

TITLE 5. SPECIAL PROCEEDINGS

Chapter 5.8

TRIBAL RESIDENTIAL LAND ASSIGNMENT ORDINANCE

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5.8.1. Title. This chapter shall be known as the “Suquamish Tribal Residential Land Assignment Ordinance.” (Res. 2014-113, passed Aug. 4, 2014)

5.8.2. Authorization. This chapter, creating and regulating tribal residential assigned land, is enacted pursuant to the authority vested in the Suquamish Tribe by its Constitution, particularly by Article III, and its 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 law. (Res. 2014-113, passed Aug. 4, 2014)

5.8.3. Purposes. The purposes of this chapter are to create tribal residential land assignments and to regulate residential use of assigned land in order to protect the peace, health, and safety of the entire community and the value of the land. This chapter also codifies the long-standing Suquamish cultural practice of protection of the Suquamish tribal residential communities. (Res. 2014-113, passed Aug. 4, 2014)

5.8.4. Applicability. This chapter applies to all land owned by the Suquamish Tribe, including land maintained by the Suquamish Housing Program underlying NAHASDA or Mutual Help and Occupancy Agreement (MHOA) conveyed homes. (Res. 2014-113, passed Aug. 4, 2014)

5.8.5. 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 §5.8.3.

(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. Moreover, unless affected or displaced by this chapter, principles of law and equity in the common law of the Tribe and tribal customs and traditions will be applied, and the general principles of law of any other tribe or any other state may be used as a guide to supplement and interpret this chapter.

(c) Homeowners who do not yet have a valid certificate of assignment are subject to the requirements of this chapter as well as the provisions regarding violations as if they were assignees. (Res. 2014-113, passed Aug. 4, 2014)

5.8.6. Definitions. (a) "Assignee" means the holder of an assignment.

(b) "Assignment" means a formal right to use the Suquamish Tribe's land subject to the conditions set forth in this chapter.

(c) "Certificate of assignment" means a document issued to assignees constituting evidence of the assignment which includes a legal description of the property assigned, name(s) of the person(s) to whom the parcel is assigned, any designated successor to the assignee, and any terms and conditions of occupancy, signed by the tribal chairperson and the secretary.

(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) "Mutual Help and Occupancy Agreement" or "MHOA" refers to the affordable housing homeownership assistance program operated by the Suquamish Tribe under the Native American Housing Assistance and Self-Determination Act (NAHASDA), PL 104-330, 1996, codified as 25 USC 4101 et seq.

(f) "Occupant" refers to any individual(s) occupying the land and may include a homeowner, his or her household members, heirs, renters, and other persons who reside on the subject residence and property.

(g) "Suquamish Housing Program" or "SHP" means the tribal government program or tribal housing program that administers and manages the Suquamish Tribe's affordable housing program.

(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.

(i) "Suquamish Tribe" or "Tribe" means the Suquamish Tribe, recognized by the United States Government in 1965 and having the special rights of self-governance. This definition includes all Suquamish tribal entities, agencies, and officials.

(j) "Tribal Court" means the Suquamish Tribal Court.

(k) "Tribal entity" means the Suquamish Tribe and its departments, programs, entities, and subdivisions.

(l) "Tribal member" means an enrolled member of the Suquamish Tribe.

(m) "Violent crime" means:

(1) Any offense that is a felony and has as an element the use, attempted use, or threatened use of physical force against the person or property of another or that by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense;

(2) Any felony defined under any law as a class A or equivalent felony or an attempt to commit a class A or equivalent felony, murder, nonnegligent manslaughter, forcible rape, robbery, indecent liberties with a minor by forcible compulsion, or aggravated assault;

(3) Any crime in any tribal court involving significant physical force which is punishable as a felony in state or federal court; and

(4) Any offense defined as a "violent crime" under tribal, state, or federal law. (Res. 2014-113, passed Aug. 4, 2014)

5.8.7. Jurisdiction. Jurisdiction by the Suquamish Tribe is extended over the following.

(a) All persons or entities within the jurisdiction of the Tribe who engage in activities related to the subject matter of this chapter;

(b) Any act within the reservation dealing with the subject matter of this chapter;
and

(c) All persons or entities who lease, mortgage, or otherwise secure an interest in any building, structure, or personal property situated on lands within the jurisdiction of the Tribe and defined in this chapter. (Res. 2014-113, passed Aug. 4, 2014)

5.8.8. Who is Eligible for an Assignment. (a) Homeowners under a NAHASDA or Mutual Help and Occupancy Agreement (MHOA) with the Suquamish Housing Program who have received a conveyance of the house constructed under the agreement shall receive an assignment for the lot or parcel where the house is located if the proposed assignee is eligible for an assignment and is in compliance with this chapter at the time it is approved.

(b) The assignment must always be with an enrolled Suquamish Tribal member or with the Tribe with the exception of the surviving spouse under §5.8.10(c).

(c) Assignees must be eighteen (18) years old or older or legally emancipated. (Res. 2014-113, passed Aug. 4, 2014)

5.8.9. Assignment Interests. An assignment does not vest title to assigned land to the assignee but is a right to use the underlying land granted by the Tribe which may not be sold or inherited and is terminated upon relinquishment or cancellation of the assignment or upon the death of the assignee. (Res. 2014-113, passed Aug. 4, 2014)

5.8.10. Approval of Transfer of an Assignment. (a) An assignment may not be transferred or exchanged without the approval of the Tribal Council in accordance with this chapter.

(b) Although an assignment is not subject to inheritance, an assignee may designate a family member to receive the assignment in the event of the death of the assignee, subject to the approval of the Tribal Council. The beneficiary should be designated in a valid will or in a form designating successor filed with the SHP and the Tribal Council. The designee must be eligible for an assignment.

(c) An ineligible surviving spouse who is responsible for the care of minor children of the deceased assignee may be granted temporary use of the assignment until one of the minor children reaches eighteen (18) years and applies for the assignment.

(d) In the event of a conflict among wills or designations filed with the tribal secretary, the most recent document shall prevail. A designation of a successor for an assignment with improvements on the assignment belonging to the assignee must designate the same successor for both the land and the improvements. (Res. 2014-113, passed Aug. 4, 2014)

5.8.11. Certificates of Assignment Required. (a) All users of tribal residential land to which this chapter applies shall have a valid certificate of assignment unless an exception is provided for in this section.

(b) All homes conveyed after the adoption of this chapter will require an accompanying certificate of assignment. Such documents are only valid with the signature of the tribal chairperson and the accompanying resolution.

(c) Homes conveyed prior to the adoption of this chapter will similarly be required to have certificates of assignment on a continuing basis. If assignments are not entered into within thirty (30) days after a homeowner is notified by the Tribe of the necessity to execute the certificate of assignment, the homeowner will no longer be able to use the tribal land and the procedure for violations in §5.8.19 will be followed.

(d) Applications for certificates of assignment must be made to the Tribal Council which may delegate authority to the SHP for processing. Certificates of assignment must be approved by the Tribal Council by resolution.

(e) A BIA approved lease may be substituted for a certificate of assignment in order to fulfill the requirement of this section. The lease must be approved by the Tribal Council by resolution.

(f) The Tribal Council may approve temporary use of the land by written resolution. (Res. 2014-113, passed Aug. 4, 2014)

5.8.12. Land Use. The following restrictions shall apply to the land use.

(a) The occupant shall maintain the residence including the utility systems located on the Tribe's property, any related fixtures securely attached to the property, and the Tribe's property in good order and working condition and may not alter the real property or remove any resources from the land without prior written permission of the Tribe.

(b) The occupant shall not engage in any unlawful activities at the residence or on the property or keep any excess garbage, solid or liquid waste, or other junk within the residence or on the Tribe's property where a health and safety risk is at issue. Waste, refuse, or garbage must be in an enclosed building or properly contained in a closed container designed for such purposes.

(c) The occupant shall not allow any discharge into the environment of toxic or noxious materials in such concentrations as to endanger the public health.

(d) The occupant shall maintain sewage and water at the unit including the making of payments for such and shall not cause or allow the effluent from any cesspool, septic tank, drainfield, or sewage disposal system to discharge upon the surface of the ground.

(e) The occupant shall not keep the carcasses of animals, including birds or fish, not intended for human consumption which are not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours after death or three (3) days of death for large animals.

(f) The occupant shall not accumulate decayed animal or vegetable matter, trash, rubbish, garbage, rotting lumber, packing material, scrap metal, or any substance in which flies, mosquitoes, disease-carrying insects, rats, or other vermin can breed, live, nest, or seek shelter.

(g) Stored or abandoned vehicles which are not operational for a period of one (1) year or which pose a hazard to the community are not permitted anywhere on tribal residential lease land unless they are inside a closed garage.

(h) The exterior of the home or any structure must be maintained so as to avoid a health or safety hazard. A resident on tribally owned residential land may not keep a home or structure in a condition or situation which renders a structure or any part thereof unsanitary, unhealthy, or unfit for human habitation, occupancy, or use, or which renders any property unsanitary or unhealthy.

(i) The occupant must not create any other neighborhood nuisance and must not threaten the health or safety of persons living in the residential community.

(j) All usage of the land other than as a residence must be specifically approved by the Suquamish Tribal Council in writing. (Res. 2014-113, passed Aug. 4, 2014)

5.8.13. Improvements. All dwellings, buildings and home improvements shall be constructed of durable material in a substantial, workmanlike, and presentable manner and shall be constructed in accordance with the building standards and occupancy requirements of the current editions of the Uniform Building Code, Uniform Mechanical Code, Uniform Plumbing Code, and Uniform Electrical Code, as well as any tribal zoning, building, health, and safety codes. Improvements of the following character placed on the assignment by the assignee shall be considered personal property belonging to the assignee and may be removed, sold, bequeathed, willed, or inherited: houses, garages, barns, sheds, interior fences, crops, household items, and personal belongings ("assignee property"). Other improvements such as exterior fences, underground water and sewage systems, trees, shrubs, and betterments of similar nature attached to the land, even though placed on the property by the assignee, shall be considered part of the real property and shall become the property of the Tribe upon relinquishment, cancellation, or other termination of the assignment ("tribal property"). (Res. 2014-113, passed Aug. 4, 2014)

5.8.14. Duty to Manage Land. The duty to manage applicable tribal residential assignment land is vested in the Suquamish Tribal Council. The Tribal Council may

delegate this duty to the Suquamish Housing Program or another appropriate tribal entity. (Res. 2014-113, passed Aug. 4, 2014)

5.8.15. Who May Reside on Applicable Tribal Residential Assignment Land. (a) An individual possessing a valid assignment has the right to reside on the assigned residential property subject to the provisions in this section.

(b) No occupant, unless previously approved by the Tribal Council by resolution, may be a registered sex offender or regardless of adjudication have been convicted of or pled guilty or nolo contendere to any of the following.

(1) Any violent crime

(2) Any crime against a child

(3) The unlawful manufacture, distribution, or felony possession of any controlled substance as that term is defined under tribal, state, or federal law

(c) The Tribe has the authority to conduct criminal background checks. (Res. 2014-113, passed Aug. 4, 2014)

5.8.16. Right to Exclude. (a) The Suquamish Tribe has the right to exclude anyone from the use of its tribal residential assignment land provided the individual was notified and given the opportunity to be heard.

(b) The Suquamish Tribe has the right to request from the Suquamish Tribal Court a restraining order on behalf of itself and/or its residents where an individual poses a threat to the Tribe or to the tribal residential community and there is a reasonable suspicion the individual intends to reside on or does reside on the tribally owned land. A restraining order shall be granted where there is a reasonable threat to the Tribe or the tribal residential community; a reasonable likelihood the person does reside in, frequent, or intend to move to the tribal residential community; and the interest of allowing the person in the tribal residential community is outweighed by the potential of threat and/or the type of threat to the tribal residential community. The standard of proof in this case is clear and convincing evidence. (Res. 2014-113, passed Aug. 4, 2014)

5.8.17. Relinquishment. An assignee may relinquish the assignment at any time by giving written notice to the SHP and the Tribal Council. (Res. 2014-113, passed Aug. 4, 2014)

5.8.18. Abandonment of Assignment. An assignment may be considered abandoned if the assignee has not occupied the assignment either him- or herself or through a lawful tenant or subtenant for a period of twelve (12) consecutive months. The burden of proof is on the assignee to establish continuous residence, the sufficiency of such evidence to

be determined by the Tribal Council. The Tribe may waive this requirement if a special circumstance has been demonstrated. (Res. 2014-113, passed Aug. 4, 2014)

5.8.19. Cancellations; Violations. (a) If an assignee, his or her guests, invitees, or any other occupant violates this chapter, the assignee will be subject to assignment cancellation upon notice and an opportunity to be heard by the Tribal Council.

(b) Notice shall be given by certified and regular mail. Such hearing will be held within fourteen (14) days of the cancellation or violation notice or at the next regularly scheduled Tribal Council meeting in executive or public session as determined by the Tribal Council. A homeowner may waive a hearing and request that the Tribal Council make a decision based upon written submissions.

(c) The assignee shall submit any documents and written witness statements supporting the request at least three (3) days prior to the Tribal Council hearing date.

(d) The Tribal Council shall have the later of ten (10) business days from the time the Tribal Council hears the request or three (3) days from the next regularly scheduled Tribal Council meeting to allow the Tribal Council to review the request and issue a written notification of its decision or to request more information or another presentation from the homeowner.

(e) Those found to be in violation of this chapter will be required to remove their personal property including their home from the land and restore the property at their own expense within sixty (60) calendar days of the Tribe's written notification or shall have sixty (60) calendar days to move out of the residence and off the Tribe's property.

(f) Where a house is moved, the Tribe's property must be restored and leveled by the homeowner within thirty (30) days of moving the house, and at the Tribe's option, the foundation for the house shall be removed by the homeowner within said period. (Res. 2014-113, passed Aug. 4, 2014)

5.8.20. Fines. (a) At its option, the Tribe may choose to levy a fine for violation depending on the severity of the offense rather than exercise its rights under §5.8.19. Fines under this section may not exceed five thousand dollars (\$5,000).

(b) Fine in lieu of application of §5.8.19 does not preclude the Tribe from later taking action under §5.8.19 if the violation is not abated within a reasonable time. (Res. 2014-113, passed Aug. 4, 2014)

5.8.21. Appeals. Any individual who has been excluded or restrained from applicable tribal residential lands, whose assignment has been cancelled, or who wishes to appeal a Tribal Council decision under this chapter may request an appeal based upon due process violations to the Suquamish Tribal Court. Court review is limited to determining whether the individual has been afforded notification and an opportunity to be heard in a

meaningful manner. The remedy for a successful appeal is a remand in order that any due process violations are cured. (Res. 2014-113, passed Aug. 4, 2014)

5.8.22. Nuisance. (a) At its option, the Tribe may also bring a public nuisance action in the Suquamish Tribal Court depending on the severity of the offense rather than exercise its rights under §5.8.19.

(b) An individual causes a nuisance by his or her act or failure to act who either:

(1) Maintains or permits a condition which unreasonably injures or endangers the safety or health of the public; or

(2) Is guilty of any other act or omission declared by law to be a public nuisance by this or any other chapter.

(c) Pursuance of a nuisance action in lieu of application of §5.8.19 does not preclude the Tribe from later taking action under §5.8.19 if the violation is not abated within a reasonable time. (Res. 2014-113, passed Aug. 4, 2014)

5.8.23. Abatement of Nuisance. If the person(s) served fail to abate the nuisance or make the necessary repairs, alterations, or changes in accordance with the order of the Suquamish Tribal Court after service of notice, the Court may cause such nuisance to be abated at the expense of the Tribe and recover such expenditure:

(a) By civil action against the person(s) served; or

(b) By ordering such sum as a special fee on the property upon which the nuisance existed and may authorize the Suquamish Housing Program to collect such fee in the same manner that it collects rents and other payments of the programs which it manages. (Res. 2014-113, passed Aug. 4, 2014)

5.8.24. Right to Create Policies. The Suquamish Tribal Council has the right to create policies and procedures, including policies and procedures for inspection, in order to enforce the provisions of this chapter. (Res. 2014-113, passed Aug. 4, 2014)

5.8.25. Amendments. (a) All provisions of this chapter are subject to amendment by the Suquamish Tribal Council.

(b) All regulations promulgated by the Tribal Council are subject to revision, repeal, or amendment by the Tribal Council. (Res. 2014-113, passed Aug. 4, 2014)

5.8.26. 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. 2014-113, passed Aug. 4, 2014)

5.1.27. Effective Date. This chapter became effective on August 4, 2014. (Res. 2014-113, passed Aug. 4, 2014)