and social conditions and goals of the Tribe;
 - (2) The need for diversity of experience;
 - (3) The need for adequate expertise in and understanding of the various duties and responsibilities of the Board; and
 - (4) Conflicts of interest that may exist.
- (E) Board vacancies shall be filled by majority vote of the Senate.

[History] Ord. 399 (3/9/20).

2-11.110 Seal.

The Board may design and designate an official seal for use in representing the interests of the Swinomish Port Authority. The official seal of the Swinomish Port Authority may be used by the Board in correspondence, contracting, and other matters.

[History] Ord. 399 (3/9/20).

2-11.120 Board Members.

- (A) Among the members of the Board shall be designated a President and Vice-President, both to be initially selected by the Senate and thereafter designated by the members of the Board. Any member may resign at any time by delivering a written resignation to the Senate.
- (B) Terms. Board members will serve staggered two-year terms, except for the representative from the Senate who shall serve a one-year term.
- (1) Board appointments shall be made by the Senate during the month of March of each year and Board terms shall expire upon the swearing in of newly appointed Board members.
 - (2) Board position No. 1 shall be held by a Senate member and shall be appointed each year to serve one-year terms. Board position Nos. 2 and 4 shall be appointed during even numbered years to serve two-year terms. Board position Nos. 3 and 5 shall be appointed during odd numbered years to serve two-year terms.

[History] Ord. 399 (3/9/20).

2-11.130 Board Meetings.

The Board shall meet regularly and maintain a record of its meetings. A quorum of three members shall be present in order to conduct the business of the Board. Telephonic attendance is permitted in lieu of physical attendance at a meeting. Electronic voting is permitted, but a record shall be maintained to memorialize voting decisions.

[History] Ord. 399 (3/9/20).

2-11.140 Bylaws.

The Board may create Bylaws for the administration and governance of the Port Authority and the implementation of the Board's powers under this Chapter. Bylaws shall be consistent with the provisions of this Chapter, the Swinomish Tribal Code, and the Swinomish Constitution.

[History] Ord. 399 (3/9/20).

2-11.150 Disclosure of Interest; Disqualification.

- (A) No Board member, attorney, agent or employee of the Port Authority shall in any manner, directly or indirectly, participate in the deliberation or the determination of any Board matter directly affecting such person's distinct, individual pecuniary interest, the distinct pecuniary interest of the Board member's immediate family, or the distinct, individual pecuniary interest of any corporation, partnership, individual or entity in which the person is directly interested.
- (B) No Board member, agent or employee of the Port Authority or any official of the Tribe who exercises any responsibilities or functions with regard to any activity of the Port Authority shall voluntarily acquire any interest, direct or indirect, in any matter or in any property included or planned to be included in any project of the Port Authority, or in any contract, agreement or other transaction or proposal relating to an activity of the Port Authority.
- (C) If a Board member, agent, employee or Tribal official involuntarily acquires such interest, or voluntarily acquires such interest prior to appointment or employment with respect to Board, in any event, the person shall immediately disclose the person's interest to Board, and such disclosure shall be entered upon the minutes of the Board, and that person shall not participate in any action by the Board relating to the property, contract or other transaction in which he or she has any such interest.
- (D) Any intentional violation of the foregoing provisions of this Section shall constitute misconduct in office and a violation of the public trust and shall subject the person to removal from the Board or other office held, and render such person liable to the

Board for any and all profits or gains of any kind or character which that person may have obtained by virtue of the violation of the trust.

[History] Ord. 399 (3/9/20).

2-11.160 Sovereign Immunity; Limited Waivers.

- (A) Nothing in this Chapter shall affect the right of the Tribe to assert immunity from suit by virtue of its status as a sovereign entity, except that the Tribe may not assert sovereign immunity when named and served as a garnishee in a garnishment order issued by the Tribal Court pursuant to this Chapter. Nothing in this Chapter shall be construed as a waiver of immunity for any administrative order or order from any other court.
- (B) The sovereign immunity of the Tribe doing business as the Swinomish Port Authority may be waived only by express resolution of the Senate after consultation with its attorneys. All waivers of sovereign immunity shall be preserved with resolutions of continuing force and effect. Waivers of sovereign immunity are disfavored and may be granted only when necessary to secure a substantial advantage or benefit to the Tribe. Waivers of sovereign immunity shall be specific and shall be limited as to: (1) duration, grantee, transaction, property or funds; (2) the court having jurisdiction; and (3) the applicable law.

[History] Ord. 399 (3/9/20).

Subchapter II – Purposes, Powers and Duties

2-11.200 Purposes of the Swinomish Port Authority.

- (A) The following statements identify the purposes for which the Swinomish Port Authority was chartered and shall guide the mission, work, and decisions of the Board:
 - (1) The Port Authority shall be a responsible steward of the Jurisdictional Area, and operate in a manner which maintains a high level of public understanding and confidence.
 - (2) The Port Authority shall operate in a manner that fairly and consistently regulates activity within the Jurisdictional Area and supports the Swinomish fishing fleet.
 - (3) The Port Authority shall properly maintain and improve the tribal infrastructure and access areas located within the Jurisdictional Area, including the docks, pier, pilings, and any moorage areas.

- (4) The Port Authority shall implement with consistency all safety and security measures and in doing so promote safe usage of the Jurisdictional Area.
 - (5) The Port Authority shall support economic development opportunities and coordinate those opportunities in conjunction with the Tribe's long-term planning and development.
 - (6) The Port Authority shall explore, develop, and implement capital improvement projects within the Jurisdictional Area.
 - (7) The Port Authority shall manage and maintain infrastructure, access points, and facilities within the Jurisdictional Area in order to balance the goals of stewardship and usage of infrastructure, environmental protection, and income generation.
- (B) The Board shall implement the purposes of this Section consistent with the Swinomish Constitution and the laws of the Swinomish Tribal Code.

[History] Ord. 399 (3/9/20).

2-11.210 Powers of the Board.

- (A) The Swinomish Port Authority Board shall have the following powers and responsibilities, subject to the prohibitions found in STC 2-11.230:
- (1) Develop a long-term comprehensive plan for stewardship, usage, and regulation of the Jurisdictional Area and submit such to the Senate.
 - (2) Acquire, construct, furnish, equip, maintain, repair, lease to or from, convey other interests in, or operate real or personal property, or any combination thereof, related to, useful for, or in furtherance of any authorized purpose within the Jurisdictional Area.
 - (3) Maintain and improve infrastructure and access areas within the Jurisdictional Area such as docks, piers, pilings, facilities, moorage areas, and marine storage areas.
 - (4) Develop and implement capital improvement projects within the Jurisdictional Area with the advice and consent of the Senate.
 - (5) Create an annual budget, manage its financial assets, and report such to the Senate.
 - (6) Coordinate patron services and assess any associated service fees.

- (7) Promote, advertise, and publicize the facilities of the Jurisdictional Area and the purposes of the Swinomish Port Authority.
 - (8) Recommend to the Senate for inclusion in this Chapter civil regulations regarding access to and activities within the Jurisdictional Area.
 - (9) Enforce all civil regulations and regulate access to and activities within the Jurisdictional Area.
 - (10) Establish bilateral partnerships and contract with entities to lease, maintain, improve, possess, or otherwise use tribal property within the Jurisdictional Area with prior consent of the Senate by resolution.
 - (11) Solicit and receive federal and state grants and other public funds on behalf of the Tribe with the advice and consent of the Senate.
 - (12) Ensure the preservation and protection of natural resources within the Jurisdictional Area in coordination with other entities authorized with such task under Swinomish law.
 - (13) Hire, fire, and oversee the duties of staff and advise the staff in the implementation of the purposes, powers and duties of this Chapter.
 - (14) Accomplish tasks related to the duties herein assigned and consistent with the purposes of this Chapter.
- (B) All powers not herein granted to the Swinomish Port Authority Board are reserved to the Senate.

[History] Ord. 399 (3/9/20).

2-11.220 Port Authority Comprehensive Plan.

- (A) The Board shall develop, maintain, and update a Swinomish Port Authority Comprehensive Plan to accomplish the purposes set forth in this Chapter within the Jurisdictional Area. The Swinomish Port Authority Comprehensive Plan shall be consistent with the long-term development goals of the Tribe and the guidance of the Senate.
- (B) The Board shall submit the Port Authority Comprehensive Plan and any amendments thereto to the Senate for review.

[History] Ord. 399 (3/9/20).

2-11.230 Prohibitions.

Notwithstanding the duties and responsibilities found in STC 2-11.210, the Board shall not, without the prior express written consent of the Senate, do the following:

- (A) Expressly, impliedly, or otherwise through its status or activities, subject the Tribe to obligations or liabilities arising from contract, tort, regulation, licensing, taxation, or any other matter;
- (B) Pledge the credit of the Tribe;
- (C) Dispose of, acquire, lease, mortgage, or otherwise encumber the real property of the Tribe;
- (D) Waive any right of the Tribe or release any obligation owed to the Tribe, or waive any other rights, privileges or immunities of the Tribe;
- (E) Name the Tribe or attempt to join the Tribe in any claim, action, suit, proceeding, dispute or other matter, whether as plaintiff, defendant or otherwise, and any such attempt is hereby declared to be ultra vires of the Board's powers and authority.

[History] Ord. 399 (3/9/20).

Subchapter III – Staffing

2-11.300 Role of Staff.

The Port Authority Board is empowered to hire, fire and manage staff as needed to perform the purposes of this Chapter. The staff shall report to and receive oversight and direction from the Board. Governmental departments and the Office of Tribal Attorney shall provide support services to the Board to effectuate the purposes of this Chapter.

[History] Ord. 399 (3/9/20).

2-11.310 Duties of Staff.

The staff shall be responsible for implementing the policies of the Board and managing the Jurisdictional Area. The Board may delegate to the staff any responsibilities consistent with the powers given to the Board.

[History] Ord. 399 (3/9/20).

Subchapter IV – Safety and Security

2-11.400 Creation of Civil Regulatory Recommendations.

- (A) The Board, with assistance from staff and the Office of Tribal Attorney, shall create civil regulatory recommendations to promote the safety and security of the Jurisdictional Area. Such recommendations shall also include enforcement procedures, due process provisions, and appeals procedures consistent with civil penalty procedures within the Swinomish Tribal Code.
- (B) The civil regulatory recommendations shall be submitted to any relevant committees for review and adoption before submission to the Senate.
- (C) If accepted, the Senate shall adopt the civil regulatory recommendations and include such infractions, enforcement procedures, including due process provisions, and appeals procedures as new provisions of this Chapter.

[History] Ord. 399 (3/9/20).

2-11.410 Enforcement of Civil Regulations.

The Board and any designated staff are hereby empowered to enforce any civil regulations adopted pursuant to this Chapter.

[History] Ord. 399 (3/9/20).

Subchapter V – Civil Infractions [RESERVED]

Subchapter VI – Civil Enforcement Procedures [RESERVED]

Subchapter VII – Appeals Procedure [RESERVED]

Subchapter VIII – Repealer and Severability

2-11.800 Repealer.

[Reserved]

2-11.810 Severability.

If any provision of this Chapter or its application to any person or circumstances is held invalid, the remainder of this Chapter, or the application to other persons or other circumstances shall remain in effect.

[History] Ord. 399 (3/9/20).

Appendix A
Jurisdictional Area

- (1) The village waterfront, located in Swinomish Tract T1003, described as a portion of Government Lot 8, Section 36, Township 34 North, Range 2 East, W.M. and Swinomish tideland tract T1025, as shown on the attached Map 1;
- (2) Waterfront area historically used for wet and dry log storage, in the Tribal Economic Zone, located in and adjacent to a portion of Government Lots 6, 7, 8 & 9 in Section 25, and Government Lot 6 in Section 36, all in Township 34 North, Range 2 East, W.M. and Swinomish tideland tract T1025, shown on the attached Map 2;
- (3) A portion of McGlinn Island, including the self-help boat repair facility, the area that has been leased as a boat repair facility, and the causeway containing the access road, located in Swinomish Tracts T1009, T1010 and adjacent tidelands, shown on the attached Map 3 and described as:

T1009: A strip of land 600 feet wide contiguous to and Easterly of the East side of The United States Government jetty as established on February 20, 1940 between the line of extreme low tide in front of Government Lot 9, Section 1, Township 33 North, Range 2 East, W.M., and the outer harbor line of the City of La Conner in front of Government Lot 3, Section 1, Township 33 North, Range 2 East, W.M.;

T1010: That portion of Government Lot 9, Section 1, Township 33 North, Range 02 East, W.M., described as follows: Beginning at the Northeast corner of said Section 1; thence North 89 degrees 37' West 4061.8 feet to Stone Monument; thence South 26 degrees 44'50" West 788.3 feet to Stone Monument; thence South 7 degrees 38'15" West 1873.56 feet to U.S.C.G. survey Monument; thence South 30 degrees 58'13" West 1095.89 feet to a point on the Government meander line of said Government Lot 9 and the true point of beginning of this description; thence from said true point of beginning continue South 30 degrees 58'30" West 133.42 feet; thence East 627.64 feet; thence North 14 °57' 10" East 429.6 feet, more or less, to a point on the Government meander line of said Lot 9; thence South 41°30' West along said meander line, a distance of 316.98 feet to an angle point in said meander line; thence North 84° West 132.0 feet; thence South 80° West 231.0 feet; thence South 70° West 107.49 feet to the true point of beginning; TOGETHER WITH a 25 feet wide non-exclusive easement for ingress, egress, roadway and utilities.

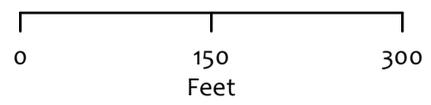
- (4) A portion of the "Summer's Court" property, identified as the portion of P15546 south of Summers Court, located in a portion of the West 370 feet of Government Lot 3, Section 9, Township 33 North, Range 3 East, W.M., and adjacent tribally-owned tidelands, shown on the attached Map 4.



 Port Authority Areas



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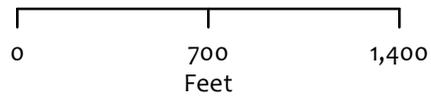
Map 1 Port Authority - Village Waterfront Area



Port Authority Areas



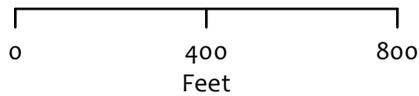
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Map 2 Port Authority - Dunlap Area



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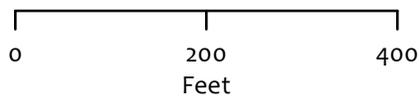
Map 3 Port Authority - McGlinn Island Area



P15546
 Port Authority Areas



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Map 4 Port Authority - Summer's Court Area