

Title 10 – Community Health
Chapter 10 – Recreation and Special Event Safety

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Legislative History

Enacted:

- Ordinance 402 Amending STC Title 10, Chapter 10 (5/5/20).
- Ordinance 388 Amending STC Title 10: Amending Chapters 1 & 6, Repealing and Enacting Chapter 2, Enacting Chapters 9, 10, & 11 (12/4/18).

[Ed. Note. The Recreational Sanitation Code was previously codified at Title 10, Chapter 2, Subchapter 3.]

10-10.010 Purposes.

The purposes of this Chapter are:

- (A) To ensure that conditions at sites used for public recreation and Special Events are reliably safe and clean.
- (B) To help sustain the physical and cultural health of the Swinomish Indian Tribal Community and residents of and guests to the Swinomish Reservation, the Senate encourages outdoor recreation and Special Events.
- (C) To protect the health, safety and welfare of the Swinomish Indian Tribal Community and residents of and guests to the Swinomish Reservation by regulating Recreational Water Contact Facilities and Water Recreation Facilities.

[History] Ord. 402 (5/5/20); Ord. 388 (12/4/18).

10-10.020 Findings.

- (A) The Senate finds that regulation of public recreation and Special Event sites is necessary to minimize safety risk and to encourage development of recreation and community gathering opportunities.
- (B) The Senate recognizes that outdoor recreation and Special Events benefit personal and community health.
- (C) The Senate finds that regulation of Recreational Water Contact Facilities and Water Recreation Facilities is necessary to protect the health, safety and welfare of the Swinomish Indian Tribal Community and residents of and guests to the Swinomish.

[History] Ord. 402 (5/5/20); Ord. 388 (12/4/18).

10-10.030 Definitions.

The following definitions apply to this Chapter.

- (A) **"Compliance Officer"** means an individual authorized by the Director of the Swinomish Planning and Community Development Department to carry out the duties and responsibilities of this Subchapter.
- (B) **"Person"** means an individual, firm, partnership, co- partnership, corporation, company, association, club, government entity, or organization of any kind.
- (C) **"Planning Department"** means the Swinomish Planning and Community Development Department.

- (D) **“Recreation Site”** refers to an area subject to regular use for recreation by multiple people, such as youth camps, campground sites, and picnic areas.
- (E) **"Recreational Water Contact Facility"** means an artificial water associated facility with design and operational features that provide patron recreational activity which is different from that associated with a conventional swimming pool and purposefully involves immersion of the body partially or totally in the water, and that includes but is not limited to, water slides, wave pools, and water lagoons.
- (F) **“Special Event”** means any activity involving the attendance of thirty (30) or more persons for a period of more than one (1) hour, that is not held in or around a private home, business, or Tribal government building.
- (G) **“Tribe”** means the Swinomish Indian Tribal Community.
- (H) **"Water Recreation Facility"** means any artificial basin or other structure containing water used or intended to be used for recreation or swimming, where body contact with the water occurs or is intended to occur and includes auxiliary buildings and appurtenances. The term is not intended to include a water recreation facility for the sole use of residents and invited guests at a single-family dwelling. The term is limited to the following public water recreation facilities within the Reservation:
- (1) conventional swimming pools, wading pools, and spray pools open to members of an association or community or the general public;
 - (2) Recreational Water Contact Facilities as defined in this Chapter;
 - (3) spa pools and tubs using hot water, cold water, mineral water, air induction, or hydrojets; and
 - (4) any area designated for swimming in natural waters with artificial boundaries within the waters.

[History] Ord. 402 (5/5/20); Ord. 388 (12/4/18).

Subchapter I: Special Event Safety

10-10.040 Notification and Permitting.

Any Person wishing to conduct a planned Special Event on the Reservation shall notify the Health Official at least ten (10) days prior to commencement of operations. The Health Official, may, at his or her discretion, require the Person to provide plans for compliance with this Title, may impose reasonable conditions as necessary to ensure public safety, and

may further require the Person to pay a reasonable fee as necessary to allow for adequate inspection and enforcement.

[History] Ord. 388 (12/4/18).

10-10.050 Location.

Recreation Sites and Special Event sites shall be located in areas reasonably accessible by emergency services.

[History] Ord. 388 (12/4/18).

10-10.060 Site Conditions.

Recreation Sites and Special Event sites shall occur in reasonably safe locations and conditions, on a well-drained area free of heavy undergrowth and health hazards, such as hazard trees, poison oak, and open pits. Activities may not take place at a Recreation Site or Special Event during dangerous weather, such as lightning storms, high winds, or excessive cold or heat.

[History] Ord. 388 (12/4/18).

10-10.070 Water Supply.

Recreation Sites and Special Event sites shall provide convenient access to an adequate supply of safe drinking water. Water stations shall be properly drained to prevent standing water. Where water pressure is available, self-closing faucets shall be used. When water is unavailable at the site, it shall be transported, stored and dispensed in a sanitary manner.

[History] Ord. 388 (12/4/18).

10-10.080 Toilet Facilities.

Clean, safe and adequate toilet facilities shall be provided or available convenient to all Recreation Sites and Special Event sites.

[History] Ord. 388 (12/4/18).

10-10.090 Refuse Containers.

If an activity at a Recreation Site or Special Event site involves the generation of garbage or rubbish, an adequate number of refuse containers shall be provided. Storage and disposal of refuse shall meet the requirements of the solid waste sections of this Title.

[History] Ord. 388 (12/4/18).

10-10.100 Food Services.

Recreation Sites and Special Event sites featuring food services shall meet the applicable food service requirements of this Title.

[History] Ord. 388 (12/4/18).

10-10.110 Inspection of Special Event and Recreation Sites.

The Health Official is authorized to inspect Special Event and Recreation Sites and Special Event sites to enforce this Chapter.

[History] Ord. 388 (12/4/18).

10-10.120 Inspection of Swimming Areas.

The Health Official may inspect public swimming areas not otherwise regulated by this Chapter periodically. He or she shall submit written reports to the Board of Health when he or she finds special problems related to health or safety. The Tribe does not generally provide life guards, and all swimming on the Reservation is at the risk of the swimmer and his or her guardian.

[History] Ord. 402 (5/5/20); Ord. 388 (12/4/18).

Subchapter II: Water Recreation Safety

10-10.210 Jurisdiction.

The Tribe asserts jurisdiction over the construction, operation, maintenance, repair and safety procedures of Water Recreation Facilities within the Reservation. Tribal jurisdiction over the activities subject to this Subchapter shall extend to all lands and waters within its territory as set forth in Article I, Section 2 of the Constitution originally ratified by the Tribe on November 16, 1935, and approved by the Secretary of the Interior on January 27, 1936, and as most recently amended and ratified by the Tribe on May 23, 2017 and approved by the Secretary of the Interior on July 7, 2017.

[History] Ord. 402 (5/5/20).

10-10.220 Adoption of Laws and Rules.

- (A) The Tribe incorporates by reference and adopts the following Federal laws and Washington State administrative rules into this Subchapter, as if they were fully set forth, which apply to and must be complied with by any Water Recreation Facility subject to the Tribe's jurisdiction as set forth in STC 10-10.210:

- (1) the Virginia Graeme Baker Pool and Spa Safety Act, and any amendments subsequent thereto;
 - (2) WAC 246-260 regarding Water Recreation Facilities, and any amendments subsequent thereto; and
 - (3) WAC 246-262 regarding Recreational Water Contact Facilities, and any amendments subsequent thereto.
- (B) In the event of conflict between a provision of the Virginia Graeme Baker Pool and Spa Safety Act and any state rule, the Virginia Graeme Baker Pool and Spa Safety Act shall prevail over the state rule.
- (C) In the event of conflict between a provision of a state rule and this Chapter, this Chapter shall prevail over the state rule.
- (D) The Planning Department may issue guidance to operators concerning any state rule in which application of a rule or designation of a Tribal entity to perform a stated duty or responsibility is ambiguous due to terminology differences between the state entities and the Tribe.
- (E) Where a state rule uses the terms “department” or “local health officer”, these terms shall refer to the Planning Department.
- (F) Where a state rule uses the term “owner” or “operator”, these terms shall refer to the Person responsible for obtaining an operating permit or the holder of an operating permit.

[History] Ord. 402(5/5/20).

10-10.230 Regulation and Enforcement by Planning Department.

- (A) The provisions of this Chapter shall be administered, monitored and enforced by the Planning Department.
- (B) The Planning Department may issue, issue with conditions, or deny any permit sought under this Chapter, and may issue warnings, issue notices of violation, suspend, continue with additional conditions, or revoke any permit issued pursuant to this Chapter.
- (C) The Planning Department may authorize Compliance Officers as needed to fulfill the duties and responsibilities of this Chapter.

[History] Ord. 402 (5/5/20).

10-10.240 Fees.

The Planning Department may establish and collect fees sufficient to cover its costs incurred in administering and carrying out duties under this Chapter and the rules adopted under this Chapter. The Planning Department shall publish and make publicly available any fees established pursuant to this Chapter.

[History] Ord. 402 (5/5/20).

10-10.250 Modification or Construction of Facility.

- (A) Permit required. A permit is required for any modification to, or construction of, any Water Recreation Facility.
- (B) Existing Facilities. Water Recreation Facilities existing at the effective date of this Subchapter which do not comply with the design and construction requirements established under this Chapter may continue to operate without modification to or replacement of the facility, provided that both of the following apply:
 - (1) water quality, sanitation, and lifesaving equipment are in compliance with the requirements established under this Chapter: and
 - (2) the existing facilities are kept in good repair with no safety violations related to the construction or design.
- (C) New modifications or construction. Any modification or construction to a new or an existing Water Recreation Facility that is initiated after the effective date of this Chapter shall comply with the requirements established under this Chapter.
- (D) Plan Submission. The plans and specifications for the modification or construction shall be submitted to the Planning Department, and a Person submitting plans shall comply with any procedures established by the Planning Department for permitting.
- (E) Plan Review. The Planning Department is authorized to review plans and may approve, reject, modify, or impose conditions upon a plan for modification or construction of a Water Recreation Facility.

[History] Ord. 402 (5/5/20).

10-10.260 Operating Permit.

- (A) An operating permit from the Planning Department is required for each Water Recreation Facility operated on the Reservation. No Water Recreation Facility may

be utilized unless and until the operator of the Water Recreation Facility has obtained an operating permit. The operating permit must be renewed annually each year that the Water Recreation Facility is operational. The permit shall be conspicuously displayed at the Water Recreation Facility.

- (B) A Water Recreation Facility may be granted a permit to operate, provided that both of the following apply:
 - (1) water quality, sanitation, and lifesaving equipment are in compliance with the requirements established under this Chapter: and
 - (2) the facilities are kept in good repair with no safety violations related to the construction or design.

[History] Ord. 402 (5/5/20).

10-10.270 Liability and Sovereign Immunity.

- (A) Nothing in this Chapter or the rules adopted under this Chapter, or any permit issued pursuant to this Chapter, creates or forms the basis for any liability:
 - (1) on the part of the Tribe, or its elected leaders, officers, employees, or agents, for any injury or damage resulting from the failure of the owner or operator of Water Recreation Facilities to comply with this Chapter, the rules adopted under or by this Chapter, or the terms of any permit issued pursuant to this Chapter; or
 - (2) by reason or in consequence of any act or omission in connection with the administration or enforcement of this Chapter or the rules adopted under or by this Chapter on the part of the Tribe, or by its employees or agents.
- (B) All actions of Compliance Officers, the Planning Department, and the Tribe and its employees and agents shall be deemed an exercise of the Tribe's inherent authority and the powers and authority convened under this Chapter.
- (C) 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 Planning Department, all Tribal officials, employees, staff, and agents, as to all actions taken or not taken in, or concerning, the administration or enforcement of this Chapter, and as to all actions taken or not taken pursuant to any authority of any action, decision or order authorized by this Chapter.

[History] Ord. 402 (5/5/20).

10-10.280 Reporting of Injury, Disease, or Death.

Any Person operating a Water Recreation Facility shall promptly report in writing to the Planning Department any serious injury, communicable disease, or death occurring at or caused by the Water Recreation Facility.

[History] Ord. 402 (5/5/20).

10-10.290 Civil Penalties.

The Planning Department may establish civil penalties for a violation of this Subchapter, the rules adopted under this Subchapter or any permit issued pursuant to this Subchapter. Each day upon which a violation occurs constitutes a separate violation. A Person violating this Chapter may be enjoined from continuing the violation.

[History] Ord. 402 (5/5/20).

10-10.300 Appeals.

- (A) Any Person aggrieved by the denial, suspension or revocation of a permit, by an order of the Planning Department or by the imposition of a civil fine has the right to an appeal. STC 15-06 governs the appeals procedure that shall be afforded under this Chapter, except that the Planning Commission instead of the Swinomish Development Authority shall hear appeals of violations and orders.
- (B) 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 STC 15-06 before seeking review in Tribal Court.

[History] Ord. 402 (5/5/20).

10-10.310 Insurance Required.

A Water Recreation Facility subject to the Tribe's jurisdiction as set forth in STC 10-10.210 shall not operate unless the owner or operator has purchased and maintains liability insurance in an amount not less than one million dollars against liability for bodily injury to or death of one or more persons in any one incident arising out of the use of the Water Recreation Facility.

[History] Ord. 402 (5/5/20).