

## TITLE 10. HEALTH, SAFETY AND WELFARE

### Chapter 10.2

#### PUBLIC NUISANCE

##### Sections:

10.2.1	Prohibited Conduct.
10.2.2	Public Nuisances Enumerated.
10.2.3	Administrative Enforcement.
10.2.4	Uncontested Infractions.
10.2.5	Contested Infractions.
10.2.6	Abatement in Extreme Hazard Situation.
10.2.7	Authorized Act Not a Public Nuisance.
10.2.8	Successive Owners Liable.
10.2.9	Private Right of Action.
10.2.10	Emergency Action.
10.2.11	Control Deemed Owner or Agent.
10.2.12	Service.
10.2.13	Severability.
10.2.14	Effective Date.

**10.2.1. Prohibited Conduct.** It is a civil violation of this chapter for any person to permit, create, maintain, or allow, upon any premises, any of the acts or things declared in STC 10.2.2 to be a public nuisance. As used in this chapter, “public nuisance” means a nuisance that affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal. (Res. 2017-157, passed Jul. 10, 2017)

**10.2.2. Public Nuisance Enumerated.** Consistent with 10.2.1, and inclusive of but not limited to, each of the following conditions are declared to constitute a public nuisance:

(a) Erecting, maintaining, using, placing, depositing, leaving, or permitting to be or remain in or upon any premises, that may be viewed, heard, or smelled from outside the premises, or in or upon any street, alley, sidewalk, park, parkway, or other public or private place on the Port Madison Reservation, any of the following disorderly, disturbing, unsanitary, fly-inducing, rat-harboring, disease-causing places, conditions, or things:

(1) Any putrid, unhealthy, or unwholesome bones, meat, hides, skins, the whole or any part of any dead animal, fish, or fowl, or waste parts of fish, vegetable, or animal matter in any quantity; the carcass of any animal, manure, human urine and/or excrement, decayed waste, or discarded food, meat, fish, animal, or vegetable refuse or any putrid or offensive animal or vegetable matter; but nothing in this chapter will prevent the temporary retention of waste in

approved, appropriate covered receptacles; or

(2) Any privies, vaults, cesspools, open containers of stagnant water, sumps, pits, or like places that are not securely protected from flies and rats, or which are malodorous; or

(3) An accumulation of material including, but not limited to, bottles, cans, glass, plastic, ashes, scrap metal, wire, bric-a-brac, broken stone, broken crockery, broken glass, broken plaster, litter, rags, empty barrels, boxes, crates, packing cases, mattresses, bedding, packing materials, wallboard, sheet metal, plaster, brick, cement, asphalt, concrete block, roofing material, cans of paint and similar materials that are not properly stored or neatly piled or are offensive to a reasonable person or in which flies or rats may breed or multiply; or

(4) Accumulation of any garbage and refuse as defined in STC 10.2; or

(5) Accumulation of yard trimmings, excluding properly maintained yard compost, or other matter that is offensive to a reasonable person; except for such yard debris that is properly contained for the purpose of composting and concealed so as not to affect the health, safety, or depreciation of adjoining property.

(b) The existence of any fence or other structure on private property abutting or fronting upon any public street, sidewalk, or place that is in a sagging, leaning, fallen, decayed, or other dilapidated or unsafe condition.

(c) The existence of wrecked or disassembled trailers, house trailers, boats, tractors, or other vehicle, appliance, or machinery of any kind, or any major parts of any such vehicle, appliance, or machinery.

(d) The existence on any premises of any abandoned or unused well, pit, shaft, cistern, or storage tank without first demolishing or removing from the premises such storage tank, or securely closing and barring any entrance or trapdoor to such storage tank or without filling any well, pit, shaft, or cistern or capping the same with sufficient security to prevent access to it.

(e) The existence in a place accessible to children of any attractive nuisance dangerous to children, including but not limited to any abandoned, broken, or neglected equipment, machinery, refrigerator, freezer, or other large appliance.

(f) Any use of property abutting on a public street or sidewalk or any use of a public street or sidewalk that causes people to gather in numbers sufficient to obstruct vehicular or pedestrian traffic. This subsection does not apply to events, programs, or parades authorized by the Suquamish Tribe.

(g) Any poisonous or harmful substance that is reasonably accessible to persons or to animals.

(h) Soils contaminated by dangerous waste, hazardous substances, or hazardous wastes as those terms are defined in STC 10.6.

(i) Lumber, wood, cardboard, or other flammable material of any kind including, but not limited to, any hazardous materials or waste oil, gasoline, or diesel products stored in such a manner as to constitute a fire or safety hazard.

(j) Scrap metal, appliances, rubber, tools, implements, or parts or portions of any of these, batteries, rope, rags, or plastic.

(k) The maintenance of signs and/or sign structures relating to uses no longer conducted or products no longer sold on vacant commercial, industrial, or institutional buildings or lots more than forty-five (45) calendar days after the building becomes vacant or the event or purpose for which the sign or structure was erected has passed.

(l) Buildings or structures that are abandoned, vandalized, partially destroyed, or permitted to remain in a state of partial construction or partial demolition in such a state as to constitute an attractive nuisance.

(m) The failure to safely and completely close, maintain, and secure all doorways, windows, or other openings into vacant structures or to secure broken windows to secure the structure from unauthorized entry.

(n) Every building or unit within a building used for the purpose of unlawfully manufacturing, delivering, selling, storing, or giving away controlled substances or imitation controlled substances, and every building or unit within a building in or upon which such acts take place.

(o) Unprotected and/or hazardous foundations and excavations.

(p) Land or property that, because of conditions on site (whether its natural state or as a result of grading, surface water drainage, or acts of nature such as earthquakes, rain, landslides, sinkholes, and so forth), presents problems of such magnitude as to be injurious or potentially injurious to the public health, safety, and welfare, in particular to adjacent property owners.

(q) Land or property on which a residential structure is placed that does not have adequate waste disposal.

(r) Land or property where unlawful burning of materials is occurring.

(s) Installing, operating, or permitting the operation of unreasonably excessive

light or sound of a magnitude that would disturb the peaceful enjoyment of a community or neighborhood.

(t) Maintaining a property with a reputation for being a place where persons frequently go to:

(1) deliver, possess, manufacture, or use controlled substances;

(2) engage in unlawful conduct such as trespass, assault, fighting, menacing, stalking, harassment or reckless endangerment, gambling, harboring fugitives, harboring stolen property, theft, prostitution, or disturbing the public peace;

(3) avoid service of process or service of a warrant issued by the Suquamish Tribal Court or any other tribal, federal or state court;

(4) engage in activities that contribute to the criminal act or delinquency of a minor; or

(5) engage in any activity that constitutes the crime of rendering criminal assistance under the Suquamish Tribal Code. (Res. 2017-157, passed Jul. 10, 2017)

**10.2.3. Administrative Enforcement.** (a) Complaints. The Suquamish Natural Resources Department, Police Department, or any other Suquamish government agency may receive complaints regarding alleged public nuisance by community members and will investigate received complaints. Suquamish government officials may also investigate possible public nuisance on the officials' own initiative.

(b) Investigation. The Natural Resources Department or Police Department will investigate to determine whether or not the condition of a property constitutes a public nuisance as defined by this chapter. If the condition of the property could be a serious health concern, the investigator may involve a health officer or other relevant tribal official in the investigation.

(c) Right to Appeal Investigation Decision. If the Natural Resources Department or Police Department decides not to initiate infraction procedures after investigating a complaint, a written response will be provided to the person who made the complaint to inform the complainant of the decision. The written response will include an appeal form and the complainant who made the complaint may appeal the decision not to initiate infraction procedures to the Executive Director of the Suquamish Tribe.

(d) Infraction Procedures. (1) Warnings. Except in cases where emergency abatement is required under this chapter, violators will be given a reasonable time not to exceed twenty (20) calendar days before issuing an infraction and order of abatement.

(2) Notice of Infraction. Any agent of the Natural Resources Department or Tribal Police Officer has authority to issue a notice of infraction when he or she has reasonable cause to believe a violation of this chapter has occurred.

(3) Form. The form and attachments for the infraction citation must include the following information:

(A) That the notice represents a determination that a violation of this public nuisance code has been committed by the person named in the notice and that the determination will be final unless contested as provided in this chapter.

(B) That an infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction.

(C) The specific infraction for which the notice was issued.

(D) The monetary and other penalties imposed by the Tribe for the infraction.

(E) The options provided in this chapter for responding to the notice are:

(i) respondent may pay the fine and abate the nuisance within thirty (30) calendar days of the notice of infraction;

(ii) within fifteen (15) calendar days of the notice of infraction, respondent may request a hearing to contest the determination that an infraction has occurred; or

(iii) within fifteen (15) calendar days of the notice of infraction, respondent may request a hearing to explain mitigating circumstances.

(F) At a hearing to contest the infraction, the Tribe has the burden of proving by a preponderance of the evidence that the infraction was committed and the person may subpoena witnesses including the investigating agent or officer.

(G) At any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction the person will be determined to have committed the infraction and may not subpoena witnesses.

(H) That the person must respond to the notice as provided in this chapter within fifteen (15) calendar days of the issuance of the infraction; otherwise, the person will be determined to have committed the infraction and a monetary penalty will be imposed.

(I) That failure to appear at a requested hearing will result in a determination that the infraction was committed and a monetary penalty will be imposed.

(J) That failure to respond to a notice of infraction or the nonpayment of a monetary fine may result in the person's case being subject to garnishment under STC 5.10, sent to a collection agency or any available means to secure payment.

(K) That if the person abates the public nuisance within seven (7) calendar days of the notice of infraction and immediately notifies the enforcement officer who issued the notice that the premises have been cleaned up, and the enforcement officer then confirms that the premises are now clean, the monetary penalty will be forgiven.

(L) The Tribe may also provide an attachment to the infraction citation to satisfy the notice requirements of any part of this section.

(4) The civil fine issued by the Tribe for maintaining a public nuisance may not exceed one thousand dollars (\$1,000) per day per occurrence. (Res. 2017-157, passed Jul. 10, 2017)

**10.2.4. Uncontested Infractions.** If the person who receives the citation does not wish to contest or seek mitigation of the infraction, the person will respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the Suquamish Tribal Court. A check or money order in the amount of the penalty prescribed for the infraction made payable to the Suquamish Tribe must be submitted with the response. (Res. 2017-157, passed July 10, 2017)

**10.2.5 Contested Infractions.** Response to Notice of Infraction; Contesting Determination; Hearing; Failure to Appear.

(a) Any person who receives a notice of infraction will immediately remove the public nuisance within seven (7) calendar days as set forth above; but if the public nuisance has not been abated to the satisfaction of the enforcement officer, that person will respond to such notice as provided in this section within fifteen (15) calendar days of the date of the notice.

(b) If the person determined to have committed the infraction wishes to contest the determination, the person will respond by completing the portion of the notice of

infraction requesting a hearing and submitting it, either by mail or in person, to the Suquamish Tribal Court. The Suquamish Tribal Court will set a time and date for a Court hearing within fifteen (15) calendar days but no sooner than five (5) calendar days except by agreement. The Court will notify the person and the prosecutor in writing of the time, place, and date of the hearing.

(c) If any person issued a notice of infraction either fails to abate the nuisance as allowed in this chapter or fails to respond to the notice of infraction or fails to appear at a hearing requested, the Tribal Court will enter an appropriate order assessing the monetary penalty prescribed for the infraction and any other penalty, abatement, or other injunctive relief authorized by the Suquamish Tribal Code.

(d) Hearings – Procedure and Counsel. (1) Procedures for the conduct of all hearings provided for in this chapter, to the extent that they are consistent with the procedures set forth in this chapter, will be consistent with the procedures of the Suquamish Tribal Court.

(2) Any person subject to proceedings under this chapter may be represented by counsel at his or her own expense.

(3) The Tribe may be represented by counsel.

(e) Tribal Court Hearing Contesting the Determination That an Infraction Has Been Committed; Appeal.

(1) A hearing held for the purpose of contesting the determination that an infraction has been committed will be without a jury.

(2) The Court may consider the notice of infraction and any other written report under oath submitted by the official who issued the notice or whose written statement was the basis for the issuance of the notice in place of the official's personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the official, and has the right to present evidence and examine witnesses present in court.

(3) Whenever a public nuisance contains three (3) or more items bearing the name of an individual or individuals, there will be a rebuttable presumption that the individual(s) whose name(s) appears on such items created the public nuisance.

(4) After consideration of the evidence and argument, the Court will determine whether the infraction was committed. Where it has not been established that the infraction was committed, the Court will enter an order of dismissal. Where it has been established that the infraction was committed, the Court will enter an appropriate order.

(5) Any appeal from the Court's determination or order will be to the Suquamish Tribal Court of Appeals.

(6) In an action for maintaining a public nuisance, evidence of the general reputation of the premises is admissible for the purpose of proving the existence of the nuisance. Proof a public nuisance is frequently committed at the place involved, or that the place is frequently used for an activity described in this chapter, is prima facie evidence that the defendant maintained a public nuisance. Evidence that persons have been arrested for or convicted of offenses for an activity described in this chapter at the place involved is admissible to show knowledge on the defendant's part with respect to the act that occurred. The originals or certified copies of the papers and judgments of those arrests or convictions are admissible in an action for maintaining a public nuisance, and oral evidence is admissible to show that the offense for which a person was arrested or convicted was committed at the place involved.

(7) If the existence of the public nuisance is established, an order of abatement must be entered as part of the judgment in the case. If judgment is in favor of the petitioner, the Court will grant an injunction ordering the defendant to abate the nuisance and enjoining the defendant from maintaining or participating in the nuisance and may include in its order reasonable requirements to prevent the use or maintenance of the place as a nuisance.

(8) Hearing before the Court to Explain Mitigating Circumstances. (A) A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction will be an informal proceeding. The person subject to the infraction may not subpoena witnesses. The determination that an infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.

(B) The Court may order reduction in monetary penalties and may alter the abatement required in the notice of infraction.

(C) There may be no appeal from the Court's determination or decision.

(9) Absent extraordinary circumstances, if the respondent fails to abate the public nuisance within fifteen (15) calendar days of the hearing, the Tribe may take action to abate the public nuisance, and the person(s) subject to the infraction will be held responsible for any costs associated with the abatement plus an administrative charge of two hundred dollars (\$200). The Tribe may utilize any available means to secure payment of these costs and charges.

(10) If respondent does not comply with the court's order, respondent will

be charged with criminal contempt of court as defined in STC 3.8.21 or any subsequent renumbering. (Res. 2017-157, passed Jul. 10, 2017)

**10.2.6 Abatement in Extreme Hazard Situations.** The investigating officer may order immediate abatement of a public nuisance if he or she finds that the existence of the nuisance poses an extreme hazard to the health, safety, and welfare of reservation residents or the environment. If, under emergency conditions, the person in charge of the property is unwilling or unable to carry out the necessary abatement action in a reasonable period of time under the circumstances or cannot be located after diligent inquiry, the Director of the Natural Resources Department or Chief of Police or his or her designees may enter the premises and perform actions necessary to immediately abate the public nuisance. (Res. 2017-157, passed Jul. 10, 2017)

**10.2.7. Authorized Act Not a Public Nuisance.** Nothing that is done or maintained under the express authority of the Suquamish Tribal Code or lawful permit or license issued by the Tribe will be a public nuisance. All actions of the Suquamish Tribe or its agencies, divisions, and entities are authorized acts and do not constitute a public nuisance. (Res. 2017-157, passed Jul. 10, 2017)

**10.2.8. Successive Owners Liable.** Every successive owner of property who neglects to abate a continuing nuisance upon or in the use of property caused by a former owner is liable for that nuisance in the same manner as the one who first created the nuisance. (Res. 2017-157, passed Jul. 10, 2017)

**10.2.9. Private Right of Action.** An action may be brought by any person whose property is injured or whose personal enjoyment is lessened by the public nuisance. (Res. 2017-157, passed Jul. 10, 2017)

**10.2.10. Emergency Action.** In an action brought by the Suquamish Tribe to abate a public nuisance, the Tribal Court will, upon a proper showing that the public nuisance presents an immediate and substantial threat to the health, safety, or peace of the Suquamish community, enter an emergency ex parte order directing the Suquamish Tribal Police to abate the public nuisance without further notice or delay. (Res. 2017-157, passed Jul. 10, 2017)

**10.2.11. Control Deemed Owner or Agent.** Every person who has the care or management of any building, structure, land, or any other place mentioned in this section will be deemed to be the owner or agent of the owner of that building, structure, land, or other place, and as such may be proceeded against under this chapter. (Res. 2017-157, passed Jul. 10, 2017)

**10.2.12. Service.** Any notice to be given under this chapter may be served by any one or more of the following means:

(a) Personal service;

(b) Registered or certified mail;

(c) Delivery to a person of suitable age and discretion at the usual living place or place of employment of the person who is the subject of the order;

(d) Posting on the exterior of a dwelling known to be frequented by the person who is the subject of the order, but only if that person's presence at the location is supported by a sworn witness declaration;

(e) Publication at least one (1) time in the Kitsap Sun, or in any published newspaper of general circulation on or adjacent to the Port Madison Indian Reservation, or in a newspaper of general circulation in the town closest to where the person who is the subject of the order was last known to reside; or

(f) Posting in a widely visible place on the property where the alleged public nuisance exists together with registered or certified mail (whether or not such mail is accepted by the addressee).

Proof of service will be made by affidavit or in any manner permitted in other civil proceedings. (Res. 2017-157, passed Jul. 10. 2017)

**10.2.13. 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 will not be affected and will remain in full force and effect and continue to be in effect as if the invalid provision(s) were not a part of this chapter. If the operation of any clause, part, or section of this chapter is held to impair the obligation of contract or deny any person any right secured to her or him by the Constitution of the Suquamish Tribe or the United States Constitution, it is hereby declared that the remainder of the chapter would nevertheless be enacted without such invalid clause, part, or section. (Res. 2017-157, passed Jul. 10, 2017)

**10.2.14. Effective Date.** This chapter, as amended, is effective as of August 1, 2017. (Res. 2017-157, passed Jul. 10, 2017)

Note: This chapter was first published in the prior code as §§7.04.010-7.04.130, authorized by Resolution 81-072, passed July 9, 1981. The entire chapter was subsequently rewritten, and authorized by Resolution 2017-157, passed July 10, 2017.