

TITLE 11. COMMERCE

Chapter 11.10

COMMERCIAL MARIJUANA ACTIVITY

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11.10.1. Title. This chapter is known as the “Suquamish Commercial Marijuana Activity Ordinance.” (Res. 2015-133 (part), passed Jun. 22, 2015)

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

(a) “Authorization” has the same meaning as in RCW 69.51A.010.

(b) “Commercial marijuana activity” means all planting, growing, producing, cultivating, processing, and selling marijuana, marijuana concentrates, marijuana-infused products, and useable marijuana in Indian Country in accordance with Suquamish Tribal laws that govern medical and recreational marijuana.

(c) “Compact” means an agreement between the Tribe and the state or the LCB regarding marijuana.

(d) “Designated provider” has the same meaning as in RCW 69.51A.010.

(e) “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.

(f) “Indian Country” means the lands of the Suquamish Indian Tribe as defined by 19 U.S.C. § 1151, including the Tribe’s Port Madison Indian Reservation and all lands held in trust or restricted fee status by the United States for the Tribe or its Tribal Members.

(g) “LCB” means the Washington State Liquor Control Board or Washington State Liquor and Cannabis Board.

(h) “Marijuana,” “marijuana concentrates,” “marijuana-infused products,” and “useable marijuana” have the same meanings as in RCW 69.50.101 or any amendments thereto. Together, such terms are known as “marijuana products.”

(i) “Medical marijuana authorization database” has the same meaning as in RCW 69.51A.010.

(j) “PME” means Port Madison Enterprises, the agency of the Tribe set forth in STC 11.4.

(k) “Qualifying patient” has the same meaning as in RCW 69.51A.010.

(l) “Recognition card” has the same meaning as in RCW 69.51A.010.

(m) “SEC” means the Suquamish Evergreen Corporation, a wholly owned subsidiary of PME.

(n) “State” means the State of Washington.

(o) “State licensee” means any entity licensed by the LCB pursuant to RCW 69.50 or WAC 314-55, as amended.

(p) “State tax” means the marijuana excise tax as stated in RCW 69.50.535 and the state and local sales and use tax on sales of marijuana as stated in RCW 82.08 and RCW 82.12, all as may be amended from time to time.

(q) “STC” means the Suquamish Tribal Code.

(r) “Tribal Council” means the Suquamish Tribal Council.

(s) “Tribal member” means an enrolled member of the Tribe.

(t) “Tribe” means the Suquamish Tribe of Indians. (Res. 2015-133 (part), passed Jun. 22, 2015; amended and renumbered by Res. 2016-086, passed Jun. 20, 2016)

11.10.3. 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, marijuana concentrates, useable marijuana, and marijuana-infused products for recreational purposes within the state.

(b) While the federal controlled Substances Act continues to designate marijuana as a Schedule I substance, on August 29, 2013, the United States Department of Justice issued a memorandum to all United States Attorneys setting forth guidance regarding marijuana enforcement. In that memo, James M. Cole, Deputy Attorney General, set forth eight enforcement priorities of particular importance to the federal government, including: preventing the distribution of marijuana to minors; preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; preventing the diversion of marijuana from states where it is legal under state law in some form to other states; preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; preventing violence and the use of firearms in the cultivation and distribution of marijuana; preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and preventing marijuana possession or use on federal property. The memo goes on to indicate that the focus of federal law enforcement resources and efforts will be on those persons whose conduct interferes with the stated priorities and that state and local governments should provide sufficiently robust regulatory and enforcement systems to protect against these harms.

(c) On October 28, 2014, the United States Department of Justice issued another memorandum to all United States Attorneys providing a policy statement regarding marijuana issues in Indian Country. In that memo, Monty Wilkinson, Director, acknowledged that “[t]he eight priorities in the Cole Memorandum will guide United States Attorneys’ marijuana enforcement efforts in Indian Country, including in the event that sovereign Indian Nations seek to legalize the cultivation or use of marijuana in Indian Country.” That memo effectively treats tribal governments the same as state governments in the decision to legalize marijuana.

(d) 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 Indian Country ineffective and unrealistic and has decriminalized its sale and possession in very limited circumstances as set forth in the STC 7.26.

(e) The Tribe also finds that, particularly considering the commercial marijuana activity occurring throughout the state, raising funds through the sale of marijuana in Indian Country is a useful economic development tool.

(f) The Tribe therefore enacts this chapter in an effort to strictly regulate and control the production, distribution, sale, and use of marijuana in Indian Country, consistent with the Department of Justice's eight priorities and to protect the health, safety, and general welfare of the Tribe and to visitors to Indian Country. (Res. 2015-133 (part), passed Jun. 22, 2015)

11.10.4. Establishment and Delegation. The Tribal Council does hereby establish and approve the charter for SEC and does hereby delegate the sole authority to locate, manage, and operate all commercial marijuana activity on behalf of the Tribe to SEC, subject to oversight by the Tribal Council as stated herein and in the charter for SEC. The authority to enact that charter is pursuant to the Constitution and Bylaws of the Suquamish Tribe, Article III, Section 1 (a), (b), (c), (f), and (i). (Res. 2015-133, passed Jun. 22, 2015)

11.10.5. Negotiations with the State. The Tribal Council does hereby authorize and delegate the authority to SEC to negotiate a compact with the state for all commercial marijuana activity within Indian Country. (Res. 2015-133, passed Jun. 22, 2015)

11.10.6. Tribal Marijuana Tax.

(a) There is a tribal marijuana tax equal to one hundred percent (100%) of the state tax then in effect levied on all commercial marijuana activity.

(b) The tribal marijuana tax must 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 Indian Country;

(2) for sales to the Tribe, SEC, or tribal members that occur in Indian Country;

(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 its Indian Country.

SEC has discretion to determine which exemptions may be implemented, except that SEC will not substitute its determination for that of Tribal Council. (Res. 2015-133 (part), passed Jun. 22, 2015; amended by Res. 2016-086 (part), passed Jun. 20, 2016)

11.10.7. Producing and Processing of Marijuana Products.

(a) Buffers. No producing or processing of marijuana products may occur within one thousand (1,000) feet of a school or playground.

(b) Minors. No persons under twenty-one (21) years of age may enter or be employed at a producing or processing facility.

(c) Producing. Production facilities may be located indoors or outdoors, provided that they are fully secure, have physical barriers, and meet safety and security protocols as outlined more specifically by SEC policy.

(d) Processing. All processing facilities must meet the standards as would be required for food handling under Indian Health Services requirements.

(e) Testing. Before sale to any retailer, marijuana products must be tested by a tribally or state-licensed lab that follows quality assurance testing protocols at least as restrictive as state law.

(f) Packaging and Labeling. All marijuana products must be packaged and labeled in accordance with SEC policy. Packaging and labeling designed to be especially appealing to children are prohibited. All marijuana-infused products meant to be eaten, swallowed, or inhaled must be packaged in child proof packaging.

(g) Sales to State Licensees. All marijuana products sold by SEC to a state licensee must meet the testing, packaging, and labeling requirements otherwise required under state law. Such sales must be input into the state's traceability system.

(h) Conditions of sale. SEC will develop policies and procedures governing records to be maintained, security requirements, maximum quantities on premises, transport and delivery, and other matters related to the production and processing of marijuana products. SEC will provide such policies and procedures to Tribal Council upon request and at least annually. (Res. 2015-133 (part), passed Jun. 22, 2015)

11.10.8. Purchase and Sale of Marijuana Products.

(a) SEC may purchase marijuana products only from (1) other tribes with sufficiently robust regulatory schemes sufficient to meet the Department of Justice's eight priorities or (2) state licensees.

(b) All marijuana products purchased from state licensees will be inputted into the state's tracking system within twenty-four (24) hours of delivery. (Res. 2015-133 (part), passed Jun. 22, 2015)

11.10.9. Retail Sales of Marijuana Products.

(a) Buffers. No retail locations may be located within one thousand (1,000) feet of a school or playground.

(b) Minors. No persons under twenty-one (21) years of age may enter or be employed at a retail facility, except that a qualifying patient between eighteen (18) and twenty-one (21) years of age may enter a retail facility if (1) the qualifying patient enters the retail facility for the purpose of having his or her authorization entered into the medical marijuana authorization database or (2) the qualifying patient has already been entered into the medical marijuana authorization database and hold a valid recognition card and seeks to purchase products for his or her personal medical use.

(1) 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.

(2) The Tribe may conduct its own compliance checks in Indian Country using minors ages eighteen (18), nineteen (19), or twenty (20) through the Suquamish 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.

(c) Advertising. Any advertising located outside of Indian Country must comply with RCW 69.50 and WAC 314-55.

(d) Maximum sales.

(1) No retail location may sell more than one (1) ounce of useable marijuana, sixteen (16) ounces of marijuana-infused product in solid form, seventy-two (72) ounces of marijuana-infused product in liquid form, or seven (7) grams of marijuana concentrate in a single transaction.

(2) Beginning July 1, 2016, no retail location may sell more than three (3) ounces of useable marijuana, forty-eight (48) ounces of marijuana-infused product in solid form, two hundred sixteen (216) ounces of marijuana-infused product in liquid form, or twenty-one (21) grams of marijuana concentrate to a qualifying patient or designated provider who has been entered into the medical marijuana authorization database and holds a valid recognition card pursuant to and in compliance with state law, and who is eighteen (18) years of age or older.

(e) Conditions of sale. SEC must develop policies and procedures governing records to be maintained, security requirements, advertising, maximum quantities on premises, transport and delivery, and other matters related to retail sales. SEC will provide such policies and procedures to Tribal Council upon request and at least annually. (Res. 2015-133 (part), passed Jun. 22, 2015; amended by Res. 2016-086 (part), passed Jun. 20, 2016)

11.10.10. Licensing and Background Investigations.

(a) SEC. SEC need not be licensed and will be established by charter. However, Tribal Council may revoke the charter of SEC if it fails to meet its obligations under this chapter or under any compact.

(b) Tribal Member Businesses. No such licenses for any purpose will be issued at this time.

(c) Employees of SEC. Only the manager, as that term is defined in the charter, who will “exercise control” over SEC will be required to undergo a background investigation before he or she is employed by SEC. The board of directors of SEC 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 preceding ten (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, being an accessory, and/or conspiracy. (Res. 2015-133, passed Jun. 22, 2015)

11.10.11. Indemnity.

(a) The Tribe indemnifies any Tribal Council member, board member, manager, or employee of the Tribe, PME, or SEC made party to a proceeding because of their role in commercial marijuana activity against personal liability incurred in a proceeding if:

(1) The individual acted in his or her official capacity;

(2) The individual acted in good faith;

(3) The individual believed his or her conduct was in the best interests of the Tribe; and

(4) The individual acted in accordance with the laws, regulations, and policies of the Tribe and/or SEC.

(b) "Proceeding" means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal related to the production, processing, or sale of marijuana.

(c) "Liability" means the obligation to pay a judgment, settlement, penalty, or fine, or reasonable expenses incurred with respect to a proceeding. (Res. 2015-133 (part), passed Jun. 22, 2015)

11.10.12. Medical Marijuana.

(a) SEC is hereby authorized to produce, process, and sell marijuana for medical use to qualifying patients and designated providers in accordance with the provisions of this chapter.

(b) The Tribal Council does hereby authorize and delegate the authority to SEC to negotiate an agreement with the Washington State Department of Health related to the entry of data into and use of the medical marijuana authorization database.

(c) SEC is hereby authorized to accept valid authorizations and enter the data of qualifying patients and designated providers into the medical marijuana authorization database.

(1) The medical marijuana authorization database is only to be accessed by SEC employees with proper training in accordance with SEC policies and procedures. SEC must provide such policies and procedures to Tribal Council upon request and at least annually.

(2) The medical marijuana authorization database may also be accessed by Suquamish Tribal Police engaged in a bona fide specific investigation of a suspected marijuana-related activity that may be illegal under tribal or state law to confirm the validity of the recognition card of a qualifying patient or designated provider.

(3) Contents of the medical marijuana authorization database are considered confidential and may not be reviewed or disclosed except as otherwise stated herein. Penalties for improper disclosure of information from the medical marijuana authorization database are listed in chapter 7.26. (Res. 2015-133 (part), passed Jun. 22, 2015; amended by Res. 2016-086 (part), passed Jun. 20, 2016)

11.10.13. Compliance. The Suquamish Tribal Police will conduct compliance checks consistent with the checklist authorized by Tribal Council. In the event of a finding of non-compliance, the Suquamish Tribal Police will document the event on the checklist

form, and work cooperatively with the employees of SEC to ensure that the issue is understood and corrected. The Suquamish Tribal Police will check those same areas for compliance on future inspections. If the issue is serious or long-going, the Suquamish Tribal Police will report its findings to Tribal Council, after which, at the discretion of Tribal Council, SEC and the Suquamish Tribal Police will meet to resolve non-compliance and prevent future non-compliance. (Res. 2016-086 (part), passed Jun. 20, 2016)

Note: All subsections in this chapter have been renumbered for consistency as follows. (Res. 2016-090, Jun. 20, 2016)

All upper case letters (A, B, C, etc.) used as subsection headings have been changed to lower case letters (a, b, c, etc.)

All lower case Roman numerals (i, ii, iii, etc.) have been changed to Arabic numerals (1, 2, 3, etc.)

Example: What was previously 11.10.6(E)(i) is now 11.10.6(e)(1)