

Title 4 – Criminal Code
Chapter 11 – Offenses Involving Drug Paraphernalia

Sec.

4-11.010	Definitions
4-11.020	Identification
4-11.030	Possession of Drug Paraphernalia
4-11.040	Manufacture or Delivery of Drug Paraphernalia
4-11.050	Advertisement of Drug Paraphernalia
4-11.060	Penalties
4-11.070	Nuisance

Legislative History

Enacted:

Swinomish Criminal Code, Ord. 184 (9/30/03), BIA (10/7/03).

Repealed or superseded:

Swinomish Criminal Code, Ord. 75 (4/2/91), Enacting Res. 91-4-37, BIA (6/13/91) (repealing and superseding Ord. 39 and Article XIII of Ord. 32).

Swinomish Drug Paraphernalia Ordinance, Ord. 70 (5/1/90), Res. 90-5-32, BIA (5/14/90) (language is included in Ord. 75, chapter 5-10).

Establishing Criminal Offenses, Ord. 39 (6/7/77) (superseding conflicting provisions of Ord. 32).

Swinomish Law and Order Code, Ord. 32 (3/4/75), BIA (5/30/75).

Swinomish Law and Order Code, Ord. 7 (6/1/38), BIA (3/24/38).

Adoption of Swinomish Law and Order Regulations, Ord. 1 (undated).

[Ed. Note. Ordinance 1 is undated and adopts the Law and Order Regulations approved by the Secretary of the Interior November 27, 1935 as part of the fundamental law governing the Swinomish Reservation. The referenced “regulations” are not located in tribal records.]

4-11.010 Definitions.

The term “**drug paraphernalia**” means all equipment, products and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of Chapter 4-10. It includes, but is not limited to:

- (A) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant that is a controlled substance or from which a controlled substance can be derived;
- (B) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
- (C) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant that is a controlled substance;
- (D) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances;
- (E) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
- (F) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannito, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;
- (G) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (H) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
- (I) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, including but not limited to:
 - (1) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - (2) Water pipes;
 - (3) Carburetion tubes and devices;
 - (4) Smoking and carburetion masks;
 - (5) Roach clips (meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand);
 - (6) Miniature cocaine spoons, and cocaine vials;
 - (7) Chamber pipes;
 - (8) Carburetor pipes;

- (9) Electric pipes;
- (10) Air-driven pipes;
- (11) Chillum;
- (12) Bongs; and
- (13) Ice pipes or chillers;
- (J) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designated for use in compounding controlled substances;
- (K) Capsules, balloons, envelopes and other containers used, intended for use, or designated for use in packaging small quantities of controlled substances; and
- (L) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances as defined in this Title.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91); Ord. 70 (5/1/90).

4-11.020 Identification.

In determining whether an object is drug paraphernalia, the Tribal Court or other authority should consider, in addition to all other logically relevant factors, the following:

- (A) Statements by an owner or by anyone in control of the object concerning its use;
- (B) Prior convictions, if any, of an owner or of anyone in control of the object, under any tribal, state or federal law relating to any controlled substance;
- (C) The proximity of the object, in time and space, to a direct violation of the Swinomish Criminal Code;
- (D) The proximity of the object to controlled substances;
- (E) The existence of any residue of controlled substances on the object;
- (F) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of Swinomish Law or the Uniform Controlled Substances Act; the innocence of an owner, or of anyone in control of the object, as to a direct violation of said Laws or Act shall not prevent a finding that the object is intended for use as drug paraphernalia;
- (G) Instructions, oral or written, provided with the object concerning its use;

- (H) Descriptive materials accompanying the object that explain or depict its use;
- (I) National and local advertising concerning its use;
- (J) The manner in which the object is displayed for sale;
- (K) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (L) Direct or circumstantial evidence of the ratio of sales of the objects to the total sales of the business enterprise;
- (M) The existence and scope of legitimate uses for the object in the community; and/or
- (N) Expert testimony concerning its use.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91); Ord. 70 (5/1/90).

4-11.030 Possession of Drug Paraphernalia.

It is unlawful for any person to use, or to possess with intent to use, any item of drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91); Ord. 70 (5/1/90).

4-11.040 Manufacture or Delivery of Drug Paraphernalia.

It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, any item of drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ingest, inject, inhale, or otherwise introduce into the human body a controlled substance.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91); Ord. 70 (5/1/90).

4-11.050 Advertisement of Drug Paraphernalia.

It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication, any advertisement, or to display on any poster, readerboard or billboard or sign of any sort, knowing, or under circumstances where one reasonably should know, that the

purpose of the advertisement or display, in whole or in part, is to promote the sale of any object designed or intended for use as drug paraphernalia.

[History] Ord. 184. (9/30/03); Ord. 75 (4/2/91); Ord. 70 (5/1/90).

4-11.060 Penalties.

Any person who possesses, manufactures, delivers or promotes the sale of drug paraphernalia shall be found guilty of a **Class C offense**.

[History] Ord. 184. (9/30/03); Ord. 75 (4/2/91); Ord. 70 (5/1/90).

4-11.070 Nuisance.

The distribution or possession for the purpose of sale, exhibition or display, in any place, public or private, of any devices, contrivances, instruments or paraphernalia, including all items defined as drug paraphernalia in Section 4-11.010, that are primarily designed for, or intended to be used for the smoking, ingestion or consumption of marijuana, hashish, PCP, or any controlled substance, other than prescription drugs, is hereby declared to be a public nuisance and may be abated by the Tribe.

[History] Ord. 184. (9/30/03); Ord. 75 (4/2/91); Ord. 70 (5/1/90).

Annotations

STC 4-11.010

NOTES OF DECISIONS

What is Drug Paraphernalia? 1

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Court denies defendant's probable cause challenge and assertion that ordinary household items cannot be charged as items of drug paraphernalia without proof of chemical composition of residue. STC 4-11.010 very broadly defines items that may be drug paraphernalia to easily include ordinary household items, and STC 4-11.020 provides many methods to prove an item is drug paraphernalia in addition to subsection (E), "the existence of any residue of controlled substances on the object." While chemical analysis may be the most powerful proof available, the statute does not demand such limitations. *SITC v. Reid*, CRCO-2011-0079 (Swinomish Tribal Ct. August 31, 2011).

STC 4-11.020

NOTES OF DECISIONS

Identification of Drug Paraphernalia 1

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