

TITLE 11. COMMERCE

Chapter 11.2

LIQUOR

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11.2.1. Title. This chapter shall be known as the "Suquamish Tribal Liquor Ordinance." (Res. 85-080 §1, passed Sept. 24, 1985)

11.2.2. Findings and Purpose. (a) The introduction, possession, and sale of liquor on Indian reservations since treaty time have been clearly recognized as matters of special concern to Indian tribes and to the United States. The control of liquor on reservations remains exclusively subject to their legislative enactments.

(b) Beginning with the Treaty of Point Elliott, Statute 927, Article 10, to which the Suquamish Tribe was party, the federal government has respected this Tribe's determinations regarding liquor-related transactions and activities on the Port Madison Indian Reservation. At treaty time, this Tribe desired to exclude "ardent spirits" from its reservation; and federal law currently prohibits the introduction of liquor into Indian country (18 USC 1154), leaving to tribes the decision regarding when and to what extent liquor transactions shall be permitted (18 USC 1161).

(c) Present-day circumstances make a complete ban of liquor within the Port Madison Indian Reservation ineffective and unrealistic. At the same time, a need exists for strict tribal regulation and control over liquor distribution.

(d) The enactment of a tribal ordinance governing liquor sales on the reservation providing for exclusive purchase and sale through Port Madison Enterprises will

increase the ability of the tribal government to control reservation liquor distribution and possession and at the same time will provide an important source of revenue for the continued operation of the tribal government and delivery of government services.

(e) In order to provide for increased tribal control over liquor distribution and possession on the reservation and to provide for urgently needed additional revenue, the Suquamish Tribal Council adopts this liquor ordinance. (Res. 85-080 §2, passed Sept. 24, 1985)

11.2.3. Definitions. Unless otherwise required by the context, the following words and phrases shall have the designated meanings.

(a) "Sale" and "sell" include exchange, barter, and traffic and also the selling or supplying or distribution, by any means whatsoever, of liquor, of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor, or of wine by any person to any person; they also include a sale or selling within the state to a foreign consignee or his or her agent in the state.

(b) "Wholesale price" shall mean the established price for which liquor, beer, and wine products are sold to the Suquamish Tribe or any licensed operator by the manufacturer or distributor, exclusive of any discount or other reduction.

(c) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, sugar, or other substance including all dilutions and mixtures of those substances.

(d) "Liquor" or "liquor products" includes the four varieties of liquor herein defined (alcohol, beer, spirits, and wine), all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous, or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine, or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, or other substance which contains more than one percent (1%) of alcohol by weight shall be conclusively deemed to be intoxicating.

(e) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent (17%) of alcohol by weight.

(f) "Wines" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar to which any saccharine substances may have been added before, during, or after fermentation and containing not more than seventeen percent (17%) of alcohol by weight.

(g) "Liquor outlet" shall mean a tribally owned or licensed retail sales business selling liquor, beer, or wine on the Port Madison Indian Reservation.

(h) "Operator" shall mean an enrolled member of the Suquamish Tribe employed by or licensed by the Suquamish Tribe to operate a liquor outlet. (Res. 85-080 §3, passed Sept. 24, 1985)

11.2.4. Relation to Other Tribal Laws. All prior ordinances and resolutions of the Suquamish Tribe regulating, authorizing, prohibiting, or in any way dealing with the sale of liquor are hereby repealed and of no further force and effect. No tribal business licensing law or other tribal law shall be applied in a manner inconsistent with the provisions of this chapter. (Res. 85-080 §4, passed Sept. 24, 1985)

11.2.5. Prohibitions. The introduction, purchase, sale, and dealing in liquor, other than by the Suquamish Tribe through its tribal enterprise or its licensees, is prohibited within the Port Madison Indian Reservation and is declared an offense under tribal law. Possession of liquor by any person now prohibited by federal law shall be lawful so long as the possession is in conformity with this chapter. Federal Indian liquor laws shall remain applicable to any act or transaction which is not authorized by this chapter, and violators of this chapter shall be subject to federal prosecution as well as legal action in accordance with tribal law. (Res. 85-080 §5, passed Sept. 24, 1985)

11.2.6. Conformity with State Law. Tribally authorized liquor transactions shall comply with Washington State liquor law standards to the extent required by 18 USC 1161. (Res. 85-080 §6, passed Sept. 24, 1985)

11.2.7. Liquor Enterprise Created. (a) The Suquamish Tribal Liquor Enterprise is hereby established. The liquor enterprise is constituted as an agency of the Suquamish tribal government.

(b) The liquor enterprise shall be responsible for the management, distribution, and control of all liquor products as authorized in this chapter within the Port Madison Indian Reservation. (Res. 85-080 §7, passed Sept. 24, 1985)

11.2.8. Liquor Enterprise Manager. The Suquamish Tribal Council shall appoint a liquor enterprise manager, who shall have the following powers and duties.

(a) To manage the liquor division for the benefit of the Suquamish Tribe.

(b) To purchase, in the name of the Suquamish Tribe, liquor products from wholesale distributors and distribute them to such tribal outlets as appropriate.

(c) To establish, with the liquor commission and subject to its approval, such administrative procedures as are necessary to govern the operation of the liquor enterprise.

(d) To report and account to the Tribal Council at least twice a year regarding the operation and financial status of the liquor enterprise. The Tribal Council shall establish the dates on which such accounting shall take place. The Tribal Council may require more frequent accounting if it deems necessary. The manager's reports and all written records of the Tribal Council's proceedings in regard to the liquor enterprise shall be available for inspection by any Suquamish tribal member upon request.

(e) With Suquamish Liquor Commission approval, to hire and set the salaries of additional personnel, as the liquor enterprise manager determines are necessary to the successful operation of the liquor enterprise.

(f) To supervise all liquor enterprise employees.

(g) To purchase, with Tribal Council approval, and to maintain the liquor enterprise real and personal property.

(h) To maintain all liquor enterprise revenues in a special account, under direction from the tribal treasurer. Funds may be withdrawn from this account by the liquor enterprise manager for the wholesale purchase of liquor products to be sold pursuant to this chapter, for payment of salaries and business expenses of employees of the liquor enterprise, and for the purchase and upkeep of real and personal property required for the liquor enterprise's operation.

(i) To set the retail price for all liquor products sold pursuant to this chapter in cooperation with the liquor commission.

(j) To obtain and maintain in full force and effect a policy of general liability insurance covering the premises in an amount set by the Tribal Council. The policy shall contain the stipulation that the Suquamish Tribe shall be given ten (10) days' notice of the proposed cancellation or expiration of such policy and shall have available for inspection a complete copy of such policy.

(k) The liquor enterprise manager shall be bonded for such additional amount and for such additional purposes as the Tribal Council deems to be appropriate in managing the liquor enterprise. (Res. 85-080 §7.3, passed Sept. 24, 1985)

11.2.9. Suquamish Liquor Commission. There is hereby created a Suquamish Liquor Commission. The members of the Suquamish Tribal Council shall serve as the Suquamish Liquor Commission. The liquor commission is empowered to:

(a) Administer this chapter by exercising general control, management, and supervision of all liquor sales, liquor control prices, places of sale, and sale outlets as well as exercising all powers necessary to accomplish the purpose of this chapter; and

(b) Adopt and enforce rules and regulations in furtherance of the purposes of this chapter and the performance of its administrative functions. (Res. 85-080 §7.1, §7.2, passed Sept. 24, 1985)

11.2.10. Independent Tribal Operator's License. (a) A member of the Suquamish Tribe may apply to the Suquamish Liquor Commission for a license to operate a tribal liquor products outlet on trust property owned by the applicant within the Port Madison Indian Reservation.

(b) The Suquamish Liquor Commission shall recommend to the Suquamish Tribal Council which applicant, if any, shall receive a license under this section. The Tribal Council at its sole discretion shall determine which, if any, applicant shall receive a license. Each license granted shall specify what liquor products are authorized to be sold pursuant to a granted license.

(c) The Tribal Council, in determining which applicant, if any, shall receive a license under this section, shall consider the current number of tribal liquor outlets in operation or contemplated and shall not act so as to frustrate the central purposes of this act by allowing the unnecessary proliferation of liquor product outlets.

(d) The operator shall comply with all parts of this chapter and with all rules and regulations relating to retail sales price, hours of sale, and persons to whom sales are lawfully permitted. (Res. 85-080 §9, passed Sept. 24, 1985)

11.2.11. Sovereign Immunity Preserved. Nothing in this chapter is intended or shall be construed as a waiver of the sovereign immunity of the Suquamish Tribe. No manager or employee of the liquor enterprise shall be authorized or attempt to waive the immunity of the Tribe. (Res. 85-080 §10, passed Sept. 24, 1985)

11.2.12. Other Business. A licensee under §11.2.10 may conduct other business simultaneously with the management of the liquor product outlet for the Tribe. The other business may be conducted on the same premises. (Res. 85-080 §11, passed Sept. 24, 1985)

11.2.13. Revenues and Taxation. There is hereby levied on the Suquamish Tribal Liquor Enterprise a tax in the amount of one hundred percent (100%) of all enterprise profits which exceed a percentage of annual net sales to be determined each year by the Tribal Council. Profits not taxed pursuant to this section shall be deposited in a separate development fund, which shall be appropriated by the Tribal Council, as it deems advisable, for the following tribal government purposes: operation and development of the liquor enterprise, operation and development of other tribal enterprises, and technical assistance for tribal enterprises and revenue generating functions. Taxes shall be paid quarterly. For purposes of this section, "profits" shall be defined as all earnings in excess of the cost of sales, undistributed expenses, and other expenses. (Res. 85-080 §12, passed Sept. 24, 1985)

11.2.14. Operating without a License. No person shall operate a liquor products outlet on the Port Madison Indian Reservation without first having in effect an independent tribal operator's license or as an employee of a liquor product outlet established by the liquor commission. (Res. 85-080 §13, passed Sept. 24, 1985)

11.2.15. Penalty. Any person or entity selling, bartering, or manufacturing liquor products in violation of any part of this chapter or rule or regulation adopted pursuant to this chapter shall be subject to a civil fine of not more than one hundred dollars (\$100) for each violation. In addition, persons or entities subject to criminal prosecution by the Tribe who sell, barter, or manufacture liquor products in violation of any part of this chapter or any rule and regulation adopted thereunder shall be subject to punishment as provided in this code. (Res. 85-080 §14, passed Sept. 24, 1985)

11.2.16. Drinking in Public. (a) No person shall open any container containing an alcoholic beverage or consume any alcoholic beverage on any public roadway, sidewalk, or place of the Port Madison Indian Reservation unless allowed pursuant to this chapter or tribal regulations adopted pursuant hereto. Any violation of this section shall be punished by fine not to exceed five hundred dollars (\$500), or imprisonment not to exceed six (6) months, or both. In setting the appropriate penalty, the Suquamish Tribal Court shall consider whether the defendant has violated this section in the past and whether the particular violation resulted in a public disturbance.

(d) The consumption of alcoholic beverages allowed in this section shall not be construed as authorizing or allowing any individual to commit any activity which is made unlawful by any other part of this code. It shall not be a defense, unless made a defense by provision of this code, that an individual alleged to have violated any other provision of this code was consuming an alcoholic beverage at the time of the alleged violation.

(e) This section shall be applicable only to members of the Suquamish Tribe unless subsequently amended by tribal resolution. (Res. 85-080 §16, passed Sept. 24, 1985; (b) and (c) repealed by Tribal Council vote, July 13, 1992)

Note: The following subsections renumbered for consistency.

11.2.3(1)-(8) changed to 11.2.3(a)-(h)
11.2.8(1)-(11) changed to 11.2.8(a)-(k)
11.2.9(1)-(2) changed to 11.2.9(a)-(b)