

**Title 15 – Business Regulations  
Chapter 6 – Business Licensing**

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**Legislative History**

Enacted:

Ordinance 286 Enacting Business Licensing Code, (3/8/11), BIA (3/21/11)

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**15-06.010 Title.**

This Chapter shall be referred to as the “Swinomish Business Licensing Code.”

[History] Ord 286 (3/8/11), BIA (3/21/11).

**15-06.020 Purpose.**

- (A) The conduct of business within Swinomish Indian Country constitutes a consensual relationship with the Swinomish Indian Tribal Community and/or its members. Such conduct can threaten or have a direct effect on the economic security, health or welfare of the Swinomish Indian Tribal Community and its members.
- (B) The Senate has the authority to exclude from the lands of the Swinomish Reservation persons not legally entitled to reside on those lands.
- (C) The purpose of this Chapter is to regulate the conduct of business within Swinomish Indian Country in order to protect the economic security, health, safety and welfare of the Swinomish Indian Tribal Community and its members, and of residents and other persons present on such lands.

[History] Ord 286 (3/8/11), BIA (3/21/11).

**15-06.030 Authority.**

This Chapter is enacted pursuant to authority provided by the following provisions of the Swinomish Constitution and By-Laws: Article VI, Sections 1(h), 1(k), and 1(l) of the Swinomish Constitution.

[History] Ord 286 (3/8/11), BIA (3/21/11).

**15-06.040 Definitions.**

For purposes of this Chapter, unless otherwise expressly provided, the following definitions shall apply:

- (A) **“Business”** means any activity, whether temporary, seasonal or otherwise, engaged in by any person with the object of gain, benefit, advantage or other return with economic value. “Business” includes a trade, profession or commercial activity involving the sale of property or services; *provided*, however, that a sale of property or services that is an isolated transaction, and is intended to be such an isolated transaction, shall not be considered to be “business” under this code.
- (B) **“Business License”** means a license, issued by the Tribe, to engage in business within Swinomish Indian Country. “Business license” includes a Special Events Business License a Wholesale Sales Business License, a Fixed Retail Sales Business License, and a renewal of any of these Business Licenses.
- (C) **“Business Licensee”** or **“Licensee”** means an individual who has been issued a Business License by the Tribe to engage in business.

- (D) **“Fixed Retail Sales”** means sales of goods or merchandise that are carried on year-round from a fixed location to ultimate consumers, usually in small or individual lots for direct use or consumption by the purchaser.
- (E) **“Peddler”** means any person who engages in the sale, or who offers for or exposes for sale, or who shall trade, deal or traffic in any personal property or services by going from house to house or who solicits and conducts business in residential areas by going from place to place or by approaching individuals. The term “peddler” includes mobile businesses operating from vehicles traveling from place to place in residential areas, such as ice cream vendors, and also includes a person who travels from place to place soliciting or taking orders for the purchase or sale of goods, wares, or merchandise to be delivered in the future.
- (F) **“Person”** means any individual, agent, principal, entity, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, corporation, association, society, or group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. “Person” does not include the Tribe.
- (G) **“Reservation”** means all lands and waters within the exterior boundaries of the Swinomish Indian Reservation.
- (H) **“Sale”** means the exchange of property and/or any transfer of the ownership of, title to, or possession of property for valuable consideration. “Sale” includes the furnishing of food, drink, or meals, for compensation, whether or not consumed upon the premises. “Sale” also includes conditional sales contracts, leases with option to purchase, and any other contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price.
- (I) **“Senate”** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.
- (J) **“Special Event Business”** means a business that is operated within Swinomish Indian Country for a brief period of time in connection with a special event taking place in or near Swinomish Indian Country that is organized by the Swinomish Indian Tribal Community, a department of the Tribal government, or an organization created or recognized by the Tribe, such as a business in a booth or stand at a special event.
- (K) **“Swinomish Indian Country”** means:
- (1) All land within the exterior boundaries of the Swinomish Indian Reservation, including but not limited to land under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and specifically including leaseholds and easements and rights-of-way running through the Reservation; and
  - (2) All Indian allotments or other lands held in trust for a Swinomish Tribal member

or the Tribe, or otherwise subject to a restriction against alienation imposed by the United States, and the Indian titles to which have not been extinguished, including easements and rights-of-way running through the same;

(3) All lands owned by the Tribe whether or not held in trust by the United States.

(L) **“Tribe”** or **“Tribal”** means or refers to the Swinomish Indian Tribal Community, a Federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, which is composed of members tracing their ancestry to the aboriginal Swinomish, Samish, Kikialus, and Lower Skagit bands of Indians.

(M) **“Wholesale Sales”** means sales of goods or merchandise in quantity to retailers, other professional business users, or to other wholesalers. In general, Wholesale Sales are sales of goods to anyone other than an ultimate consumer.

[History] Ord 286 (3/8/11), BIA (3/21/11).

**15-06.050 License Required.**

(A) All persons engaging in a business must possess and display a valid Business License to engage in such business before engaging, and at all times while engaging, in any such activities within Swinomish Indian Country.

(1) All persons engaging in a Special Event Business must possess and display a valid Special Event Business License to engage in such business at such time and location before engaging, and at all times while engaging, in any such activities within Swinomish Indian Country.

(2) All persons engaging in any business of wholesale sales must possess and display a valid Wholesale Sales Business License to engage in such business at such time and location before engaging, and at all times while engaging, in any such activities within Swinomish Indian Country.

(3) All persons engaging in any business of retail sales from a fixed business location must possess and display a valid Fixed Retail Sales Business License to engage in such business at such time and location before engaging, and at all times while engaging, in any such activities within Swinomish Indian Country.

(4) This Chapter is applicable to peddlers.

(B) All Business Licenses issued pursuant to this Chapter authorizing the conduct or operation of any business or other activity at a specified location shall be posted in a conspicuous place at such location; *provided*, however, that when the Business Licensee has no established place of business and goes from place to place or from house to house, then such license must be carried on the person of such licensee while actually engaged in the licensed business or other activity.

- (C) No Business License issued under the authority of this Chapter shall entitle the licensee to conduct or operate the business or other activity for which s/he has secured such license at a place or location other than the location stated in such license; *provided*, however, that Special Event Businesses may be conducted at locations in accordance with the terms of the Business License.
- (D) A Business License is not an exclusive license by the Tribe to engage in a particular business activity. The Tribe reserves the right to license other entities engaging in similar business activities and to itself engage in any and all businesses.
- (E) No Business Licensee shall have any exclusive right to any location in the public streets.
- (F) No Business License issued under the provisions of this Chapter shall be transferable or assignable.

[History] Ord 286 (3/8/11), BIA (3/21/11).

**15-06.060 Exemptions from Business License Requirements.**

- (A) The following activities, persons, entities or businesses are exempt from the license requirements of this Chapter:
  - (1) Charitable, religious or nonprofit organizations or corporations that have received tax exempt status under 26 U.S.C. 501(c)(3) or similar civic, charitable or nonprofit organizations;
  - (2) Newspaper carriers;
  - (3) Common carriers or parcel delivery;
  - (4) Sales by enrolled members of the Swinomish Indian Tribal Community of Native American produced arts, crafts or goods;
  - (5) Services or goods ordered by mail, phone or internet;
  - (6) Business activity that is conducted pursuant to and in accordance with a permit or license that has been issued by the Tribe under any other Chapter of Title 15, or under Title 16, of the Swinomish Tribal Code;
  - (7) Any activity conducted by the Swinomish Indian Tribal Community, a Tribal Department, a Tribal entity or a Tribal enterprise;
  - (8) Any person (a) whose only business activity within Swinomish Indian Country consists of providing goods and/or services to the Swinomish Indian Tribal Community and (b) who has provided the Tribe with a properly completed and signed Form W-9 (or such equivalent form that may be utilized in the future by the Internal Revenue Service);

- (9) Occasional yard or garage sales;
- (10) Cutting and/or splitting of firewood by an enrolled member of the Swinomish Indian Tribal Community or by the spouse of an enrolled member; or
- (11) Treaty activities conducted pursuant to and in accordance with a permit or license that has been issued by the Tribe under Title 18 of the Swinomish Tribal Code.

[History] Ord 286 (3/8/11), BIA (3/21/11).

**15-06.070 Business License Application Process.**

- (A) Any person eighteen (18) years or older may apply for a Business License.
- (B) Except as provided in 15-06.070(C) concerning Special Event Business Licenses, all applications for a Business License required by this Chapter shall be made upon forms to be furnished by the Tribe, signed by the applicant pursuant to 15-06.070(D), and submitted to the Tribe's Office of Planning and Community Development. The application may request such information as is deemed relevant by the Tribe to carry out the purposes of this Chapter, including the residence of the applicant, the nature of the proposed business activity, the previous business experience of the applicant, the place where the business is proposed to be conducted, and civil or criminal judgments entered against the applicant or the applicant's business.
- (C) All applications for a Special Events Business License required by this Chapter shall be made upon forms to be furnished by the Tribe, shall provide all information requested by the Tribe, shall be signed by the applicant pursuant to 15-06.070(D) and shall be submitted to the designated representative of the group or Department that is conducting the Special Event.
- (D) If the applicant is a partnership, one of the partners must sign the application; if the applicant is a corporation, the application must be signed by an officer of the corporation; or if the applicant is a foreign corporation authorized to do business in the State of Washington, the application must be signed by the resident agent or local manager of the foreign corporation.
- (E) Each applicant shall provide satisfactory proof of any insurance required by Section 15-06.100 to the Tribe with the application for a Business License.

[History] Ord 286 (3/8/11), BIA (3/21/11).

**15-06.080 License Application Review and Decision.**

- (A) The Tribe shall review and may investigate the accuracy of the information provided by the applicant in the application.

- (1) If operation of the business is reasonably expected to involve regular contact with children or elders by the applicant or employees or agents of the applicant, the Tribe will conduct a criminal history background investigation of the applicant. The Tribe may conduct a criminal history background investigation of other applicants when the Tribe determines that a background investigation will further protection of the economic security, health, safety and welfare of the Tribe and its members, and of residents and other persons present in Swinomish Indian Country. The applicant shall pay the cost of the background investigation at the time of application in accordance with 15-06.090, and shall provide any necessary information or consent needed to allow the Tribe to conduct such an investigation.
- (B) The Tribe may inspect any proposed place of business after an application for a Business License has been filed to determine whether the premises comply with applicable law. Failure to permit an inspection or to cure any material non-compliance identified in the inspection shall result in a denial of a Business License.
- (C) The Tribe shall issue a license to the applicant if the Tribe determines that:
  - (1) the applicant is eighteen (18) years or older,
  - (2) the applicant has truthfully and accurately provided all information requested by the Tribe;
  - (3) the character, business experience and any required insurance coverage of the applicant are satisfactory to the Tribe;
  - (4) the applicant has paid all applicable fees;
  - (5) operation of the proposed business at the location identified by the applicant will be consistent with all Tribal laws, including zoning and health laws; and
  - (6) issuance of the license is in the best interests of the Tribe, the members of the Tribe and the residents of Swinomish Indian Country.
- (D) The Tribe shall deny the applicant a license if the applicant has:
  - (1) Not satisfied all of the requirements in 15-06.080(C);
  - (2) Within the ten years prior to the date of application, been convicted of, or entered a plea of *nolo contendere* or guilty to, any of the following under Tribal, Federal or State criminal law:
    - (a) an offense reasonably related to conduct of the business, including, but not limited to, crimes involving fraud or misrepresentation;

- (b) an offense for which it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement; or
  - (c) either a single felonious offense or two or more misdemeanor offenses involving any of the following: crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children or elders.
- (2) Within the ten years prior to the date of application, had a civil judgment entered against the applicant based upon violation by the applicant of a consumer protection law, or if it readily can be determined that establishing the elements of the cause of action upon which judgment was entered required proof or admission of an act of dishonesty or false statement.
- (E) The denial of a license to an individual, corporation, partnership or other organization, which serves as the employer or principal for an individual applicant, shall be a sufficient basis to deny a license to any individual applicants who are employed by or acting as an agent for the denied applicant.

[History] Ord 286 (3/8/11), BIA (3/21/11).

#### **15-06.090 License Fees.**

- (A) The fees set out in 15-06.090(B) shall be paid, as applicable, at the time of the filing of an application for issuance or renewal of a Business License. No application shall be accepted until all of the applicable fees have been paid in full.
- (B) Fees:
- (1) **Business License:** A \$50.00 application fee shall be paid at the time of application for a Business License. In addition to this application fee, the applicant must pay the Tribe at the time of application the cost of a criminal background investigation by the Tribe of the applicant.
  - (2) **Business License Renewal:** A \$50.00 renewal fee shall be paid each year at the time of application for renewal of each Business License.
  - (3) **Special Event Business License:**  
The amount of a Special Event Business License Application fee for a particular event may be established by the Senate. If the Senate does not establish the fee for a particular event, then the Special Event Business License application feeshall be set by the group or Department that is conducting the Special Event. The Special Event Business License Application fee shall be paid at the time of application.



- (4) **Special Event Deposit:** Any person who is found eligible to be issued a Special Event Business License shall pay, before the license will be issued, a clean-up fee deposit of \$100.00. The clean-up fee shall be refunded in accordance with usual Tribal accounting procedures after an inspection of the site by an authorized Tribal official who finds the site to be satisfactory.
  - (5) **Wholesale Sales Business License:** A \$500.00 application fee shall be paid at the time of application for a Whole Sales Business License.
  - (6) **Wholesale Sales Business License Renewal:** A \$500.00 renewal fee shall be paid each year at the time of application for renewal of each Wholesale Sales Business License.
  - (7) **Fixed Retail Sales Business License:** A \$150.00 application fee shall be paid at the time of application for a Fixed Retail Sales Business License.
  - (8) **Fixed Retail Sales Business License Renewal:** A \$150.00 renewal fee shall be paid each year at the time of application for renewal of each Fixed Retail Sales Business License.
  - (9) **Late Fee:** A late payment fee of \$15.00 shall be paid for each ten (10) calendar days of delinquency after a renewal application and renewal fee are due. This fee shall be paid at the time of application for renewal of the Business License.
  - (10) **Administrative Fees:** An administrative fee of \$10.00 shall be paid by any Business Licensee that requires a license to be re-issued to reflect a new address or name change.
- (C) The License fees are non-refundable; *provided*, however, that if a Business License is revoked prior to the expiration of the period for which it was issued by virtue of a change in Tribal policy that is reflected in a new Tribal ordinance or in an amendment to a Tribal ordinance, the licensee whose Business License is revoked is entitled to a refund on a *pro rata* basis for that portion of the year for which the Business License was revoked.
- (D) All funds collected pursuant to this Chapter shall be transferred by the person collecting the funds to the Swinomish Accounting Department by the close of the next regular business day following the day on which the fees are collected.

[History] Ord 286 (3/8/11), BIA (3/21/11).

#### **15-06.100 Insurance.**

- (A) The Tribe may require that an applicant for a Business License have and maintain in force, throughout the effective period of any Business License that is issued, bodily and personal injury and property damage liability insurance naming the applicant as an insured and providing for coverages, terms and conditions as the Tribe may deem necessary to protect the economic security, health, safety and welfare of the Tribe and its

members, and of residents and other persons present in Swinomish Indian Country. The Tribe may require that an applicant present proof of such insurance.

[History] Ord 286 (3/8/11), BIA (3/21/11).

**15-06.110 Business License Terms and Conditions.**

- (A) No business shall be conducted by an applicant unless and until:
  - (1) the Tribe has issued the applicant a written Business License that is signed by a duly authorized representative of the Swinomish Department of Planning and Community Development or, in the case of a Special Event Business License, the license is signed by a duly authorized representative of the organization or department that is conducting the special event; and
  - (2) the Business Licensee is and remains in full compliance with any and all conditions of the License and of this Chapter.
- (B) Each Business Licensee shall comply with all applicable Tribal laws, including but not limited to Tribal laws concerning employment and contracting preference, health and sanitation, taxes, and zoning. Any Business Licensee who intends to prepare or distribute food or beverages must obtain any necessary permit (such as a food handler's permit) before doing so.
- (C) Each Business Licensee shall maintain in force any liability insurance required by Section 15-06.100 throughout the effective period of a Business License.
- (D) The Business License is specific to the business, owner(s) and location named on the license and is nontransferable.
  - (1) If the ownership of the business licensed changes, then the new owner must apply for a Business License.
  - (2) If business is transacted at two or more separate places by one person within Swinomish Indian County, a separate application and license is required for each place in which business is transacted, and the applicant shall pay the applicable fees for the licensing of each place of business; *provided*, however, that the applicant will not be required to undergo an additional criminal history background check if a subsequent application is filed within the same calendar year as the initial application.
  - (3) If the name or place of business of the Licensee is changed, the Licensee shall notify the Tribe's Office of Planning and Community Development of the change. Upon payment by the applicant of the administrative fee 15-06.090(b) and approval by the Tribe of the new name or location of the business, a new license shall be issued for the new name or place of business.

- (E) Except as provided in 15-06.110(F), a Business License does not entitle the licensee to conduct activities on particular lands within Swinomish Indian Country. A licensee other than a peddler or Special Event Business Licensee must obtain lawful possession of or right to use a location to conduct the business through a lease or other interest in property.
- (F) A Special Event Business Licensee is entitled to conduct business in a booth or stand at and during the Special Event as designated in the Special Event Business License.
- (G) Each Business Licensee shall agree, as a condition of the license, to respond within fifteen (15) calendar days to requests made by the Tribe for information about the Licensee's business, and to allow reasonable Tribal inspections of the business premises following reasonable notice by the Tribe, for the purpose of determining whether the Licensee is in compliance with the terms of the License and with the Swinomish Tribal Code.
- (H) Any Business License (except a Special Event Business License) issued pursuant to this Chapter is for the privilege of operating on Swinomish Indian Country for a period of one calendar year, or the remaining portion of the calendar year in which the license is issued. A Special Event Business License is valid for the period stated on the license.
- (I) A Business License renewal application and fee are due before December 01 of the year for which the Business License was most recently issued. If a Business Licensee fails to submit a renewal application and to pay the renewal fee prior to December 01, such person's license to engage in business within Swinomish Indian Country will terminate on and effective at midnight on January 01 of the succeeding year; *provided*, however, that the Business License may be renewed by submission of a renewal application and payment of the license fee and all applicable late fees no later than January 31 of the year following the most recent year for which a valid Business License was in effect. If the Business License is not renewed by January 31, then the applicant is no longer eligible for a renewal, and must submit an application for a new Business License.

[History] Ord 286 (3/8/11), BIA (3/21/11).

#### **15-06.120 Revocation of Business License.**

- (A) A Business License issued pursuant to this Chapter may be suspended or revoked by the Tribe for any of the following reasons:
  - (1) The Licensee made a material misrepresentation or false or misleading statement in the application for the Business License and the statement was not known by the Tribe to be a misrepresentation, false or misleading at the time that the license was issued;
  - (2) The Licensee has been convicted of, or entered a plea of *nolo contendere* or guilty to, a criminal offense which would have disqualified the Licensee from being issued a license under 15-06.080(D) if the conviction or plea had been entered prior to issuance of the license.

- (3) Conduct of the business licensed by the Tribe in violation of a material term or condition of the License;
  - (4) Conduct of the business licensed by the Tribe in violation of this Chapter or other Tribal Code provision, or in such a manner as to constitute a breach of the peace or as to constitute a material threat to the health, safety and general welfare of the Tribe, its members or residents of or persons present in Swinomish Indian Country;
  - (5) Failure to maintain any insurance required by 15-06.100;
  - (6) Conduct of another business in Swinomish Indian Country that is required to be licensed pursuant to this Chapter but which does not have a valid Business License at the time that such other business is conducted; or
  - (7) Revocation of the Business License of a person who serves as the employer or principal for individual licensees, which shall constitute a basis for revoking the license issued to individual applicants who are employed by or acting as agents for such person.
- (B) Any attempt to assign or otherwise transfer a Business License automatically revokes and voids the license.
- (C) The Tribe may suspend a license, rather than revoking the license, in order to afford the Business Licensee a reasonable opportunity to cure the circumstances that gave rise to the suspension. Any suspension of a license pursuant to 15-06.120(A) shall be for the period of time specified in the notice of suspension. If the Licensee has not cured, to the satisfaction of the Tribe, the circumstances that gave rise to the suspension by the end of the period of suspension, the Tribe shall revoke the license.
- (D) A notice of revocation or suspension shall be signed by a duly authorized representative of the Swinomish Department of Planning and Community Development or, in the case of a Special Event Business License, a duly authorized representative of the organization or department that is conducting the special event.

[History] Ord 286 (3/8/11), BIA (3/21/11).

**15-06.130 Request for Hearing Before the Swinomish Development Authority.**

- (A) Any party aggrieved by the denial, suspension or revocation of a Business License other than a Special Event Business License may request a hearing by the Swinomish Development Authority (SDA) within thirty calendar days from the date of notice of the challenged decision. A decision denying, revoking or suspending a Special Event Business License is not appealable.

- (B) Any request for a hearing shall be filed with the administrative secretary of the Swinomish Senate, shall be accompanied by payment of a filing fee of \$25.00, and shall state:
- (1) The reasons for the hearing request, specifically identifying any claimed errors involving any of the following in the challenged decision or action:
    - (a) Conclusions as to Swinomish law, as to Federal law, or in the application of such law;
    - (b) Any factual findings or statements of facts; or
    - (c) Any arbitrary or capricious action.
- (C) The hearing shall be conducted within 30 days of the filing of the request for hearing, or such extended period of time to which the appellant and Tribe may agree.
- (D) The SDA shall give the appellant written notice of the time and location of any hearing. Such notice shall be transmitted to the appellant in such a manner that the notice is reasonably calculated to be received by the appellant at least ten (10) days in advance of the date of the hearing.
- (E) A hearing required under this Section 15-06.130 shall proceed in the following manner:
- (1) The Department that denied, suspended or revoked the license shall provide the SDA with copies of all relevant documents, including the decision appealed from and the Business License or application at issue. The Department may provide additional oral information. SDA members may ask questions of the Department staff.
  - (2) The appellant may submit written documents, oral statements or witnesses in response to the information presented by the Department that denied, suspended or revoked the license. SDA members may ask questions of the appellant and any witnesses.
  - (3) The Department or organization that denied, suspended or revoked the license may present documents or statements in response to the appellant.
  - (4) Following the evidentiary portion of the hearing, the SDA shall deliberate on the appeal. Deliberations may be conducted off the record in executive session.
  - (5) Following deliberations, the SDA shall issue a written decision. The SDA may orally announce its decision.
- (F) The SDA shall make a written transcript or audio record of all hearings.

- (G) The Tribe may charge an appealing party the reasonable costs of preparing copies of the administrative record or of transcribing a recording of a hearing for the SDA and for the appealing party.
- (H) The SDA shall affirm the denial, suspension or revocation of the license unless the appealing party demonstrates to the SDA:
  - (1) The denial, suspension or revocation is either:
    - (a) Contrary to Swinomish or Federal law; or
    - (b) Not supported by substantial evidence in the record of proceedings held before the SDA; or
    - (c) Arbitrary or capricious; or
    - (d) Not in the best interests of the Tribe.
- (I) If the SDA determines that the aggrieved party has met the burden set forth in Subsection (H)(1), then the SDA, in its discretion, may issue a decision on the merits or may send the matter back to the Department or organization that denied, suspended or revoked the license for further proceedings in accordance with the SDA ruling.

[History] Ord 286 (3/8/11), BIA (3/21/11).

**15-06.140 Appeals of Swinomish Development Authority Decisions.**

- (A) Any party aggrieved by a decision of the Swinomish Development Authority under this Chapter may appeal that decision to the Senate by filing a written notice of appeal within thirty calendar days from the date of notice of the SDA decision.
- (B) Any appeal shall be filed with the administrative secretary of the Swinomish Senate, shall be accompanied by payment of a filing fee of \$25.00, and shall state:
  - (1) The reasons for the appeal, specifically identifying any claimed errors involving any of the following in the challenged SDA decision:
    - (a) Conclusions as to Swinomish law, as to Federal law, or in the application of such law; or
    - (b) Any factual findings or statements of facts; or
    - (c) Any arbitrary or capricious action.
- (C) The Senate shall make a decision on appeal based on the administrative record of the proceedings before the SDA. The Senate shall not receive or consider any additional evidence not contained in the administrative record of the proceedings before the SDA,

and shall not consider any issue that was not raised by the appealing party in the administrative proceedings before the SDA.

- (D) The Tribe may charge an appealing party the reasonable costs of preparing copies of the administrative record or of transcribing a recording of a hearing for the Senate and for the appealing party.
- (E) The Senate shall affirm the decision of the SDA unless the appealing party demonstrates to the Senate:
  - (1) The decision of the SDA is either:
    - (a) Contrary to Swinomish or Federal law; or
    - (b) Not supported by substantial evidence in the record of proceedings held before the SDA; or
    - (c) Arbitrary or capricious; or
    - (d) Not in the best interests of the Tribe.
- (F) If the Senate determines that the aggrieved party has met the burden set forth in Subsection (E)(1), then the Senate, in its discretion, may issue a decision on the merits or may send the matter back to the SDA for further proceedings in accordance with the Senate's ruling. The decision of the Senate shall be in writing.

[History] Ord 286 (3/8/11), BIA (3/21/11).

#### **15-06.150 Appeals of Senate Decisions.**

- (A) Any party aggrieved by a decision of the Senate pursuant to this Chapter may appeal such decision to Tribal Court within thirty (30) calendar days from the date of notice of the decision. Any appeal to the Tribal Court shall be in writing and shall identify the name of the party petitioning for review, the interest of the petitioning party in the decision appealed from, and shall name as respondent only the Director of the Department of Planning and Community Development, in his or her official capacity. The appealing party shall pay any usual Tribal Court filing fee.
- (B) The Tribal Court shall make a decision on appeal based on the record of the proceedings before the Senate. The Tribal Court shall not receive or consider any additional evidence not contained in the administrative record of the proceedings before the Senate. The Tribal Court shall not consider any issue that was not raised by the appealing party in the administrative proceedings before the Senate.
- (C) The Tribe may charge an appealing party the reasonable costs of preparing copies of the administrative record or of transcribing a recording of a hearing for the Tribal Court and for the appealing party.

- (D) The Tribal Court review shall be conducted by the Court, without a jury. The review shall be in accordance with those provisions of the Swinomish Rules of Civil Procedure that are determined to be applicable by the Tribal Court.
- (E) Any appeal from a decision of the Tribal Court shall be filed and adjudicated in accordance with the Swinomish Rules of Appellate Procedure.
- (F) The review by the Swinomish Tribal Court of Appeals shall be limited to the evidentiary record made in the administrative proceedings held before the Senate. The Court of Appeals shall not consider any issue that was not raised by the appealing party in both the administrative proceedings before the Senate and in the record of proceedings before the Tribal Court.
- (G) The Tribal Court and the Court of Appeals shall affirm the decision of the Senate upon review unless the appealing party demonstrates to the Court:
  - (1) The decision of the Senate either:
    - (a) Is contrary to Swinomish or Federal law; or
    - (b) Is not supported by substantial evidence in the record of proceedings held before the SDA; or
    - (c) Is arbitrary or capricious.
- (H) If the Court determines that the aggrieved party has met the burden set forth in Subsection (G)(1), then the Court shall reverse the decision appealed from and shall remand the matter to the Senate for further proceedings in accordance with the Court's ruling. The Senate, in its discretion, may send the matter to the SDA for further proceedings in accordance with the Court's ruling. The Tribal Court and the Court of Appeals shall not have authority to issue a license, and shall not have authority to grant any relief other than an order reversing the decision appealed from and remanding the matter to the Senate for further proceedings.
- (I) The decision of the Court of Appeals shall be final, and is not subject to further review.

[History] Ord 286 (3/8/11), BIA (3/21/11).

**15-06.160 Time and Finality.**

- (A) The date of notice of any decision shall be the date on which the decision is mailed by the person or body making the decision to the last known address of the appellant. The date of notice shall be stated in the decision.



- (B) All time periods set forth in Sections 15-06.130 - 150 shall be calculated in accordance with Rule 3-02.080(A), "Computation and Extension of Time", of the Swinomish Rules of Civil Procedure.
- (C) If a decision is not appealed within the time period set forth in this Chapter, then that decision is final and conclusive, and is not subject to further review.

[History] Ord 286 (3/8/11), BIA (3/21/11).

**15-06.170 Duties and Civil Liabilities of an Owner of a Business.**

- (A) Each owner of a business shall comply, and shall assure that the business and all persons employed at the business comply, at all times with all provisions of this Chapter.
- (B) Each owner of a business is responsible for any violation of, or noncompliance with, any provision of this Chapter by the business or by any person employed at the business, and is jointly and severally liable for any civil fine, forfeiture or other penalty imposed as a result of any such violation or noncompliance by the business or by any person employed at the business.

[History] Ord 286 (3/8/11), BIA (3/21/11).

**15-06.180 Violations Found by Planning Department.**

- (A) If the Planning Department finds that any of the provisions of this Chapter are being violated, it shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it.
- (B) The notice shall also inform the recipient of his or her right to request a hearing before the Swinomish Development Authority.
- (C) Said notice shall inform the alleged violator that he or she has an appropriate number of days to correct the alleged defect or violation. Appropriateness depends on the seriousness of the alleged offense in relation to the health, morals, and safety of the Reservation.

[History] Ord 286 (3/8/11), BIA (3/21/11).

**15-06.190 Violations Found by Citizens.**

- (A) Wherever a violation of this Chapter occurs, or is alleged to have occurred, any person may file a written complaint with the Planning Department, stating fully the alleged violations and the basis for believing them to be true.
- (B) The Planning Department shall investigate the complaint.

- (C) Upon determining that the provisions of this Chapter have been violated, the Planning Department shall notify the person responsible for the violation by certified mail within seven (7) days, specifying the nature of the violation and the date by which the violation shall be corrected.
- (D) The notice of violation shall inform the recipient of his or her right to request a hearing before the Swinomish Development Authority.

[History] Ord 286 (3/8/11), BIA (3/21/11).

#### **15-06.200 Enforcement.**

- (A) The Planning Department and Senate shall take any action authorized by law to ensure compliance with or to prevent violation of this Chapter or any regulations issued hereunder.
- (B) In the event the Planning Department, Senate, or staff determines that a person is in violation of this Chapter, failure to correct the violation within the stated time period shall subject the violator to civil remedies set forth in Sections 15-06.210 and 15-06.220.

[History] Ord 286 (3/8/11), BIA (3/21/11).

#### **15-06.210 Civil Enforcement.**

- (A) The provisions and remedies in this Chapter may be enforced by the Tribe through civil proceedings against:
  - (1) any person who has violated or is violating any provision of this Chapter;
  - (2) any person who owns in whole or in part any business in Swinomish Indian Country that has violated or is violating any provision of this Chapter or at which any person employed at the business has violated or is violating any provision of this Chapter;
  - (3) the property of any person identified in Subsection (A)(1) or (2) of this Section; or
  - (4) as otherwise may be provided in the Swinomish Tribal Code.
- (B) In addition to relief provided by any other provision of this Chapter or the Swinomish Tribal Code, this Chapter may be enforced through declaratory and injunctive relief requiring:
  - (1) any person to come into compliance with, or to cease non-compliance with, this Chapter; or

- (2) any person who owns in whole or in part a business in Swinomish Indian Country to assure that the business and/or persons employed at the business come into compliance with, or cease non-compliance with, this Chapter.

[History] Ord 286 (3/8/11), BIA (3/21/11).

#### **15-06.220 Civil Penalties and Forfeiture.**

- (A) In addition to any other civil or criminal penalty or remedy that may be provided in any other section of the Swinomish Tribal Code, any person found by the Tribal Court to have violated any provision of this Chapter shall be subject to any or all of the following civil penalties:
  - (1) a fine imposed by the Tribal Court in an amount not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00) per violation; provided that for the purpose of assessing a fine, each day that the person is in violation of this Chapter may be considered a separate violation;
  - (2) forfeiture of products in the person's possession, custody or control in connection with that person's operation of a business in Swinomish Indian Country in violation of this Chapter.
- (B) In addition to any civil or criminal fine, forfeiture or other penalty, any person found to have violated any provision of this Chapter shall be required to pay any unpaid fees, plus interest from the date such fee was due at a rate of eighteen percent (18%) per year compounded monthly.

[History] Ord 286 (3/8/11), BIA (3/21/11).

#### **15-06.230 Tribal Administrative Remedies and Tribal Court.**

All cases or controversies arising under the terms and provisions of this Chapter shall be heard only in the Swinomish Tribal Court, and only as provided in this Chapter. An applicant or other aggrieved party must exhaust any and all administrative remedies provided in this Chapter before seeking review in Tribal Court.

[History] Ord 286 (3/8/11), BIA (3/21/11).

#### **15-06.240 Sovereign Immunity.**

The sovereign immunity of the Tribe is not in any way waived or limited by this Chapter, or by any appeal commenced pursuant to this Chapter, and nothing in this Chapter shall constitute or be construed as a waiver of the sovereign immunity of the Tribe. Such sovereign immunity shall extend to the Tribe, the Senate, the Swinomish Development Authority, the Department of Planning and Community Development, all Tribal officials, employees, staff, and agents, as to all actions taken in, or concerning, the administration or enforcement of this Chapter, and as to all

actions taken pursuant to any authority of any action, decision or order authorized by this Chapter.

[History] Ord 286 (3/8/11), BIA (3/21/11).

**15-06.250 Severability.**

The provisions of this Chapter are severable. If a court of competent jurisdiction should hold any provision of this Chapter invalid, such ruling shall not affect the validity of any other provision, such that the remaining provisions shall have full force and effect.

[History] Ord 286 (3/8/11), BIA (3/21/11).

**15-06.260 Effective Date.**

The provisions of this Chapter shall become effective immediately upon approval by the United States Secretary of the Interior or his or her designee. Any person currently possessing a license to engage in business from the Swinomish Indian Tribal Community on the date of adoption by the Senate may apply for a license renewal under the provisions of this Code.

[History] Ord 286 (3/8/11), BIA (3/21/11).