

TITLE 11. COMMERCE

Chapter 11.8

PREVAILING WAGE

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11.8.1. Title. This chapter shall be known as the Suquamish Tribal “Prevailing Wage Ordinance.” (Res. 2009-114, passed Jul. 21, 2009)

11.8.2. Authorization. This chapter, governing the establishment and payment of a prevailing wage, is enacted pursuant to the authority vested in the Suquamish Tribal Council by Article III of the Suquamish Tribal Constitution, which grants authority to pass ordinances that govern the conduct of all persons and regulate all property within the Tribe's jurisdiction to the fullest extent allowed under applicable federal law. (Res. 2009-114, passed Jul. 21, 2009)

11.8.3. Purpose. The purpose of this chapter is to establish a prevailing wage for construction activities and to require that any agreement with a contractor to which this chapter applies contain a provision that not less than prevailing wages as set pursuant to this chapter shall be paid by the contractor and any subcontractors.

This chapter is intended to supersede all federal wage determinations to the greatest extent allowed under federal law and to the fullest authority of tribal law. (Res. 2009-114, passed Jul. 21, 2009)

11.8.4. Applicability. (a) This chapter applies to construction activities, including maintenance, undertaken by the Tribe within the area of operation of the Tribe pursuant to the Native American Housing Assistance and Self-Determination Act of 1996

("NAHASDA") or any other United States federal act containing requirements for the establishment and payment of a determined prevailing wage, including but not limited to wage determinations of the Secretary of Labor or wage determinations set under the Davis–Bacon Act, 40 USC 3141 et seq., applicable to Indian tribes.

(b) The Tribal Council may, at its discretion, use the established prevailing wages in circumstances to which §11.8.4(a) does not apply but is not required to do so.

(c) This chapter does not apply to volunteers, interns, or anyone who receives no compensation, reasonable benefits, or a nominal fee to perform services for which the individual volunteered and who is not otherwise employed at any time in the construction of affordable housing projects. (Res. 2009-114, passed Jul. 21, 2009)

11.8.5. Interpretation. (a) This chapter is an exercise of the sovereign power of the Suquamish Tribe and all provisions of this chapter shall be liberally construed for the accomplishment of the purposes listed in §11.8.3.

(b) Any ambiguity in this chapter or in any rules or regulations hereafter promulgated pursuant to this chapter shall be resolved so as to be consistent with applicable tribal and federal law. (Res. 2009-114, passed Jul. 21, 2009)

11.8.6. Definitions. (a) "Agreement" shall include any contract or other written document funded under any United States act applicable to Indian tribes and subject to the Davis–Bacon Act, 40 USC 3141 et seq., specifically including the Native American Housing Assistance and Self-Determination Act of 1996, as amended, PL 104–330, 25 USC 4101 et seq., and such other tribal agreements as may be determined by the Tribal Council to be appropriate.

(b) "Construction" includes alteration, maintenance, or repair of public buildings, public housing, or public works.

(c) "Contractor" or "employer" means any person who is awarded a contract by the Tribe subject to an agreement using federal funds or who is awarded any other contract by the Tribe that is otherwise subject to the Davis–Bacon Act or other wage-establishing federal law.

(d) "Individual" or "person" means but is not limited to natural persons and business entities, including business sole proprietorships, partnerships, corporations, joint ventures, organizations, and associations.

(e) "Prevailing wage" shall mean the wages prevailing on the Port Madison Indian Reservation and within the Tribe's area of operations for each category of employee including but not limited to architect, technical engineer, draftsman, technician, plumber, carpenter, laborer, and mechanic as determined by the Tribe.

(f) "Subcontractor" means anyone who is awarded a portion of a contract using federal funds or who is otherwise subject to the Davis–Bacon Act.

(g) "Suquamish Tribe" or "Tribe" means the Suquamish Tribe, recognized by the United States government in the Treaty of Point Elliott in 1855 and having sovereign rights of self-governance. This definition includes all departments, entities, agencies, and officials of the Tribe acting in their official capacity.

(h) "Suquamish Tribal Council" or "Tribal Council" means the governing body of the Suquamish Tribe as set forth in the Suquamish Tribe's Constitution and Bylaws. (Res. 2009-114, passed Jul. 21, 2009)

11.8.7. Determination of Prevailing Wage. The procedures for determining prevailing wages are as follows:

(a) The Tribe's department of community development in conjunction with the Tribe's human resources department shall arrange for a wage survey to be conducted not less frequently than biennially to determine the prevailing wage for each category of labor subject to this chapter.

(b) The department of community development may obtain wage rates through a review of all relevant contracts with the Tribe or any other available and reliable sources for prevailing wages paid each class of profession or trade included in the survey and related to the Port Madison Indian Reservation. The department of community development shall establish the prevailing wage at not less than the average wage paid to each class of profession or trade included in the survey, excluding any wages paid subject to the Davis–Bacon Act. The survey shall also include the classification of trainee in all trades.

(c) The Tribe shall retain for not less than three (3) years all contracts reviewed and denote that these contracts were used to determine the prevailing wage as well as the survey report and the wage rates reported by each source.

(d) Wage rates shall include base hourly salary but not the value of benefits paid to or on behalf of the employees.

(e) The results of the survey and the prevailing wage shall be contained in a schedule of prevailing wages which shall list each covered class of profession, trade, and trainees and the hourly rate for each and the effective dates of the schedule.

(f) The wage rates shall be adjusted in any year the Tribe does not conduct a survey using the Department of Labor Urban Consumer Price Index (Seattle–Tacoma–Bremerton) adjustment for that year or a similar local index in the event the Consumer Price Index is no longer published.

(g) The Tribal Council shall approve the schedule of prevailing wages at least annually by motion or resolution. (Res. 2009-114, passed Jul. 21, 2009)

11.8.8. Delegation of Authority. The department of community development with the advice of the human resources department may conduct the wage survey or may hire an outside consultant or agency to conduct surveys and/or to develop the prevailing wage under this chapter. (Res. 2009-114, passed Jul. 21, 2009)

11.8.9. Payment of Prevailing Wage Required. Each employer, contractor, or subcontractor when performing under an agreement to which this chapter applies shall pay prevailing wages and shall maintain certified payroll records reporting the hourly rates paid each employee. The certified payroll records shall be available for inspection and copying during regular office hours by the employee. Any employee shall be entitled to inspect and copy his or her certified payroll record. (Res. 2009-114, passed Jul. 21, 2009)

11.8.10. Notification of Prevailing Wage Required. (a) The Tribe shall provide every employer with a copy of the currently effective schedule of prevailing wages at the time bids or proposals are solicited.

(b) At all times while performing under an agreement to which this chapter is applicable, each employer, contractor, or subcontractor shall post at the job site and in its principal office a copy of the schedule of prevailing wages furnished by the Tribe. (Res. 2009-114, passed Jul. 21, 2009)

11.8.11. Tribal Court Action and Remedies. (a) Each covered agreement falling under this chapter or when so designated by the Tribal Council shall contain a provision stating the remedies for failure to pay tribally determined prevailing wages ("wage penalty") or for failing to maintain records ("records penalty").

(b) Any adversely affected employee covered under this chapter may bring an action in the Suquamish Tribal Court against any covered employer, contractor, or subcontractor to recover the amount of the wage or records penalty.

(c) The wage penalty shall be calculated by determining the difference between the amount the employee was actually paid under the agreement and the amount the employee was entitled to under this chapter. In the event the failure to pay prevailing wages is determined by the Court to be knowing and intentional, the Court may order punitive damages not to exceed two (2) times the amount of the wage penalty.

(d) The records penalty shall be two hundred dollars (\$200) per day not to exceed a total of ten thousand dollars (\$10,000) for each day an employer fails to maintain or allow the Tribe or an employee to inspect certified payroll records as required by this chapter or fails to provide a copy of such record within five (5) work days of a written request.

(e) Any petition filed in the Tribal Court under this chapter shall at a minimum require the petitioner to include the petitioner's name and address, a statement identifying which provision of this chapter has been violated, and a brief description of the facts and events that gave rise to the alleged violation. The rules of civil procedure, STC Title 4, shall apply.

(f) In the event the employee prevails in the Tribal Court action, the employee shall be entitled to recover from the employer reasonable attorney's fees. (Res. 2009-114, passed Jul. 21, 2009)

11.8.12. Limitation of Actions. No action under this chapter shall be filed or allowed more than two (2) years after the date such wages became due and payable under the agreement. (Res. 2009-114, passed Jul. 21, 2009)

11.8.13. No Waiver of Sovereign Immunity. This chapter provides for jurisdiction of the Tribal Court over wage claims and remedies provided by this chapter and no other claims or remedies. This chapter shall not be construed or interpreted to grant jurisdiction to any other court over the Tribe, its departments or entities, or individuals acting in their official tribal capacity. Nothing in the chapter shall be construed to be a waiver of any tribal sovereign immunity. (Res. 2009-114, passed Jul. 21, 2009)

11.8.14. Severability; Construction. If any phrase, clause, part, sentence, provision, or section of this chapter is found to be invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected and shall remain in full force and effect and continue in effect as if the invalid provision(s) were not a part hereof. If the operation of any clause, part, or section of this chapter shall be held to impair the obligation of a contract or to deny any person any right secured to him or her by the Constitutions of the Suquamish Tribe or of the United States, it is hereby declared that the remainder of this chapter would have nevertheless been enacted without such invalid clause, part, or section. (Res. 2009-114, passed Jul. 21, 2009)

11.8.15. Authority to Promulgate Regulations. The department of community development is authorized to promulgate regulations consistent with this chapter. (Res. 2009-114, passed Jul. 21, 2009)

11.8.16. Effective Date. This chapter shall be effective retroactive to January 1, 2005, but shall not impair any contract or agreement then existing or entered into prior to the enactment of the ordinance or any contract or agreement that may hereafter be entered into pursuant to invitations for bids that are outstanding on the date of enactment. (Res. 2009-114, passed Jul. 21, 2009)