

# TITLE 23 BUSINESS AND TAXATION

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# TITLE 23 BUSINESS AND TAXATION

## Chapter 23.01 Cigarette and Sales Tax Code

### 23.01.01 Authority

The authority of the Tribal Council of the Port Gamble S'Klallam Tribe to adopt this ordinance as codified in this title is found in the Constitution of the Port Gamble S'Klallam Tribe and in the inherent sovereignty of the Port Gamble S'Klallam Tribe to regulate its own territory and activities therein.

[HIST: Source - Resolution No. 03 A 148, passed 10/28/03.]

### 23.01.02 Purpose

The Tribal Council of the Port Gamble S'Klallam Tribe finds that regulation of the sale of cigarettes is essential to the health and welfare of the Port Gamble S'Klallam Tribe and its members. The Tribal Council further finds that a tax base is essential to the Tribe's ability to provide goods and services, and to finance government operations and economic development, for the safety, health and welfare of the Port Gamble S'Klallam Tribe, its members, and those who work on, live on, and visit the Tribe's Tribal Lands. Therefore, in the public interest and for the welfare of the people of the Port Gamble S'Klallam Tribe, its employees, the residents of and visitors to Tribal Lands, the Port Gamble S'Klallam Tribal Council, in the exercise of its authority under the Tribal Constitution, declares its purpose by the provisions of this chapter to regulate the sale of cigarettes and to impose, collect and administer taxes on the retail sale of cigarettes.

[HIST: Source - Resolution No. 03 A 148, passed 10/28/03.]

### 23.01.03 Scope

- a) Application. This chapter shall apply to the full extent of the sovereign jurisdiction of the Port Gamble S'Klallam Tribe in Tribal Lands.
- b) Compliance with this chapter is hereby made a condition of the use of any land or premises in Tribal Lands.
- c) Deemed to Consent. Any person who resides, conducts business, engages in a business transaction, receives benefits from the Tribal government, including police, fire or emergency services, acts under Tribal authority, or enters the Tribal Lands under the jurisdiction of the Port Gamble S'Klallam Tribe, shall be deemed thereby to have consented to the following:
  - 1) To be bound by the terms of this chapter;

- 2) To the exercise of civil jurisdiction by the Port Gamble S’Klallam Tribal Court over said person in legal actions arising pursuant to this chapter, and
- 3) To detainment, service of summons and process, and search and seizure, in conjunction with legal actions arising pursuant to this chapter.

[HIST: Source - Resolution No. 03 A 148, passed 10/28/03.]

#### 23.01.04 Definitions

The following definitions apply throughout this chapter unless otherwise specified or the context clearly indicates otherwise:

- a) “Auditor” means an independent third party auditor selected pursuant to section 23.01.10 of this chapter.
- b) “Carton” or “carton of cigarettes” means a carton of two hundred (200) cigarettes.
- c) “Cigarette” means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.
- d) “Cigarette Compact” means the Cigarette Tax Compact entered into by the Port Gamble S’Klallam Tribe and the State of Washington.
- e) “Court” means the Port Gamble S’Klallam Community Court, and includes the Port Gamble S’Klallam Court of Appeals.
- f) “Department” means the state of Washington Department of Revenue.
- g) “Essential government services” means services provided by the Tribe, including, but not limited to, Tribal administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development., and as more fully defined in Part XIII, Section 8. of the Compact to wit:

“Essential Government Services” includes, but is not limited to: government services to provide and maintain infrastructure such as sidewalks, roads, and utilities; services such as fire protection and law enforcement; the costs of administering the Tribal Cigarette Tax stamp program under this Compact, including all deductions and exemptions similar to those available to retailers, Wholesalers and

others under State law, further including transportation vehicles and related costs; Tribal administration activities such as tax functions, contracting for health benefits, economic development, natural resources, and the provision of job services; and distribution of moneys related to trust funds, education, general assistance, such activities as land and building acquisitions, and building development and construction.

- h) "General fund" means the Port Gamble S'Klallam Tribe general fund.
- i) "Tribal Lands" means lands owned by the Tribe and held for the benefit of the Tribe.
- j) "Local retail sales tax" means the combined Washington local retail sales taxes applicable in the area.
- k) "NonIndian" means an individual who is neither a Tribal member nor a nonmember Indian.
- l) "Nonmember Indian" means an enrolled member of a federally recognized Indian Tribe other than the Port Gamble S'Klallam Tribe.
- m) "Person" means and includes any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity, or other identifiable entity.
- n) "Retail selling price" means the ordinary, customary, or usual price paid by the consumer for each package of cigarettes, which price includes the Tribal cigarette tax.
- o) "Self-certified tribal wholesaler" means a wholesaler who is a federally recognized Indian Tribe or a member of such a Tribe, who is not required to be licensed under any state law, and who has by letter certified to the Department that it will abide by the terms of the Cigarette Compact and who has signed a contract with the Tribe requiring it to abide by the terms of the Cigarette Compact.
- p) "Self-certified wholesaler" means an out-of-state wholesaler who is not a self-certified tribal wholesaler and who has by letter certified to the Department that it will abide by the terms of the Cigarette Compact and who has signed a contract with the Tribe requiring it to abide by the terms of the Cigarette Compact.
- q) "Port Gamble S'Klallam Indian Reservation" or "reservation" means the area recognized as the Port Gamble S'Klallam Indian Reservation by the United States Department of the Interior.
- r) "State" means the state of Washington.

- s) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. "Tobacco product" does not include cigarettes.
- t) "Tribal cigarette tax" means the tax or taxes enacted as a provision of Tribal law on the units of cigarettes sold and on the purchase of cigarettes by retail buyers.
- u) "Tribal Council" means the Port Gamble S'Klallam Tribal Council.
- v) "Tribal member" means an enrolled member of the Port Gamble S'Klallam Tribe.
- w) "Tribal retailer" means a cigarette retailer wholly owned by the Port Gamble S'Klallam Tribe and located in Tribal Lands.
- x) "Tribal tax stamp" means the stamp or stamps that indicate the Port Gamble S'Klallam Tribal cigarette tax imposed under the Cigarette Compact is paid or that identify those cigarettes with respect to which no tax or another Tribal tax is imposed.
- y) "Tribe" or "Tribal" means or refers to the Port Gamble S'Klallam Tribe.
- z) "Wholesaler" means every person who purchases, sells, or distributes cigarettes for the purpose of resale only.

[HIST: Source - Resolution No. 03 A 148, passed 10/28/03.]

#### 23.01.05 Cigarette Compact with Washington State

The Tribe entered into a compact with the State of Washington regarding the sale and taxation of cigarettes in Tribal Lands (the "Cigarette Compact"). In accordance with the terms of the Cigarette Compact and during its term:

- a) The Tribe shall not engage in mail order type sales, such as internet, catalog, and telephone sales, to Washington residents outside of Tribal Lands, unless and until the State and the Tribe have entered into a memorandum of agreement in regard to the taxability of such sales.
- b) "Tribal retailer" refers to the Gliding Eagle Marketplace and the Point Casino and Hotel.

- 1) The Tribe will notify the Department thirty (30) days prior to the start up of cigarette sales by any other Tribal retailer.
  - 2) The Tribe will provide information regarding the status of land upon which any Tribal retailer is located at least thirty 30 days prior to the startup of any new cigarette sales by such retailer.
- c) Tribal retailers may purchase cigarettes for sale in Tribal Lands only from:
- 1) Wholesalers or manufacturers licensed to do business in the State of Washington;
  - 2) Self-certified wholesalers who meet the requirements of Part VI section 2 of the Cigarette Compact;
  - 3) Self-certified tribal wholesalers who meet the requirements of Part VI section 3 of the Cigarette Compact; and
  - 4) The Tribe or its enterprises as a Tribal manufacturer.
- d) All cigarettes sold by the Tribal retailer shall bear a Tribal tax stamp, including cigarettes subject to the Tribal cigarette tax, the Tribal member cigarette tax, or exempt from either of these taxes. The stamps shall be purchased and affixed in accordance with the terms of the Cigarette Compact.
- e) The Port Gamble S'Klallam Tribe, or its designee, shall notify the state Department of Revenue 72 hours in advance of all shipments of cigarettes by the self-certified wholesaler or self-certified tribal wholesaler to the Tribe or Tribal retailers. Such notice shall include who is making the shipment (meaning who is the wholesaler), detail regarding both quantity and brand, and the invoice order number.
- f) No person shall sell or give, or permit to be sold or given, cigarettes to any person under the age of 18. If a violation of this subsection 23.01.05(f) is reported to the Tribe:
- 1) The Tribe shall investigate the allegation; and
  - 2) When there is probable cause to believe a violation has occurred, cite the individual who is alleged to have made a sale or gift in violation of this subsection 23.01.05(f) for such violation and apply the following penalties to the individual:
    - i) Upon a first violation, a fine of \$250.00;
    - ii) Upon a second violation within any rolling one-year period, a fine of \$500.00;

- iii) Upon a third violation within any rolling one-year period, a fine of \$750.00;
  - iv) Upon a fourth violation within any rolling two-year period, a fine of \$1,000.00; and
  - v) Upon a fifth violation within any rolling two-year period, a fine of \$1,000.00 and termination from employment. Upon the fifth violation within any rolling two-year period, the individual shall no longer be permitted to make cigarette sales in Tribal Lands for a period of no less than one year.
- 3) It shall be no defense to a citation for a violation of this subsection 23.01.05(f) that the purchaser acted, or was believed by the defendant to act, as agent or representative of another.
  - 4) It shall be a defense to a citation for a violation of this subsection 23.01.05(f) that the person making a sale reasonably relied on officially issued identification that shows the purchaser's age and bears his or her signature and photograph.

[HIST: Source - Resolution No. 03 A 148, passed 10/28/03.]

#### 23.01.06 Cigarette Tax - Levy

- a) Beginning no later than the effective date of the Cigarette Compact, the Tribe shall impose taxes, pursuant to the terms of this section, on all sales by Tribal retailers of cigarettes to nonIndian and nonmember Indian purchasers within Tribal Lands.
- b) The Tribal tax rate shall be as follows:
  - 1) For the first 36 months ("phase-in period"), the tax rate shall equal no less than the sum of an amount equal to 80 percent of the State cigarette tax, which is expressed in cents per cigarette, plus an amount equal to 80 percent of the state and local retail sales taxes. This phase-in period may be reduced in accordance with subsection 23.01.06(c).
  - 2) No later than 36 months after the initial imposition of tax under this section 23.01.06(c) and subject to the phase-in period reduction under subsection 23.01.06(c) the Tribal tax rate shall be no less than the sum of an amount equal to 100 percent of the state cigarette tax, which is expressed in cents per cigarette, plus an amount equal to 100 percent of the state and local retail sales taxes.
- c) If during any quarter the number of cartons of cigarettes, excluding those manufactured by the Port Gamble S'Klallam Tribe or its enterprises, that are sold at retail exceeds by at least 10 percent the



quarterly average sales of the six months preceding the imposition of the Tribal cigarette tax, the 36-month phase-in period shall be reduced by three months. These reductions will be cumulative. The quarterly average sales baseline shall be determined by the Auditor. For the purposes of this provision:

- 1) "Quarter" means a three-month period, each quarter immediately succeeding the next. The first quarter begins the first day of the first month the Tribal cigarette tax is imposed, if the imposition of the tax is on or before the 15th of the month, or begins the first day of the second month the Tribal cigarette tax is imposed, if the imposition of the tax is after the 15th of the month; and
  - 2) The "quarterly average sales" means the sum of the retail sales made during the two quarters divided by two.
- d) During the term of the Cigarette Compact, upon any future increase in the state cigarette tax, state retail sales tax, or local retail sales tax, the Tribal tax on cigarettes shall increase by no less than 100 percent of the increase in the combined state and local tax rates; provided, however, that during the phase-in period the Tribal tax rate shall be set that it is at least equal to 80 percent of the then-current combined state cigarette tax and state and local sales tax.
- e) During the term of the Cigarette Compact, upon any future decrease in the state cigarette tax, state retail sales tax, or local retail sales tax, the Tribal tax on cigarettes may decrease to a minimum of no less than 100 percent of the combined state and local tax rates; provided, however, that during the phase-in period the Tribal tax rate shall be set that it is at least equal to 80 percent of the then-current combined state cigarette tax and state and local sales tax.
- f) The following sales shall not be subject to a general Tribal sales tax levy under other provision of Tribal law:
- 1) All cigarettes manufactured by the Port Gamble S'Klallam Tribe or its enterprises in Tribal Lands;
  - 2) All other cigarettes whenever a Tribal cigarette tax or Tribal member cigarette tax is imposed on those cigarettes during the term of a compact with the state of Washington.

[HIST: Source - Resolution No. 03 A 148, passed 10/28/03.]

### 23.01.07 Cigarette Tax – Exemptions from – Other Taxes

The following shall not be subject to the cigarette tax levy:

- a) Sales of tobacco products;

- b) Sales of cigarettes to enrolled members of the Port Gamble S'Klallam Tribe. However, such sales are subject to a Tribal member cigarette tax, which shall be equal to the tax levied under section 23.01.06 on sales to nonIndians and nonmember Indians. The tax revenue from sales to enrolled members of the Port Gamble S'Klallam Tribe shall be exempt from the prohibition on subsidization in section 23.01.09.
- c) Sales of cigarettes manufactured by the Port Gamble S'Klallam Tribe or its enterprises within Tribal Lands.
- d) Mail order type sales of cigarettes, such as internet, catalog, and telephone sales, to purchasers outside of Tribal Lands and outside of Washington state.

[HIST: Source - Resolution No. 03 A 148, passed 10/28/03.]

#### 23.01.08 Cigarette Tax – Collection and Payment of

- a) Every person engaged in retail sales of cigarettes in Tribal Lands who is liable for collecting the Tribal cigarette tax levy or Tribal member cigarette tax levy, shall maintain accurate written records of the purchase, stamping, and retail sales of cigarettes, and shall make such records available for inspection by the Tribal finance officer and/or Auditor retained by the Tribe. Records shall be maintained for no less than three years after the audit is accepted by the appropriate federal oversight agency.
- b) All applicable taxes shall be paid prior to the sale, distribution, or transfer of possession of any cigarettes. During the term of the Cigarette Compact, the terms of the Cigarette Compact regarding the purchase, stamping, transportation and sale of cigarettes shall apply.
- c) Whenever cigarette taxes are paid by any person other than the consumer, user or possessor, that payment shall be considered a pre-collection of such taxes due. When the tax is prepaid by another, this amount is part of the selling price of the cigarette to the retail purchaser

[HIST: Source - Resolution No. 03 A 148, passed 10/28/03.]

#### 23.01.09 Cigarette Tax – Use of Tribal Levy

- a) Tribal cigarette tax revenue shall be used only for essential government services, and may not be used to subsidize Tribal cigarette and food retailers. For the purposes of this section, "subsidize" means that proceeds from the Tribal cigarette tax pursuant to the Cigarette Compact cannot be expended on the enterprise activities of the Tribal retail cigarette business. In addition, where the cigarette business is co-located with a retail food business, the proceeds cannot be expended to support that business.

- 1) "Enterprise activities" include paying wages, benefits, bonuses or expenses, related to the maintenance and operation of the retail facility or typically considered to be part of a business' operating expenses and overhead.
- 2) "Non-enterprise activities" include, but are not limited to: government services to provide and maintain infrastructure such as sidewalks, roads, and utilities; services such as fire protection and law enforcement; the costs of administering deductions and exemptions similar to those available to retailers, wholesalers and others under state law; Tribal administration activities such as tax functions, contracting for health benefits, economic development, natural resources, and the provision of job services; and distribution of moneys related to trust funds, education, and general assistance.

- b) Tribal member cigarette tax revenue is not subject to the requirements of this section 23.01.09.

[HIST: Source - Resolution No. 03 A 148, passed 10/28/03.]

#### 23.01.10 Cigarette Tax - Audit

The Tribe shall retain a third-party independent auditor for the purposes of verifying compliance with the Cigarette Compact. The Auditor shall perform all work required under Part VIII of the Cigarette Compact.

[HIST: Source - Resolution No. 03 A 148, passed 10/28/03.]

#### 23.01.11 Prior Resolutions

Prior Tribal Council resolutions dealing with the levy of Tribal cigarette taxes are superseded by this chapter.

[HIST: Source - Resolution No. 03 A 148, passed 10/28/03.]

#### 23.01.12 Cigarette Sales Permitted

Tribal retailers are the only retail businesses authorized to sell cigarettes within Tribal Lands.

[HIST: Source - Resolution No. 03 A 148, passed 10/28/03.]

#### 23.01.13 Severability

If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances, is not affected.

[HIST: Source - Resolution No. 03 A 148, passed 10/28/03.]

## **Chapter 23.02 Tribal Hotel Room Occupancy Tax**

### 23.02.01 Authority

The authority of the Tribal Council of the Port Gamble S'Klallam Tribe to adopt this ordinance as codified in this title is found in the Constitution of the Port Gamble S'Klallam Tribe and in the inherent sovereignty of the Port Gamble S'Klallam Tribe to regulate its own territory and activities therein.

[HIST: Source - Resolution No. 16-A-095, passed 7/25/16. This Chapter was created to regulate the operation of motels, hotels, and other temporary lodging businesses within the Port Gamble S'Klallam Tribe's jurisdiction and to regulate taxes on room occupancy.]

### 23.02.02 Purpose

The Tribal Council of the Port Gamble S'Klallam Tribe finds that regulation of the operation of motels, hotels, and other temporary lodging businesses in the Tribe's Tribal Lands is essential to the health and welfare of the Port Gamble S'Klallam Tribe and its members. The Tribal Council further finds that a tax base is essential to the Tribe's ability to provide goods and services, and to finance government operations and economic development, for the safety, health and welfare of the Port Gamble S'Klallam Tribe, its members, and those who work on, live on, and visit the Tribe's Tribal Lands. Therefore, in the public interest and for the welfare of the people of the Port Gamble S'Klallam Tribe, its employees, the residents of and visitors to Tribal Lands, the Port Gamble S'Klallam Tribal Council, in the exercise of its authority under the Tribal Constitution, declares its purpose by the provisions of this chapter to regulate the operation of motels, hotels and other temporary lodging businesses and to impose, collect, and administer taxes on room occupancy.

[HIST: Source - Resolution No. 16-A-095, passed 7/25/16.]

### 23.02.03 Scope

- a) Application. This chapter shall apply to the full extent of the sovereign jurisdiction of the Port Gamble S'Klallam Tribe in Tribal Lands.
- b) Compliance with this chapter is hereby made a condition of the use of any land or premises in Tribal Lands.
- c) Deemed to Consent. Any person who resides, conducts business, engages in a business transaction, receives benefits from the Tribal government, including police, fire or emergency services, acts under Tribal authority, or enters the Tribal Lands under the jurisdiction of the Port Gamble S'Klallam Tribe, shall be deemed thereby to have consented to the following:

- 1) To be bound by the terms of this Chapter;
- 2) To the exercise of civil jurisdiction by the Port Gamble S'Klallam Tribal Court over said person in legal actions arising under this Chapter, and
- 3) To detention, service of summons and process, and search and seizure, in conjunction with legal actions arising under this Chapter.

[HIST: Source - Resolution No. 16-A-095, passed 7/25/16.]

#### 23.02.04 Definitions

The following definitions apply throughout this chapter unless otherwise specified or the context clearly indicates otherwise:

- a) "Court" means the Port Gamble S'Klallam Tribal Court.
- b) "Essential government services" mean services provided by the Tribe including, but not limited to, Tribal administration, public facilities, fire, police, public health, education, elder care, social services, sewer, water, environmental and land use, transportation, utility services, community development, and economic development.
- c) "Occupancy" means the use or possession, or the right to the use or possession, of a motel, hotel, or other temporary lodging room.
- d) "Person" means and includes any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity, or other identifiable entity.
- e) "Room" means any room, space, or area of any kind in any part or portion of a motel, hotel or other temporary lodging facility let out for the use or possession of lodging or meeting purposes.
- f) "Room rental charge" means the actual amount charged for the rental of a motel, hotel, conference, or other temporary lodging room(s) before applicable taxes.
- g) "State" means the State of Washington.
- h) "Tribal Council" means the Port Gamble S'Klallam Tribal Council.
- i) "Tribal Lands" means land owned by the Tribe or held for the benefit of the Tribe.
- j) "Tribal member" means an enrolled member of the Port Gamble S'Klallam Tribe. "Tribe" or "Tribal" means or refers to the Port Gamble S'Klallam Tribe.

[HIST: Source - Resolution No. 16-A-095, passed 7/25/16.]

#### 23.02.05 Room Occupancy Tax

Beginning on August 1, 2016, the Tribe shall impose taxes, under the legal terms of this Chapter, on the rental of guest and conference rooms in motel, hotel, and other temporary lodging facilities located within the Tribe's Tribal Lands. The Tribal tax rate shall be ten (10) percent of the room rental charge.

[HIST: Source - Resolution No. 16-A-095, passed 7/25/16.]

#### 23.02.06 Room Occupancy Tax Exemptions

Tribal members are exempt from the Tribe's room occupancy tax when they provide proof of Tribal enrollment before they take possession of a room.

The Tribe, including its departments, entities, and wholly owned corporations, are exempt from the Tribe's room occupancy tax. The Tribe maintains the right to waive the hotel room occupancy tax at its discretion.

[HIST: Source - Resolution No. 16-A-095, passed 7/25/16. Resolution No. 17-A-012, passed 1/23/17 modified this section to include the Tribe and its entities from paying room occupancy tax and to allow the Tribe to waive the tax at its discretion.]

#### 23.02.07 Room Occupancy Tax—Collections and Payment

Every person engaged in the rental of motel, hotel, conference and other temporary lodging rooms in the Tribe's Tribal Lands who is liable for collecting the Tribal room occupancy tax levy shall maintain accurate written records of room rental charges and room occupancy taxes charged and received, and shall make such records available for inspection by the Tribal finance officer and/or third party auditor retained by the Tribe. Records shall be maintained for no less than three (3) years after the audit is accepted by the appropriate federal oversight agency.

[HIST: Source - Resolution No. 16-A-095, passed 7/25/16.]

#### 23.02.08 Room Occupancy Tax—Use of Tribal Levy

Tribal room occupancy tax revenue may be used for any services, programs, or other governmental activities of the Port Gamble S'Klallam Tribe.

[HIST: Source - Resolution No. 16-A-095, passed 7/25/16.]

### 23.02.09 Room Occupancy Tax—Audit

The Tribe may retain a third-party independent auditor for the purposes of verifying compliance with this Chapter.

[HIST: Source - Resolution No. 16-A-095, passed 7/25/16.]

### 23.02.10 Temporary Lodging Business—Permitted

The Port Gamble S’Klallam Tribe and its wholly owned enterprises are the only entities authorized to operate motels, hotels, or other temporary lodging businesses within the Tribe’s Tribal Lands.

[HIST: Source - Resolution No. 16-A-095, passed 7/25/16.]

### 23.02.11 Severability

If any provision of this Chapter, or its application to any person or circumstances is held invalid, the remainder of the Chapter, or the application of the provision to other persons or circumstances, is not affected.

[HIST: Source - Resolution No. 16-A-095, passed 7/25/16.]

## Chapter 23.03 Commercial Marijuana Activity

### 23.03.01 Title

This chapter shall be known as the “Port Gamble S’Klallam Tribe Commercial Marijuana Activity Ordinance.”

[HIST: Source - Resolution No. 17-A-058, passed 4/24/17. After serious deliberation, the Port Gamble S’Klallam Tribe has determined that present day circumstances, including the Washington State’s legalization of marijuana, make a complete ban of marijuana within Tribal Lands ineffective and unrealistic. This chapter was created to regulate legal commercial marijuana activity by the Tribe and any tribally owned entity.]

### 23.03.02 Definitions

As used in this chapter, the following words and phrases shall each have the designated meaning unless a different meaning is expressly provided or the context is clearly indicated.

- a) “Commercial Marijuana Activity” means all planting, growing, producing, cultivating, processing, and selling marijuana, marijuana concentrates, marijuana- infused products, and useable marijuana within the jurisdiction of the Port Gamble S’Klallam Tribe and in accordance with the Tribe’s laws that govern medical and recreational marijuana.
- b) “Designated Provider” shall have the same meaning as in RCW 69.51A.010.
- c) “Essential Government Services” means services provided by the Tribe including, but not limited to, administration, public facilities, fire, police, health, education, elder care, social services, sewer, water, environmental and land use, transportation, utility services, community development, and economic development.
- d) “Manager” means a person chosen or hired to manage, direct, or administer the every-day affairs of a business.
- e) “Marijuana,” “marijuana concentrates,” “marijuana-infused products,” and “useable marijuana” shall have the same meanings as in RCW 69.50.101 or any amendments thereto. Together, such terms shall be known as “Marijuana Products.”
- f) “Medical Marijuana Authorization Database” shall have the same meaning as in RCW 69.51A.010.



- g) “Qualifying Patient” shall have the same meaning as in RCW 69.51A.010.
- h) “Recognition Card” shall have the same meaning as in RCW 69.51A.010.
- i) “State” means the State of Washington.
- j) “State Licensed” means any entity licensed by the Washington State Liquor and Cannabis Board under RCW 69.50 or WAC 314-55, as amended.
- k) “Tribal Council” means the Port Gamble S’Klallam Tribal Council.
- l) “Tribal Enterprise” means any corporation or other business owned in whole or in part by the Tribe that is authorized to sell marijuana products under the Port Gamble S’Klallam Law and Order Code.
- m) “Tribal Member” means an enrolled member of the Port Gamble S’Klallam Tribe.
- n) “Tribe” means the Port Gamble S’Klallam Tribe.

[HIST: Source - Resolution No. 17-A-058, passed 4/24/17.]

### 23.03.03 Findings

- a) Historically, the production, possession, delivery, distribution, and sale of marijuana have been illegal across the United States and in Indian Country. In 2012, the voters of Washington State passed Initiative 502 (“I-502”) which sets forth a system allowing for the production, processing, and retail sale of Marijuana Products for recreational purposes within the State.
- b) After serious deliberation, the Tribe has determined that present day circumstances—including the State’s legalization of marijuana—make a complete ban of marijuana within Port Gamble S’Klallam Tribal Lands ineffective and unrealistic and the Tribe has decriminalized its sale and possession in very limited circumstances as set forth in Title 5 of the Tribe’s Law and Order Code.
- c) The Tribe also finds that, particularly considering the commercial marijuana activity occurring throughout the State, raising funds

through the sale of marijuana in Tribal Lands is a useful economic development opportunity.

d) The Tribe therefore enacts this chapter in an effort to strictly regulate and control the production, distribution, sale, and use of marijuana on Tribal Lands and to protect the health, safety, and general welfare of the Port Gamble S'Klallam Tribe and its visitors.

[HIST: Source - Resolution No. 17-A-058, passed 4/24/17.]

#### 23.03.04 Authorized Entities

The Port Gamble S'Klallam Tribe and any tribal enterprise designated by the Tribe to engage in the marijuana business are the only persons or entities authorized to manufacture, process, package, deliver, distribute, or sell marijuana. Additionally, the Tribe and any tribal enterprise are the only persons or entities authorized to possess marijuana in quantities in excess of the quantities identified under Section 23.03.05 of this chapter, and in RCW 69.50.360(3). This authorization exists solely to the extent provided under Chapter 23.03 of the tribal code and under RCW 69.50.360.

The Tribe and/or its Tribal Enterprises may sell marijuana products within the jurisdiction of the Port Gamble S'Klallam Tribe under both the PGST Tribal Code and the Tribe's Compact with the State of Washington. Tribal members and Tribal Member Businesses are prohibited from conducting retail sales of marijuana products.

[HIST: Source - Resolution No. 17-A-058, passed 4/24/17.]

#### 23.03.05 Permitted Acts

The following acts, when performed by a tribal enterprise or by its employee in compliance with Tribal Law, shall not constitute criminal or civil offenses under Tribal law:

- a) Purchase and receipt of useable marijuana, marijuana concentrates, or marijuana-infused products that have been properly packaged and labeled from a tribal enterprise or a state-licensed producer or processor;
- b) Possession of useable marijuana, marijuana concentrates, or marijuana-infused products;

- c) Delivery, distribution, and sale of any combination of the following amounts of useable marijuana, marijuana concentrates, or marijuana-infused product to any person twenty-one (21) years of age or older:
  - 1) One ounce of usable marijuana;
  - 2) Sixteen (16) ounces of marijuana-infused product in solid form;
  - 3) Seventy-two (72) ounces of marijuana-infused product in liquid form; or
  - 4) Seven (7) grams of marijuana concentrates.
- d) Delivery, distribution, and sale of any combination of the following amounts of useable marijuana, marijuana concentrates, or marijuana-infused product to a qualifying patient or his or her designated provider, as those terms are defined under chapter 69.51A RCW, if the patient or provider is in possession of a valid authorization and recognition card, as defined under RCW 69.51A.010, and the patient is recorded in that database established under Section 21 of Chapter 70, Laws of 2015, Washington State (2SSB 5052):
  - 1) Forty-eight (48) ounces of marijuana-infused product in solid form;
  - 2) Three (3) ounces of useable marijuana;
  - 3) Two hundred sixteen (216) ounces of marijuana-infused product in liquid form; or
  - 4) Twenty-one (21) grams of marijuana concentrates.
- e) Producing, processing, packaging, and labeling marijuana, usable marijuana, and marijuana-infused products; and
- f) Delivery, distribution, and sale of useable marijuana or marijuana-infused products to an enterprise of the Tribe or to state licensed producers, processors, or retailers.

[HIST: Source - Resolution No. 17-A-058, passed 4/24/17.]

### 23.03.06 Tracking

Any tribal enterprise of the Port Gamble S’Klallam Tribe shall employ reasonable and effective inventory methods that allow marijuana to be tracked from seed to sale.

All tribal enterprises of the Port Gamble S'Klallam Tribe will input all Marijuana Products purchased from State Licensees into the State's tracking system within 24 hours of delivery.

[HIST: Source - Resolution No. 17-A-058, passed 4/24/17.]

### 23.03.07 Quality Assurance Tests

All enterprises of the Port Gamble S'Klallam Tribe engaged in the production or processing of marijuana shall employ third party laboratories to conduct quality assurance tests consistent with those specified under WAC 314-55-102 or successor regulations.

[HIST: Source - Resolution No. 17-A-058, passed 4/24/17.]

### 23.03.08 Security Procedures

All enterprises of the Port Gamble S'Klallam Tribe shall employ reasonable and effective security procedures and systems that safeguard marijuana from theft and diversion, including marijuana intended for destruction as waste.

[HIST: Source - Resolution No. 17-A-058, passed 4/24/17.]

### 23.03.09 Prohibited Sales—Location

Marijuana products may not be sold or advertised within, on, or within one thousand (1,000) feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or a skate park or within one hundred (100) feet of a public or private youth center, public swimming pool, or video arcade facility, or a church building or other building designated as a place of worship.

For the purposes of this section:

- a) The term "playground" means any outdoor facility (including any parking lot next to the playground) that is intended for recreation purposes, that is open to the public, and that has at least 2 separate structures that are intended for the recreation of children including, but not limited to, sliding boards, swing-sets, and teeterboards.
- b) The term "youth center" means any recreational facility and/or gymnasium (including any parking lot next to the center), that is

intended primarily for use by persons under eighteen (18) years of age, which regularly provides athletic, civic, or cultural activities.

c) The term "video arcade facility" means any facility, legally accessible to persons under eighteen (18) years of age, that is intended primarily for the use of pinball and video machines for amusement containing a minimum of ten (10) pinball and/or video machines.

d) The term "swimming pool" includes the pool area, any buildings, and any parking lot next to the pool building(s).

[HIST: Source - Resolution No. 17-A-058, passed 4/24/17.]

### 23.03.10 Advertising

Usable marijuana, marijuana concentrates, or marijuana-infused products sold within the jurisdiction of the Port Gamble S'Klallam Tribe may not contain any statement, or illustration that:

- a) Is false or misleading;
- b) Promotes consumption;
- c) Represents the use of marijuana as having curative or therapeutic effects;
- d) Depicts a child or other person under legal age consuming marijuana, or includes:
  - 1) 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 marijuana; or
  - 2) Is designed in any manner that would be especially appealing to children or other persons under twenty-one (21) years of age.

All advertising must contain the following warnings:

- a) "This product has intoxicating effects and may be habit forming";
- b) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";
- c) "There may be health risks associated with consumption of this product"; and

- d) "For use only by adults twenty-one and older. Keep out of the reach of children."

All advertising outside of the Port Gamble S'Klallam Tribe's jurisdiction must comply with RCW 69.50 and WAC 314-55.

[HIST: Source - Resolution No. 17-A-058, passed 4/24/17.]

### 23.03.11 Warnings Included with Marijuana Products

a) Marijuana Products sold at retail must include accompanying material that contains the following warnings that state:

- 1) "There may be health risks associated with consumption of this product";
- 2) "Should not be used by women who are pregnant or breast feeding";
- 3) "For use only by adults twenty-one and older. Keep out of reach of children";
- 4) "Marijuana and products containing marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug"; and
- 5) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production and processing.

b) In addition to the above warnings in subsection (a), usable marijuana sold at retail must also include accompanying material that contains the following warning that states:

"Warning: This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health."

In addition to the above warnings in subsection (a), marijuana concentrates and marijuana-infused products sold at retail must also include accompanying material that contains the following warnings that state:

- 1) "This product is infused with marijuana or active compounds of marijuana";
- 2) "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours"; and

- 3) Statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract.

[HIST: Source - Resolution No. 17-A-058, passed 4/24/17.]

### 23.03.12 Labels Affixed to Marijuana Products

a) Labels affixed to the container or package containing Marijuana Products sold at retail must include:

- 1) The business or trade name and Washington state unified business identifier number of the licensees that produced, processed, and sold the useable marijuana, or, if grown or processed within the Port Gamble S'Klallam Tribe's jurisdiction by a tribal enterprise, a statement to that effect;
- 2) Inventory ID number;
- 3) Date manufactured or date of harvest;
- 4) Warnings that state: "This product has intoxicating effects and may be habit forming"; and
- 5) Statement that "This product may be unlawful in some jurisdictions" or a comparable statement.

b) In addition to the above statements listed in subsection (a), labels affixed to the container or package containing useable marijuana sold at retail must include:

- 1) Concentration of THC, THCA, CBD, including a total of active cannabinoids (potency profile); and
- 2) Net weight in ounces and grams or volume as appropriate.

c) In addition to the above statements listed in subsection (a), labels affixed to the container or package containing marijuana-infused products sold at retail must include:

- 1) Best by date;
- 2) For products meant to be eaten or swallowed, recommended serving size and the number of servings contained within the unit, including total milligrams of active tetrahydrocannabinol (THC), or Delta 9;
- 3) Net weight in ounces and grams, or volume as appropriate;

- 4) List of all ingredients and any allergens;
  - 5) Warning statement that "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours"; and
  - 6) If a marijuana extract was added to the product, disclosure of the type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract.
- d) In addition to the above statements listed in subsection (a), labels affixed to the container or package containing marijuana concentrates sold at retail must include:
- 1) Best by date;
  - 2) Net weight in ounces and grams, or volume as appropriate;
  - 3) If a marijuana extract was added to the product, disclosure of the type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract;
  - 4) Concentration of THC (total Delta 9 and Delta 9 THC-A) and CBD;

[HIST: Source - Resolution No. 17-A-058, passed 4/24/17.]

### 23.03.13 Additional Requirements of Authorized Entities

- a) Minors. Authorizes enterprises of the Port Gamble S'Klallam Tribe that engage in Commercial Marijuana Activity shall not employ any persons under 21 years of age. Additionally, no enterprise shall allow any person under 21 years of age to enter a tribal facility that is engaged in Commercial Marijuana Activity.
- b) Producing. Production facilities may be located indoors or outdoors, provided that they are fully secure, have physical barriers, and meet Tribal and State safety and security protocols.
- c) Food Handler's Permit. All tribal employees who work in the manufacturing, production, packaging, processing, delivery, sale, and distribution of marijuana must obtain a Washington State Food Handler's Permit before beginning employment.
- d) Packaging. All marijuana-infused products meant to be eaten, swallowed, or inhaled must be packaged in child-proof packaging.



e) Records. Enterprises of the Port Gamble S'Klallam Tribe that engage in Commercial Marijuana Activity shall develop policies and procedures governing records to be maintained, security requirements, maximum quantities on premises, transport and delivery, and other matters related to the marijuana business.

[HIST: Source - Resolution No. 17-A-058, passed 4/24/17.]

#### 23.03.14 Retail Sales

Acceptable identification for proof of age includes: Driver's license, ID card, or Instruction Permit issued by any U.S. state or Canadian province; Washington temporary driver's license; Tribal enrollment card; passport from any nation; U.S. Military ID; or Merchant Marine card issued by U.S. Coast Guard.

The Tribe may conduct its own compliance checks in Tribal Land using minors ages 18, 19, or 20 through the Port Gamble S'Klallam Tribal Police Department or other authorized agency in accordance with Tribal regulations and policies. No criminal action may be taken against any minor who purchases marijuana as part of such a compliance check.

[HIST: Source - Resolution No. 17-A-058, passed 4/24/17.]

#### 23.03.15 Manager Background Investigations

Port Gamble S'Klallam Tribal enterprises that engage in Commercial Marijuana Activity shall require any person employed as a manager by such an enterprise to undergo a background investigation before he or she begins employment. The board of directors, or other managing body of the enterprise, will be responsible for ensuring that a background investigation on the manager's suitability is done. No such manager may have been convicted of, or entered a plea of guilty or no contest to, any of the following criminal offenses:

- 1) Any felony in the proceeding 10 years; and
- 2) Any crime involving dishonesty within the preceding ten (10) years, including, not exclusively: fraud; forgery; possession of a forgery device; theft; counterfeiting; embezzlement; making a false representation; obstruction of justice; intent to defraud; bribery; mail fraud; perjury; willful tax evasion; attempt, aiding and abetting a crime, or being an accessory, and/or involved in a conspiracy of a crime.

[HIST: Source - Resolution No. 17-A-058, passed 4/24/17.]

### 23.03.16 Indemnity

The Tribe shall indemnify any Tribal Council member, board member, manager, employee of the Tribe, or employee of a tribal enterprise, who is made party to a proceeding because of their role in Commercial Marijuana Activity against personal liability incurred in a proceeding if:

- a) The individual acted in his or her official capacity;
- b) The individual acted in good faith;
- c) The individual believed his or her conduct was in the best interests of the Tribe; and
- d) The individual acted in accordance with the laws, regulations, and policies of the Tribe and/or an enterprise of the Tribe.

[HIST: Source - Resolution No. 17-A-058, passed 4/24/17.]

### 23.03.17 Tribal Marijuana Tax

- a) There shall be a Tribal marijuana tax levied on all Commercial Marijuana Activity. The Tribal marijuana tax shall be equal to 100 percent of the Washington State Tax.
- b) The Tribal marijuana tax shall be remitted to the Tribe on a quarterly basis.
- c) The Tribe will use the proceeds of such tax for essential government services.
- d) No other tax besides the Tribal marijuana tax may be imposed on Commercial Marijuana Activity.
- e) The Tribe may allow an exemption from the Tribal marijuana tax in the following circumstances:
  - 1) For sales on marijuana grown, produced, or processed within Tribal Lands;
  - 2) For sales to the Tribe, to an enterprise of the Tribe, or to Tribal Members where the sale occurs within the jurisdiction of the Tribe;
  - 3) For activities that would otherwise be exempt under state or federal law; and

4) For medical marijuana products used in the course of medical treatments by a clinic, hospital, or similar facility owned and operated by the Tribe within the Tribe's jurisdiction.

[HIST: Source - Resolution No. 17-A-058, passed 4/24/17.]

## Chapter 23.04 Dental Health Provider Licensing

### *General Provisions*

#### 23.04.01 Purpose and Scope

The general purposes of this Chapter are:

- a) To establish a regulatory and licensing system for dental health providers that is based on and reflects the priorities and values of the Port Gamble S'Klallam Tribe;
- b) To regulate dental health providers to protect the health, safety and welfare of the Tribe and its members;
- c) To ensure that adequate minimum standards are established, maintained and adhered to by all of the Tribe's dental health providers;
- d) To set standards for dental health providers;
- e) To require certain dental health providers to have a Tribal License and engage in specific scopes of practice as authorized under this Chapter and their Tribal License;
- f) To assure dental health services are culturally relevant and comply with best practices;
- g) To promote and expand access to adequate numbers of dental health providers;
- h) To establish a legal and regulatory structure that will enable operation of the Port Gamble S'Klallam Tribe's dental program, to provide the highest quality dental services in the most efficient and culturally competent manner, making optimal use of the skills of Tribal employees, in order to maximize the health care resources available to the Tribe; and
- i) To reduce and then eliminate disparities in access to dental health care and in oral health experienced among Tribal members and other American Indians and Alaska Natives.

[HIST: Source - Resolution No. 18-A-012, passed 1/22/18. Creating the Dental Health Provider Licensing code will allow the Tribe to hire Dental Health Aide Therapists who are licensed by the Swinomish Indian Tribal Community. The Swinomish Indian Tribal Community (SITC) has developed and is implementing a comprehensive dental licensure program that allows SITC to serve as a regional licensing body for tribal dental health programs in Washington and Oregon.]

### 23.04.02 Sovereign Authority

The authority of the Tribal Council of the Port Gamble S'Klallam Tribe to adopt this ordinance as codified in this title is found in the Constitution of the Port Gamble S'Klallam Tribe and in the inherent sovereignty of the Port Gamble S'Klallam Tribe to regulate its own territory and activities therein.

[HIST: Source - Resolution No. 18-A-012, passed 1/22/18.]

### 23.04.03 Findings

The Port Gamble S'Klallam Tribe 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) The Tribe provides health care services and programs for Tribal members, including a comprehensive dental program under the Indian Self-Determination and Education Assistance Act.
- c) Oral health is necessary for overall health. Chronic pain, missing teeth, infections, and life-threatening emergencies can result from poor oral health care.
- d) American Indian and Alaska Native people have a higher prevalence of dental caries and untreated tooth decay in all age groups compared to the general population. American Indian and Alaska Native children ages two to five have nearly three times the United States average rate of dental decay.
- e) Indian Health Services (IHS) data from 2014 shows that in the Portland, Oregon IHS Area, 68 percent of those American Indian and Alaska Native children ages three to five screened had decay experience, and 35 percent had untreated decay.
- f) Oral health care disparities are attributable to factors including a lack of consistently available dental health professionals in the Indian health system.
- g) The Port Gamble S'Klallam Tribe wishes to increase the number of Native health care providers generally and Tribal health care providers in particular who provide services to Tribal members and other eligible Native Americans.

- h) The Alaska Native Tribal Health Consortium (ANTHC) developed a program to train and utilize dental health aide therapists in Alaska Native tribal health programs, which has operated successfully since 2003. A study by the University of Washington School of Dentistry published in 2016 found that since 2003, villages in the Yukon Delta in Alaska with DHATs, when compared to villages without DHATs, experienced the following outcomes:
- 1) 284% decrease in first four front teeth extractions for children under 3 years old;
  - 2) 26% decrease in extractions for adults;
  - 3) 60% increase in access to preventative care for children;
  - 4) 75% increase in access to preventative care for adults; and
  - 5) 44% decrease in the need to put children under general anesthesia for full mouth rehabilitations.
- i) The IHS's Community Health Aide Program Certification Board (CHAPCB) standards for Dental Health Aides, including dental health aide therapists, were adopted in 2002. Dental health aide therapists have practiced in accordance with international and IHS standards for mid-level dental practice since 2004. The ANTHC training program, which developed its two-year curriculum in conjunction with the University of Washington, satisfies all of the CHAPCB *Standards and Procedures*.
- j) The Alaska Tribal Health System Dental Health Aide Program and the CHAPCB standards are consistent with and will further the Port Gamble S'Klallam Tribe's goals for a tribal dental health program, to help increase the number of Native health care providers and to address oral health care disparities attributable to the lack of consistently available, culturally competent, long-term dental health professionals in the Indian health system.
- k) The CHAPCB *Standards and Procedures*, initially developed by IHS consistent with international standards for mid-level dental providers, have evolved since 2002 as experience has been gained utilizing such providers in Native communities. The CHAPCB *Standards and Procedures* serve as a well-informed and time-tested resource and inspiration for development of, and partial incorporation into, the licensing standards which have been developed by the Swinomish Indian Tribal Community.
- l) Oral health care services are most appropriately delivered by an effective, safe, and culturally competent workforce.

- m) More than half of the procedures that are currently performed by a dentist at tribal dental health care programs can be performed at lower cost by a dental therapist acting within the scope of his or her certification or Tribal license. A dental therapist meets the same standard of care as a dentist and provides services at a lower cost to the Tribe. By using dental therapists, the Tribe can use the limited financial resources of tribal dental health care programs more efficiently and increase the number of tribal members who can access and use the dental health care program.
- n) The Port Gamble S'Klallam Tribe desires for its dental program to provide the highest quality dental services in the most efficient and culturally competent manner, making optimal use of the skills of Tribal employees in order to maximize the health care resources available to the Tribe and its Tribal members. After reviewing the situation carefully, the Port Gamble S'Klallam Tribe has concluded that the licensing and employment of dental therapists and supervising dentists will substantially and materially assist in reaching that goal.
- o) Since 2015, the Swinomish Indian Tribal Community, Division of Licensing, has developed and is implementing a comprehensive dental licensure scheme under its inherent sovereign authority and its tribal health program to certify qualified dental health providers. The Swinomish Indian Tribal Community has successfully licensed dental health providers practicing at the Swinomish Dental Clinic, and the Swinomish Indian Tribal Community serves as a regional licensing body for tribal dental health programs operated by federally recognized tribes in Washington and Oregon.
- p) The Tribe does not wish to duplicate the same comprehensive licensure scheme put into place by the Swinomish Indian Tribal Community for Tribal Dental Health Providers, as doing so would be resource intensive and would create delays in the Tribe's ability to hire Dental Health Aides to begin providing services as quickly as possible, and thus the Tribe finds that implementing its own dental licensure scheme beyond what is provided in this Code is not feasible.
- q) The Port Gamble S'Klallam Tribe desires for the Swinomish Indian Tribal Community, Division of Licensing and the Dental Health Provider Licensing Board, to license the Port Gamble S'Klallam Tribe's employees who are Dental Health Aides and Dentists.

[HIST: Source - Resolution No. 18-A-012, passed 1/22/18.]

#### 23.04.04 Incorporation by Reference

Unless stated otherwise or inconsistent with any provision of this Code, the requirements for certification and practice of Dental Health Aides in

the CHAPCB *Standards and Procedures*, as amended, are incorporated by reference into this Code where indicated and shall apply as if set forth herein; *provided*, however, that in the event of a conflict or inconsistency between the CHAPCB *Standards and Procedures* and the Swinomish Indian Tribal Community's Dental Health Provider Licensing Code, under which the Port Gamble S'Klallam Tribe's Dental Health Aides and supervising dentists must be licensed in accordance with this Code, the provisions of the Swinomish Indian Tribal Community's Dental Health Provider Licensing Code shall control. These *Standards and Procedures* may be referred to as "CHAPCB" and shall be cited as "CHAPCB" followed by the applicable section number. The *Standards and Procedures* may currently be accessed online at the following link <http://www.akchap.org/html/chapcb.html> or by contacting the Alaska Community Health Aide Program (CHAP) directly.

[HIST: Source - Resolution No. 18-A-012, passed 1/22/18.]

#### 23.04.05 Definitions

For the purposes of this Chapter, unless explicitly stated otherwise, the following definitions shall apply:

- a) "Atraumatic restorative treatment" means a maximally preventive and minimally invasive approach to stop further progression of dental caries. It involves the removal of soft, completely demineralized carious tooth tissues with hand instruments, and is followed by restoration of the cavity with an adhesive dental material that simultaneously seals the remaining tooth structure that remains at risk.
- b) "Dental Health Aide" means primary dental health aides I and II, dental health aide hygienists, expanded function dental health aides I and II, and dental health aide therapists, except as used in CHAPCB Article 30 of Chapter 2 regarding requirements for special classes of dental health aides.
- c) "Dentist" means a person who is:
  - 1) In the employ of the United States government, providing dental services in the discharge of official duties and licensed as a dentist in one of the States of the United States;
  - 2) In the employ of the Tribe, providing dental services in the discharge of official duties and licensed as a dentist in one of the States of the United States; or
  - 3) Licensed as a dentist by the State of Washington.
- d) "Preceptorship" means a period of practical experience and training under either the direct supervision of a Dentist or a dental health aide



therapist, dental hygienist or dental health aide hygienist who is under the overall supervision of a Dentist.

- e) "Reservation" means all lands and waters within the exterior boundaries of the Port Gamble S'Klallam Tribe Reservation.
- f) "Tribal Dental Health Aide" means a Dental Health Aide (including a primary dental health aide I and II, dental health aide hygienist, expanded function dental health aide I and II, and dental health aide therapists), as these terms are defined in CHAPCB 1.20.010, who is employed by the Tribe and licensed in accordance with this Code.
- g) "Tribal Dental Health Provider" means a person who is employed by the Tribe and licensed as a Tribal Dentist or a Tribal Dental Health Aide in accordance with this Code.
- h) "Tribal Dentist" means a Dentist, as that term is defined under this Section, who is employed by the Tribe and licensed in accordance with this Code.
- i) "Tribal License" means a license issued under the Swinomish Indian Tribal Community's Dental Health Provider Licensing and Standards Code, Title 15, Chapter 11 of the Swinomish Indian Tribal Community's Tribal Code.
- j) "Tribe" means the Port Gamble S'Klallam Tribe.

All other words and phrases have their ordinary and customary meanings.

[HIST: Source - Resolution No. 18-A-012, passed 1/22/18.]

### ***Tribal Dental Health Provider Licensing Qualifications and Standards***

#### **23.04.06 Tribal License Required for Dental Health Aides and Dentists**

- a) Tribal License Required. The following employees of the Port Gamble S'Klallam Tribe, and persons who are eligible for employment by the Port Gamble S'Klallam Tribe, who carry out the Tribe's dental health program under the Indian Self-Determination and Education Assistance Act, shall obtain a Tribal License in order to practice within the Tribe's dental program, except as otherwise provided in this Code:
  - 1) A Dental Health Aide; and
  - 2) A Dentist, but only if the Dentist is or may be responsible for supervising a Dental Health Aide; *provided however* that the Tribe may determine that a Dentist who is or may be responsible for supervising a Dental Health Aide need not obtain a Tribal License

if the Tribe determines that the Dentist is otherwise shown to be qualified by training or experience to supervise a Dental Health Aide and the Dentist is or will provide other, higher levels of dental care to the Tribe's patients.

- b) Scope of Practice. All Tribal Dental Health Providers shall practice within the scope of practice and licenses granted to the Tribal Dental Health Provider, consistent with the Port Gamble S'Klallam Tribe's tribal law, and any applicable state or federal law.
- c) Prohibition of Unlicensed Practice.
  - 1) Except as otherwise provided in this Code, no person shall provide dental services as a Dental Health Aide or as a Dentist within the Port Gamble S'Klallam Tribe's dental health program without first applying for and being granted a Tribal License to provide such services as required by this Code, and continuing to maintain an active license in good standing. Such a Tribal Dental Health Provider whose Tribal License becomes inactive shall not provide dental services until the license is renewed or a new active license is issued.
  - 2) Notwithstanding the provisions of Section 23.04.06(c)(1) above, in order to preserve continuity of treatment and minimize disruption of dental services, a Dental Health Aide or Dentist who has a valid state license or CHAPCB certification may provide services, within the scope of the license or certification, for the Port Gamble S'Klallam Tribe's dental health program in the event of an unexpected absence of a Tribal Dental Health Provider whose position cannot be timely filled by another Tribal Dental Health Provider; *provided, however*, that each such state-licensed or CHAPCB-certified provider shall provide temporary services without obtaining a Tribal License for no more than fourteen (14) business days in a calendar year.
- d) Dental health care providers employed by the Tribe who are not Dental Health Aides, and Dentists who will never supervise a Dental Health Aide, are not required to obtain a Tribal License.

[HIST: Source - Resolution No. 18-A-012, passed 1/22/18.]

#### 23.04.07 Supervision Requirements for Tribal Dental Health Aides

A Tribal Dental Health Aide must comply with the following:

- a) The supervision requirements of CHAPCB 2.30.010 or any supervision requirements imposed as a condition of a Tribal License that the Tribal Dental Health Aide holds; *provided, however*, that for purposes of this subsection the employment requirement in CHAPCB 2.10.010(a)(9)(A)

shall be read to require that the supervising individual be employed by the Port Gamble S'Klallam Tribe; and

- b) Any conditions imposed by the Tribal Dental Health Aide's clinical supervisor or by the Tribe's health director who supervises the Dental Clinic.

[HIST: Source - Resolution No. 18-A-012, passed 1/22/18.]

#### 23.04.08 Scope of Practice for a Tribal Dental Health Aide Prior to Obtaining a Tribal License

A person who is employed by the Port Gamble S'Klallam Tribe may perform services of a Dental Health Aide prior to being licensed in accordance with this Code. The extent of the services that may be performed are as follows:

- a) As part of training required for licensing;
- b) As part of preceptorship required under CHAPCB sections 2.30.100(b), 2.30.220(c)(1)(B) or (c)(2), 2.30.230(d), 2.30.240(c)(1)(D) or (c)(2), 2.30.250(c), 2.30.260(d), 2.30.400(b), 2.30.500(b), 2.30.550(d), or 2.30.600(3);
- c) As authorized by a provisional Tribal License;
- d) By a person who has been previously certified as a Dental Health Aide by the Indian Health Service and is undergoing a further preceptorship so that the supervising Tribal Dentist can evaluate his or her skills prior to making recommendations for licensing; or
- e) While an application for a Tribal License is pending, after successful completion of all required training and preceptorships.

[HIST: Source - Resolution No. 18-A-012, passed 1/22/18.]

#### 23.04.09 Training, Education, Supervision, and Competency Requirements

##### a) Dental Health Aides.

1) A person to be licensed or who is licensed in accordance with this Code as a Tribal Dental Health Aide must satisfy and comply with the requirements for training, education, supervision, and competencies, as required by the Swinomish Indian Community Dental Health Provider Licensing Board and the Swinomish Indian Tribal Community Dental Health Provider Licensing and Standards Code, as applicable.

2) An applicant to be licensed as a Dental Health Aide must demonstrate that the person has formal education, training, and/or

personal or professional experience that would be reasonably expected to result in cultural competency.

3) A person who otherwise satisfies the requirements of this Section to be licensed must agree to limit his or her scope of practice to that authorized under his or her Tribal License and any further limitations imposed by his or her supervisor.

b) Dentists. A person to be licensed or licensed in accordance with this Code as a Tribal Dentist must also satisfy and comply with the following requirements for training, education, supervision, and competencies:

1) Possess and maintain an active license as a Dentist in a State of the United States, as prescribed in Section 23.04.05 (c);

2) Report to the Port Gamble S'Klallam Tribe and the Swinomish Indian Community Dental Health Provider Licensing Board any limitation on the license required under subsection (A);

3) Demonstrate that the person has formal education, training, and/or personal or professional experience that would be reasonably expected to result in cultural competency;

4) Agree to limit his or her scope of practice to that authorized under his or her State or Tribal License and any further limitations imposed by his or her supervisor; and

5) Have experience working with and supervising Dental Health Aides or have completed a course acceptable to the Tribe and the Swinomish Indian Tribal Community's Dental Health Provider Licensing Board regarding supervision of Dental Health Aides.

[HIST: Source - Resolution No. 18-A-012, passed 1/22/18.]

#### 23.04.10 Continuing Education

a) Tribal Dental Health Aides. A Tribal Dental Health Aide must comply with all requirements for continuing education identified in CHAPCB 3.10.050 and, if licensed to perform dental radiology, the additional requirements of CHAPCB 2.30.240(c). Approved continuing education programs for a Tribal Dental Health Aide must also satisfy the requirements of CHAPCB 3.10.200, provided:

1) Sponsoring organizations under CHAPCB 3.10.200(b) may also include any state dental society or association or any state dental hygiene society or association; and

(2) The Swinomish Indian Tribal Community's Division of Licensure may approve a continuing education program or self-study education program consistent with the Community's Dental Health

Provider Licensure Code and the requirements of CHAPCB 3.10.200(c) or (d).

- b) Tribal Dentists. A Tribal Dentist must satisfy all continuing education requirements required by each jurisdiction in which the Tribal Dentist is licensed and any additional requirements imposed by the Port Gamble S'Klallam Tribe's dental program.

[HIST: Source - Resolution No. 18-A-012, passed 1/22/18.]

#### 23.04.11 Tribal Dental Health Aide Training and Curriculum

Tribal Dental Health Aide training and curriculum must satisfy the requirements of CHAPCB Chapter 7 or their equivalent, provided that training or curriculum that does not directly satisfy the requirements of CHAPCB must be presented to the Swinomish Indian Tribal Community Dental Health Provider Licensing Board for review and approval.

[HIST: Source - Resolution No. 18-A-012, passed 1/22/18.]

#### ***Tribal Law Recognizing and Complying with Swinomish Indian Tribal Community (SITC) Dental Health Provider Licensing and Standards Code***

#### 23.04.12 Tribe and Tribal Dental Health Providers Bound By Tribal License and SITC Dental Health Provider Licensing and Standards Code; Preservation of Tribal Law

- a) As a matter of Tribal Law, the Tribe's Dental Health Aides and Dentists who have applied for a Tribal License and/or were issued a Tribal License in accordance with this Code shall be subject to and fully comply with all applicable law governing the Tribal License, including but not limited to the Swinomish Indian Tribal Community Dental Health Provider Licensing and Standards Code, Title 15, Chapter 11 of the Swinomish Indian Tribal Community Tribal Code, and abide by all decisions of the Swinomish Indian Tribal Community's Division of Licensing and Dental Health Provider Licensing Board, the Swinomish Tribal Court, and the Swinomish Tribal Court of Appeals.
- b) As a matter of Tribal law, the Tribe formally recognizes and agrees to be bound by all procedural requirements imposed on Tribal Dental Health Providers and applicants for a Tribal License by the Swinomish Indian Tribal Community's Division of Licensing and Dental Health Provider Licensing Board under applicable law of the Swinomish Indian Tribal Community, including but not limited to the Swinomish Indian Tribal Community Dental Health Provider Licensing and

Standards Code, Title 15, Chapter 11 of the Swinomish Indian Tribal Community Tribal Code.

- c) As a matter of Tribal law, the Tribe formally recognizes and agrees to abide by and implement all decisions related to applications for a Tribal License and Tribal Licenses issued to Tribal Dental Health Aides and Tribal Dentists by the Swinomish Indian Tribal Community's Division of Licensing and Dental Health Provider Licensing Board, the Swinomish Tribal Court, and the Swinomish Tribal Court of Appeals, in accordance with applicable law of the Swinomish Indian Tribal Community, including but not limited to the Swinomish Indian Tribal Community Dental Health Provider Licensing and Standards Code, Title 15, Chapter 11 of the Swinomish Indian Tribal Community Tribal Code. This includes, without limitation, the following:
  - 1) Denial of an application for a Tribal License;
  - 2) Issuance of a Tribal License, including a provisional restricted license;
  - 3) Scope of practice, supervision, training, education, and competency requirements;
  - 4) Investigations;
  - 5) All disciplinary determinations, including but not limited to permanent revocation of a Tribal License, suspension of a Tribal License, public or private censure, public or private letter of reprimand, probationary status, surrender of a Tribal License, and other such sanctions.
- d) The Tribe may, separate from and in addition to the disciplinary sanctions outlined in Sections 23.04.12 (c)(5) of this Code, impose a disciplinary sanction on any person holding a Tribal License under this Code if the Tribe itself finds that the person has violated any of the conditions applicable to Dental Health Aides set out in CHAPCB 4.10.010, or has committed an act that under Tribal law or policy would merit disciplinary action and/or disqualify the person from receiving a Tribal License under this Code.

[HIST: Source - Resolution No. 18-A-012, passed 1/22/18.]

#### 23.04.13 Reporting for Investigation

Whenever a person has a reasonable basis to believe that a Tribal Dental Health Provider licensed under this Code has committed an action that would, if substantiated, constitute ground for discipline under Tribal law or policy, or under the Swinomish Indian Tribal Community's Dental Health Provider Licensing and Standards Code, that person may file a

written report with the Tribe's Health Services Director stating the facts of the alleged action or inaction and the basis for believing them to be true. The Tribe's Health Services Director shall thereafter coordinate with the Swinomish Indian Tribal Community Division of Licensing, as applicable.

[HIST: Source - Resolution No. 18-A-012, passed 1/22/18.]

#### 23.04.14 Memorandum of Agreement

In order for the Swinomish Indian Tribal Community's Division of Licensing, Dental Health Provider Licensure Board to license the Tribe's Dental Health Aides and Dentists, the Tribe shall put in place a Memorandum of Agreement with the Swinomish Indian Tribal Community that provides for the following, at a minimum:

- a) That the individual licensed or to be licensed as a Tribal Dental Health Provider is subject to the following in connection with such licensure:
  - 1) The authority of the Swinomish Indian Tribal Community, including but not limited to the Division of Licensing, Dental Health Provider Licensing Board, the Swinomish Tribal Court and the Swinomish Tribal Court of Appeals, and
  - 2) All applicable Swinomish Tribal law, in addition to Title 15, Chapter 11 of the Swinomish Indian Tribal Community Tribal Code, and
  - 3) The enforcement of such law by the Swinomish Indian Tribal Community in accordance with Subchapters V and VI of Title 15, Chapter 11 of the Swinomish Indian Tribal Community Tribal Code, including without limitation the authority of the Swinomish Tribal Court and Swinomish Tribal Court of Appeals.
- b) To be bound by Title 15, Chapter 11 of the Swinomish Indian Tribal Community Code, including without limitation the Swinomish Indian Tribal Community's continuing responsibility for oversight of the Tribal Dental Health Provider's licensure.
- c) To comply with Washington State Substitute Senate Bill 5079 (effective July 23, 2017).
- d) That the Tribe has tribal law in place—see Section 23.04.06 (c) of this Code—prohibiting any person from providing services as a Dental Health Aide on the Tribe's reservation without a valid Tribal License, and that any such providers with such a valid license shall maintain the license in good standing.
- e) That the Tribe and any of its employees applying to be licensed or who are licensed as a Tribal Dental Health Provider will abide by all

decisions of the Swinomish Indian Tribal Community in connection with such a license, including without limitation the decisions made by the Dental Health Provider Licensing Board, the Division of Licensing, the Swinomish Tribal Court and the Swinomish Tribal Court of Appeals, in accordance with Title 15, Chapter 11 of the Swinomish Indian Tribal Community Tribal Code.

- f) That the Tribe will pay all fees or charges assessed or incurred by the Swinomish Indian Tribal Community for the filing, investigation, consideration, and determination of an application for licensure filed by an individual who is or will be an employee of the Tribe.
- g) That any Dental Health Aide applying for a Tribal License or who was issued a Tribal License as required by this Code, is an employee within the Tribe's comprehensive dental program and will provide only certain dental services in accordance with his or her Tribal License and applicable State law, and will be supervised by a Dentist who either has a Tribal License under this Code or is otherwise shown to be qualified by training or experience to supervise a Dental Health Aide, and that the Dentist will provide the other, higher levels of dental care to the Tribe's patients.
- h) That the Tribe will determine and certify to the Swinomish Indian Tribal Community whether the individual meets the Tribe's required standard of cultural competence in order to practice in the Tribe's dental health program.

[HIST: Source - Resolution No. 18-A-012, passed 1/22/18.]

### *Enforcement and Sovereign Immunity*

#### 23.04.15 Enforcement

The Tribe's Tribal Council shall take any action authorized by this Code to ensure compliance with or to prevent violation of this Code. In the event that the Tribal Council determines that a person is in violation of this Code, failure to correct the violation within thirty (30) days shall subject the violator to civil remedies set forth in Title 3 Civil Actions of the Tribe's Law and Order Code.

[HIST: Source - Resolution No. 18-A-012, passed 1/22/18.]

#### 23.04.16 Sovereign Immunity

Except as otherwise provided in a Memorandum of Agreement entered into in accordance with Section 23.04.14 of this Code, the sovereign immunity of the Tribe is not in any way waived or limited by this Code, or by any action commenced pursuant to this Code, and nothing in this Code



shall constitute or be construed as a waiver of the sovereign immunity of the Tribe. Such sovereign immunity shall extend to the Tribe, all Tribal officials, employees, any individual or entity with whom the Tribe has contracted to provide services pursuant to or in accordance with this Code, as to all actions taken in, or concerning, the administration or enforcement of this Code, and as to all actions taken pursuant to any authority of any action, decision or order authorized by this Code.

[HIST: Source - Resolution No. 18-A-012, passed 1/22/18.]