

Title 11 – Utilities
Chapter 2 – Tribal Utility Authority

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Legislative History

Enacted:

Ordinance 300 Amending STC Title 11, Chapters 1 and 2, Amending STC Title 10, Chapter 6, Enacting STC Title 10, Chapter 8 – Solid Waste, and Repealing STC Title 11, Chapter 7 (11/8/11), BIA (11/21/11).
Ordinance 195 Codifying Title 11, (11/5/03), BIA (11/25/03).

Repealed or Superseded:

Ordinance 123 Amendment to Utility Ordinance Adding New Sections to Art. XVII “Violations of Ordinance”, (5/12/97).
Ordinance 121 Amendment to Utility Ordinance Promulgating Additional Enforcement Measures to Ensure Timely Payments of Assessments, (9/10/96), BIA (10/20/96).
Ordinance 109, Amendment to Utility Ordinance Amending the Provision for Judicial Review., (2/7/95).
Ordinance 108 Amending Utility Ordinance and Clarifying the meaning of Amendment 106, (1/10/95), BIA (2/2/95).

Amending Ordinance No. 65, Utility Ordinance, Ord. 106 (7/12/94) (amending provision for collection of assessments).
Ordinance 105, Amending Utility Ordinance No. 65, (6/22/94), BIA (6/29/94) (amending provisions regarding the final roll and the appeal of assessments).
Ordinance 67 Amending the Provision of Ordinance 65 for an assessment lien, (12/5/89), BIA (9/24/90).
Resolution 89-12-97 to Adopt "Legislative Findings" as Appendix No. 1 to Utility Ordinance No. 65, (12/5/89).
Ordinance 65 Swinomish Indian Tribal Community Utility Ordinance, Enacting Resolution 89-10-95 and repealing and superseding Ordinance 51 (10/10/89), BIA (10/23/89).
Ordinance 51 Utility and Environmental Service Ordinance Enacting Res. 85-6-41, (06/04/85), BIA (7/10/85).
Resolution 81-4-824 Setting New Water Rates for the Swinomish Tribal Community Water System, (4/14/81).

Rescinded:

Ordinance 73 (7/19/90), (Disapproved by BIA).

[Ed. Note. Ord. 109 is signed, but not dated, by BIA Puget Sound Agency Superintendent Bill Black. The substantive provisions of Amendment to Tribal Utility Ordinance Relating to Appeals of Assessments, Res. 94-4-34 (4/26/94), are identical to the substantive provisions of Ord. 105. Tribal archives do not contain a copy of Ord. 73. Ord. 65 was originally numbered Ord. 62.]

Subchapter I – Establishment

11-02.010 Utility Authority.

There is hereby established the Swinomish Indian Tribal Utility Authority (the "Authority"), which shall have authority to provide utility services to all of the lands and waters within the exterior boundaries of the Reservation and to enforce this Title. The Authority shall have the day-to-day responsibility for operating, providing, and maintaining the tribal utilities and for enforcing this Title.

[History] Ord. 300 (11/8/11); Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11.02.020 Services.

- (A) The services provided by the Authority shall include water, sewage, and solid waste. Additional services may be provided upon approval by the Senate.
- (B) The Authority shall provide safe, adequate water for a fee to any person connected to the Authority water supply system; provided, that water services may be terminated as provided in Sections 11-02.480 through 11-02.490. The Authority shall control, regulate and manage such system or systems,

promulgating all rules and regulations as are approved and deemed necessary by the Commission to carry out the goals and objectives of this Chapter.

- (C) Solid Waste collection and disposal services in the Village Area shall be managed and provided for a fee by the Utility Authority. The Utility Authority may contract with a private company for solid waste collection and disposal services.

[History] Ord. 300 (11/8/11); Ord. 195 (11/5/03); Ord. 121 (9/10/96); Ord. 65 (10/10/89).

11-02.030 Utility Commission.

There is hereby established the Swinomish Indian Tribal Utility Commission (the “Commission”) to serve as the advisory and policy setting board of directors for the Swinomish Indian Tribal Community Utility Authority. Unless specified otherwise in this Title, the Commission shall have the authority to establish rules and regulations regarding the acceptance of, and subscription to, tribally provided utility services.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.040 Subordinate to the Senate.

Generally, the Senate shall have full plenary authority over the Commission. The Commission shall operate as a subordinate unit of the Senate, independent in its operation, but responsible to the Senate for its actions.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.050 Operations.

The methods of appointment, terms of office, and operating procedures of the Commission shall be set forth in this Title and in regulations adopted by the Commission.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.060 Powers and Responsibilities.

The Commission shall provide direction and overall responsibility for the Authority and its projects. To fulfill these responsibilities, the Commission shall have the power to:

- (A) Adopt an annual budget for the maintenance and operation of the Authority;
- (B) Establish policies and procedures for the administration of the Authority;
- (C) Determine and set reasonable fees for utility services;
- (D) Provide procedures for the hiring and compensation of management and maintenance personnel;

- (E) Adopt appropriate regulations to implement the requirements of this Chapter;
- (F) Authorize investment of Authority funds;
- (G) Establish and maintain for the Authority a commercial bank account;
- (H) Initiate improvement projects;
- (I) Recommend to the Senate the sale and issuance of bonds, warrants, notes or the incurrence of other obligations to finance the Tribe's public utilities; and
- (J) Implement additional services and perform additional tasks at the direction of the Senate.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.070 Membership.

The Commission shall be composed of five (5) persons appointed by the Senate. At least three (3) of the five (5) members shall be appointed from among the on-reservation users of the Tribe's public utilities. At least one (1) of the five (5) members shall be appointed from among members of the Senate.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.080 Terms of Office.

- (A) Commissioners will serve staggered two-year terms, except for the representative from the Senate who shall serve a one-year term. Commission appointments shall be made by the Senate during the month of March of each year and Commission terms shall expire upon the swearing in of newly appointed Commissioners.
- (B) Commission position No. 1 shall be held by a Senate member and shall be appointed each year to serve one-year terms. Commission positions Nos. 2 and 4 shall be appointed during even numbered years to serve two-year terms. Commission positions Nos. 3 and 5 shall be appointed during odd numbered years to serve two-year terms.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.090 Method of Appointment.

The Senate shall annually appoint persons to fill any Commission vacancies. The Authority shall advertise the vacancies. The Commission shall forward to the Senate Chair the names of all candidates interested in serving, together with the Commission's recommendations for appointment. For all Commissioner positions, the Senate shall

choose persons capable and willing to perform the duties of the Commission. After receiving names of candidates and recommendations, the Senate shall appoint Commissioners by a majority vote.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.100 Vacancies.

(A) Senate Commissioner. In the event that the Commissioner from the Senate loses or resigns his or her position in the Senate, his or her appointment to the Commission shall expire immediately, and the Senate shall fill the vacancy by appointing a new Commissioner at the next regular meeting of the Senate.

(B) **Commissioners at Large.**

- (1) If a Commissioner from the public at large resigns, moves from the local area, or dies, the Senate shall declare the Commissioner position vacant.
- (2) If a Commissioner is found guilty of a felony or major crime in any court of law, the Senate may declare the position vacant.
- (3) If any Commissioner misses two (2) consecutive Commission meetings without a valid excuse, the Commission may declare the position vacant.
- (4) All vacancies should be filled within one (1) month, or as soon as possible thereafter, in accordance with this Chapter.

(C) Unexpired Terms. All appointments to fill unexpired terms shall be for the remainder of that unexpired term.

(D) Senate as Interim Commission. If the number vacancies on the Commission prevents a quorum, the Senate shall act as the interim Commission until the Senate fills enough vacancies to achieve a quorum.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.110 Officers.

(A) Elections. Officers of the Commission shall be elected by the Commissioners annually following the annual appointment or reappointment of Commissioners by the Senate.

(B) Duties. Officers shall have the following duties:

- (1) Chair. The Chair shall preside at all meetings; call and arrange all meetings; oversee the general management of the Authority's affairs; and perform all duties incidental to the office.

- (2) Vice-Chair. The Vice Chair shall perform all of the Chair's duties in the absence of the Chair; and shall assist the Chair as required in handling the Authority's affairs.
- (3) Secretary Treasurer. The Secretary Treasurer shall keep or cause to be kept a complete and accurate record of all meetings; and shall maintain all correspondence, notices and records of the Authority; shall report the Authority's financial status at each regularly scheduled Commission meeting; and shall present to the Commissioners for their action all requests for funds not included in the annual budget; and shall ensure that an annual financial statement is prepared and submitted to the Senate.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.120 Meetings.

- (A) Schedule. The Commission shall meet when business demands and requires attention, but in no case less than once per month. Regular and special meetings shall be called by the Chair. Any three (3) Commissioners may request in writing that the Chair schedule a special meeting of the Commission. If the Chair fails to schedule a meeting within five (5) days after receipt of a written request, any other three (3) Commissioners may call such a meeting pursuant to the procedures set forth below.
- (B) Notice and Opportunity to Be Heard. Meetings shall be held in public places, and the Utility Commission shall provide at least five (5) days public notice of Commission meetings. Emergency meetings may be convened with less than five (5) days notice, in cases of emergency where loss of life, limb or property is threatened, or where the continued operation or economic viability of the Tribal public utilities may be in jeopardy. All meetings shall be open to members of the Tribal Community and to users of the Tribe's public utilities.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.130 Quorum and Voting.

- (A) Quorum. A minimum of three (3) Commissioners is required to establish a quorum and conduct Commission business.
- (B) Voting. Any action taken by the Commission must be approved by a majority vote of those Commissioners present at a Commission meeting. Each Commissioner of the Commission shall be entitled to vote on each matter coming properly before the Commission at which a quorum is present, except the Chair, who shall vote only in the case of a tie.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.140 Meeting Agenda.

Regular meetings of the Utility Commission shall be conducted according to the following agenda outline:

- (A) Call to Order;
- (B) Roll call;
- (C) Reading of minutes of previous meeting;
- (D) Report by Treasurer;
- (E) Report by Manager;
- (F) Unfinished business;
- (G) New business;
- (H) Miscellaneous business;
- (I) Adjournment;

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.150 Compensation.

Commissioners shall serve without monetary compensation. However, Commissioners shall receive prevailing government rates for mileage, per diem, or other costs incurred while on approved Commission business, consistent with Tribal policy, and subject to the availability of funds within the Authority budget.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

Subchapter II – Management and Finances

11-02.160 Management Personnel.

The Commission shall oversee the business and operating affairs of the Authority. The Commission shall provide for hiring and contracting personnel for the operation and management of the Authority, and shall establish compensation rates consistent with its approved budget. The Commission may delegate only those duties that are not specifically designated as duties to be performed exclusively by the Commission.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.170 Annual Budget.

- (A) The Commission shall establish an annual budget enumerating the necessary costs of the Authority including operation, maintenance, administration of capital improvements, debt service, personnel, liability and other insurance, replacement, a reserve for major repairs and replacements, and lease payments for use of Tribal Community resources and facilities.
- (B) The Commission's annual budget shall be presented to the Senate for its approval prior to the commencement of the Commission's fiscal year.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.180 User Rate and Fee Schedule.

The annual budget shall be used to determine a rate and fee schedule to be charged to the users of public utilities. The budget and fee schedule shall be approved by the Commission prior to implementation.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.190 Fiscal Year.

The fiscal year of the Authority shall be the same as the fiscal year of the Senate.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.200 Depository.

The depository of the Authority shall be a separate commercial account or accounts in any bank or banks selected by the Commission. Said account shall be in the name "Swinomish Indian Tribal Utility Authority." Said accounts shall be fully insured by an agency of the United States Government.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.210 Investments.

Funds that are not needed for immediate use or that represent the proceeds of bonds or notes issued to finance a long-term construction project shall be invested in:

- (A) A federally insured commercial bank or savings and loan association;
- (B) Bonds, notes or other securities constituting direct and general obligations of the United States;

- (C) Bonds, notes or other securities constituting the direct and general obligation of any instrumentality of the United States; or
- (D) Bonds, notes, letters of credit, or other securities or evidence of indebtedness constituting the direct and general obligation of a federal home loan bank or federal reserve bank.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.220 Disbursements and Receipts.

- (A) The Commission shall determine the distribution of funds required for the operation, maintenance and management of the public utilities through the adoption of an annual budget. No disbursement of Commission funds shall be made except pursuant to an approved budget.
- (B) Disbursements will be made by check upon presentation of invoices or vouchers. Disbursements shall be made by individuals properly designated by the Commission.
- (C) All cash payments and cash received will be promptly and directly deposited in the depository. Receipts will be issued for all cash received and copies filed and retained for accounting.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.230 Records and Accounts.

- (A) Financial records shall be maintained for all expenditures, receipts from payments for services, investments, and returns on investments, and any other financial matters necessary for operation of the Authority.
- (B) All accounting records for the Authority shall be maintained in accordance with generally accepted accounting principles and in a manner satisfactory to the Senate.
- (C) The records of accounts shall be made available to the Senate upon request.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.240 Exclusive Use of Funds.

The funds accrued by the Authority and kept on deposit are for the exclusive use of the Authority for the necessary operation, maintenance, and management of the Tribe's public utility. Authority funds shall not be transferred or loaned to the Tribal Community General Fund or any other accounts of the Tribe or other Tribal Community departments,

except to pay for services provided to the Authority by other Tribal Community departments.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.250 Audits and Reports.

- (A) The accounts of the Authority shall be audited annually at the close of the fiscal year at the expense of the Authority.
- (B) Annual and periodic reports shall be submitted by the Commission to the Senate.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.260 Bonding.

Officers of the Commission and any other person(s) designated to handle funds for the Authority shall be bonded for amounts not less than \$100,000 per person.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.270 Insurance.

Fire and other insurance on property owned or used by the Authority or on property in which the Authority has an insurable interest shall be provided by the Authority in amounts and type of coverage sufficient to cover the cost of full replacement. Insurance may be part of the Tribal Community insurance policies, with the expenses thereof prorated to the Authority if so directed by the Senate.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.280 Petty Cash.

A petty cash fund is authorized to be established in an amount of up to two hundred dollars (\$200.00). This fund may be used to pay small expenses, when necessary, and to pay small obligations when it is not feasible to pay by check drawn on the official depository. The fund may be reimbursed periodically from the official depository of the Authority in an amount equal to and upon submittal of receipts, vouchers, and statements of the proof of expenditure.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.290 Power to Acquire Property Rights.

The Authority may acquire by purchase all lands, property rights, water, and water rights, both within and without the exterior boundaries of the Reservation necessary for its purposes provided:

- (A) Title to all such property so acquired shall be taken in the name of the United States for the use and benefit of the Tribe in the case of real property and in the name of the Tribe in the case of other property; and
- (B) No real property shall be acquired without permission of the Senate. The Authority may lease real or personal property necessary for its purposes for a term of years when such leased property may reasonably be needed, where such property may not be needed permanently, or where such a lease may effect substantial savings to the Authority.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

Subchapter III – Terms of Service

11-02.300 Eligibility.

- (A) Properties, either inside or outside the exterior boundaries of the Reservation, may receive services of the Authority when the owner thereof agrees to the following terms:
 - (1) The property owner warrants that he or she is the owner, assignee, lessee, or tenant of the property to receive the utility services and has full authority to bind the property to the terms, regulations, assessments, and rate structure of the Authority as may be amended from time to time.
 - (2) The property receiving services shall be subject to liens, penalties and interest for non-payment of utility service charges and assessments to the same extent as any other property served by the Authority. Such liens, penalties, and interest shall constitute a charge against that property and a covenant running with the land and shall bind the property and all future owners thereof.
 - (3) The Authority may cease water or sewer services if the user is delinquent in payments of operation and maintenance charges or has no legal right to occupy the property, as provided in Section 11-02.480(D), or if an owner is delinquent in the payment of assessments, as provided in Section 11-02.480(B) or Section 11-02.480(C).
- (B) The Authority reserves the right to require a property owner to execute a contract for water or sewer services where the property owner may have unique or unusual needs.

[History] Ord. 195 (11/5/03); Ord. 121 (9/10/96); Ord. 65 (10/10/89).

11-02.310 Terms.

(A) Full Payment.

- (1) Before the property receives service, the property owner shall pay to the Authority such connection and other charges as provided by this Title or by contract entered into under the terms of this Title. The property owner must pay the charge in full before connecting to the public sewers or water supply systems of the Authority.
- (2) Any such arrangement shall also provide for interest to be collected upon the unpaid balance of the charges at a rate of one percent (1%) per month upon the unpaid balance compounded annually. Failure to complete payment of the connection charges shall become a lien against the property.

(B) Performance in Lieu of Payment. Instead of any charge, the Authority, at the discretion of the Commission, may accept from the property owner a sewer or water pipeline of sufficient value installed in an easement or public right-of-way, or some other performance reflecting value approximating the charge.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.320 Developers' or Owners' Contracts.

The Authority may also enter into contracts with developers or owners of real estate for construction of sewer or water facilities by such developers and include such terms and conditions as the Commission deems proper.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

Subchapter IV – Charges and Fees

11-02.330 Charges and Fees.

The Commission shall recommend, and the Senate shall approve, permit fees, connection charges, service charges, and other fees by resolution on an annual basis in a manner consistent with all federal statutes and regulations.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.340 Billings and Delinquent Charges.

The Commission may, from time to time, fix billings and delinquency charges by resolution.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.350 Uniform Rate Schedule.

- (A) No Distinctions within Classes. The Commission shall provide for revenues by fixing rates and charges for the furnishing of utility service to those to whom such service is available. Such rates and charges are to be fixed as deemed necessary by the Commission, so that uniform charges will be made for the same class of customer or service. No distinction in rates and charges shall be made on the basis of race, color, creed, religion, or tribal membership of the owner of the property served.
- (B) Classification. In classifying customers served or service furnished by the Authority, the Commission may in its discretion consider any or all of the following factors:
- (1) The difference in the cost of maintenance, operation, repair, and replacement of various parts of the system;
 - (2) The different character of service furnished various customers;
 - (3) The quantity and quality of sewage or solid waste delivered, or water consumed, by the customer and its time of delivery;
 - (4) Capital contributions made to the system, including but not limited to assessments; and
 - (5) Any other matters that present a reasonable difference as a grounds for distinction.
- (C) Cost Recovery.
- (1) Such rates are to be paid on a monthly basis and shall produce revenues sufficient to pay in a timely manner the costs of maintenance and operation, the principal of, interest on, premium, if any, of issuance of any indebtedness of the Authority or the Tribe's utility systems, including, without limitation, assessment bonds, revenue bonds, lease-purchase obligations, warrants, notes, and all other charges necessary for efficient and proper operation of the system.
 - (2) Rates and charges shall be set by resolution of the Commission with the approval of the Senate.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.360 Connection Fees.

- (A) Commission Shall Set. The Commission, with the approval of the Senate, shall provide by resolution for connection fees. Connection fees shall produce revenues sufficient to pay in a timely manner the outstanding obligations or

indebtedness of the Authority or Tribe at the time of initial commencement of operations by the Authority, one time costs incurred by the Authority or Tribe in commencing operations, and such other expenses of the Authority as are necessary including a reserve for depreciation of the system.

- (B) No Discrimination. No distinction in connection fees shall be made on the basis of race, color, creed, religion or tribal membership of the owner or occupier of the property served.
- (C) Classification Scheme. In classifying customers for connection fees, the Commission may consider any or all of the following factors:
 - (1) Difference in cost of construction;
 - (2) Amortization and depreciation schedules for the portions of the system serving that property;
 - (3) Capital contributions made to the system or portions thereof by the owners of surrounding property; and
 - (4) Any other matters that present a reasonable difference, or grounds for distinction, in connection fees.
- (D) Latecomer's Schedule. The Commission may provide for additional connection fees based upon a "latecomer's" schedule, under which fees are collected to reimburse a developer or the Authority for the construction of a specific portion of the system specially benefiting the property connecting to the system.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.370 Nature of Obligation.

The fees and charges of the Authority, whether for service available or delivered, for the privilege of connection to the system, or to defray the costs of construction or repair of the system, shall be a lien against the benefited property, and shall also be a joint and several personal obligation of the record owners of the property on the date the service is provided or billed.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.380 Collection of Fees and Charges.

- (A) The Authority may collect its fees and charges by foreclosing its lien and by proceeding against any or all of the persons, corporations or other entities personally liable, but when it shall have satisfied any judgment, it shall enter a satisfaction of judgment and thereby release the remaining defendants, if any, to the extent of such satisfaction.

- (B) Any remedy used by the Authority to collect any funds owed it shall be applicable to all users within a class of users, without regard to the race, color, creed, religion, or tribal membership of the owner, provided that, lessees or occupiers of tribal land shall be deemed a separate class of users for the purposes of this Section only.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

Subchapter V – Enforcement

11-02.390 Entry On Property.

- (A) **Entry Permitted.** The manager and other duly authorized employees or representatives of the Authority bearing proper credentials and identification shall be permitted to enter upon all properties for the purpose of inspection, observation, measurement, sampling and testing in accordance with the provisions of this Title.
- (B) **Willful Obstruction.**
 - (1) Any person who willfully obstructs or prevents an Authority employee or representative from entering or remaining upon property for a lawful purpose under this Title shall be subject to a penalty in accordance with Sections 11-02.440 through 11-02.460 of this Title for each such incident.
 - (2) Any person who willfully obstructs or prevents an Authority employee or representative from entering or remaining upon property for a lawful purpose under this Title shall be liable to the Authority in a civil action for all damages, costs and attorneys fees whether at trial or on appeal suffered by the Authority as a result of the obstruction.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.400 Meters.

- (A) **Property of the Authority.** All meters for the measurement of utility services shall be installed in accordance with the requirements of the Authority in such locations as the manager shall direct. All such meters shall be the property of the Authority and shall be maintained by it. All meters shall remain accessible to Authority personnel and no person shall obstruct or tamper with any meter.
- (B) **Penalties.**
 - (1) Any person obstructing or tampering with any meter shall be in violation of this Title and subject the violator to actual damages and civil penalties

under Sections 11-02.440 through 11-02.460 of this Title for each such incident.

- (2) The owner of the property on which the meter is located shall be responsible for all damage or tampering with such meter.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.410 Unauthorized Services.

No person shall obtain utility services from the Authority facilities without authorization. Any person who obtains such unauthorized service by connecting to the Authority facilities without authorization or by bypassing or tampering with any meter shall be liable to the Authority for three (3) times the value of the actual service obtained in addition to the costs of correction.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.420 Manager's Authority.

The manager shall be the administrator of the Authority. All instructions and decisions he or she makes shall be final, but appeals from such instructions or decisions may be made to the Commission in writing at any regular meeting of the Commission.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.430 Liability to Authority.

Any person who violates any provision of this Title shall be liable to the Authority for any expense, loss, damage, cost of inspection, or cost of correction incurred by the Authority by reason of such violation, including any expenses incurred by the Authority in collecting from such person for such loss, expenses, cost of inspection or cost of correction.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.440 Notice Of Violation.

- (A) The Authority shall serve or mail written notice to any person found to be violating any provision of this Title. The notice shall state the nature of the violation and provide a reasonable time limit for the satisfactory correction thereof.
- (B) The offender shall, within the period of time stated in such notice, permanently cease all violations and make all necessary corrections.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.450 Costs of Correction.

- (A) Order of Correction. The Authority, through its manager, shall be empowered to order the correction of violations of this Title and charge the costs of this correction, plus a fee of the lesser of one hundred dollars (\$100.00) or ten percent (10%) of the actual costs of correction, to the owner of the property upon which the violation occurs.
- (B) Appeal. The order of the manager may be appealed to the Commission. The order of the Commission may be stayed by application to the Swinomish Tribal Court and the contemporaneous filing of a bond indemnifying the Commission as obligee for twice the estimated cost of the correction.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.460 Civil Penalty.

- (A) Any person who continues to violate this Title beyond the time limit for correction specified in the notice shall be liable for a civil penalty of not less than one hundred dollars (\$100.00) per day for each such day after the expiration of the time limit stated in the notice.
- (B) This penalty shall be assessed by the Tribal Court upon the filing of a complaint by the Authority.
- (C) The proceeds of the civil penalty, less the costs of the filing and other court costs, shall be placed in the general fund of the Authority.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.470 Notice to Connect.

The service of a Notice to Connect upon an owner, whether for connection to the system prior to its initial operation or connection to the system at a later time, shall be deemed a notice of violation of this Title.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.480 Cessation of Water Services.

The Authority, through its manager, may order the cessation of water services to a user under the following circumstances:

- (A) If the user is two (2) or more months delinquent in payment of water or sewer monthly operation and maintenance charges;

- (B) If the “owner” as defined in this Chapter is three (3) or more months delinquent in payment of water or sewer assessment charges that are billed on a monthly basis;
- (C) If the “owner” as defined in this Chapter is two (2) or more periods delinquent in payment of water or sewer assessment charges that billed on the basis of a period longer than a month; or
- (D) If the Authority is notified by sworn affidavit that cessation of water service is requested because the user has no legal right to occupy the property, and the affidavit establishes that:
 - (1) The person who executed the affidavit is an owner of the property or a legal representative of the owner or, in the case of land held in trust by the United States, is an official of the Bureau of Indian Affairs or the Realty Office of the Tribe; and
 - (2) No underlying lease has been entered into authorizing the user (or a person from whom the user received a sublease) to occupy the property; or
 - (3) An underlying lease authorizing the user (or a person from whom the user received a sublease) to occupy the property has expired naturally and has not been renewed; or
 - (4) The underlying lease authorizing the user (or a person from whom the user received a sublease) to occupy the property has been canceled and, in the case of land held in trust by the United States, such cancellation is final for the Department of the Interior; and
 - (5) Notice was given to the user that such an affidavit seeking cessation of water service would be filed with the Authority. Such notice shall set forth the grounds on which cessation of water service is sought. For purposes of this Subsection, such notice shall be deemed to have been given if it is both mailed to the user’s utility billing address by first class U.S. Mail, and posted on the property, at least ten (10) days prior to the affidavit being filed with the Authority.

[History] Ord. 195 (11/5/03); Ord. 121 (9/10/96).

11-02.490 Procedures for Cessation of Water Services.

- (A) Following are the exclusive procedures for ceasing water services to a user for the grounds set out in Section 11-02.480.
 - (1) At least fifteen (15) days prior to cessation of water service, the manager shall notify the user by both causing to be mailed to the user’s billing address, and by causing to be posted on the property, a notice setting forth

the name of user, the reason for cessation of water services, and the date on or after which water service will cease.

- (2) If the grounds for cessation of water services are delinquency in the payment of assessments or monthly operation and maintenance charges, as set out in Subsections 11-02.480(A) – (C) the notice shall also:
 - (a) Set forth the date and time by which, and the place at which, payment must be made in order to prevent cessation of service, which date shall not be less than fourteen (14) days from the date of mailing and posting of the notice; and
 - (b) Include an itemized bill that shows the full amount that must be paid in order to prevent cessation of water service, including any interest, fees, costs, and penalties authorized by this Title.

- (B) The filing of an appeal authorized by this Title shall not stay the manager's decision to cease water delivery to a user.

[History] Ord. 195 (11/5/03); Ord. 121 (9/10/96); Ord. 65 (10/10/89).

11-02.500 Reconnection After Cessation of Water Services.

- (A) Water services ceased pursuant to Section 11-02.490 may be resumed when the grounds for cessation set forth in Section 11-02.480 no longer exist.
- (B) The owner shall pay a reconnection fee, as established by the Commission in an amount sufficient to fully reimburse all costs related to the cessation and resumption of water services, prior to the resumption of water services.

[History] Ord. 195 (11/5/03); Ord. 121 (9/10/96); Ord. 65 (10/10/89).

11-02.510 Providing Unauthorized Water Service.

- (A) It is a violation of this Chapter to provide unauthorized water service.
- (B) Unauthorized water service is provided whenever the plumbing on a property receiving water service pursuant to this Chapter is connected, by hose, pipe, tubing, or otherwise, to the plumbing on a property not authorized to receive service pursuant to this Chapter, including any property whose water service has been ceased or suspended.
- (C) Whenever an employee or official of the Authority observes unauthorized water service being provided, the Authority shall:
 - (1) Disconnect, and, when practicable, seize the hose, pipe, tubing, or other connection providing unauthorized water service;

- (2) Post a notice on the property providing the unauthorized water service stating that a violation of this Section has been observed, the unauthorized connection has been disconnected (and, when applicable, seized), and water service is being immediately suspended to the property providing the unauthorized water service. The notice shall also state the steps that must be taken to resume the suspended water service; and.
 - (3) Immediately suspend the water service to the property providing the unauthorized water service.
- (D) Water service suspended pursuant to this Section shall be resumed no sooner than the next regular business day after the day service is suspended, and shall be resumed only after:
- (1) A service charge, as set by the Commission to defray the full cost of suspension and resumption of service, has been paid in full; and
 - (2) An additional enforcement fee has been paid in full. The enforcement fee shall be Fifty Dollars (\$50.00) for the first violation of this Section. For the second or subsequent violation of this Section the enforcement fee shall be Two Hundred Fifty Dollars (\$250).

[History] Ord. 195 (11/5/03); Ord. 123 (5/12/97).

11-02.520 Unauthorized Resumption of Water Service.

- (A) In addition to any civil or criminal penalties that may apply to obtaining unauthorized water service, this Section shall apply whenever water service has been ceased or suspended pursuant to the terms of this Title and any rules or regulations promulgated hereunder, and such service is resumed by any method, except as authorized by the terms of this Title and any rules or regulations promulgated hereunder and performed by an employee or official of the Authority.
- (B) Whenever any employee or official of the Authority observes any unauthorized resumption of water service:
 - (1) The mechanism used to perform the unauthorized resumption of water service shall be removed and, when practicable, seized, or otherwise rendered ineffective by any necessary means, and water service shall immediately again be ceased or suspended without further notice.
 - (2) After an unauthorized resumption of water service has been observed and corrected, authorized water service shall not be resumed until, in addition to any other actions or payments required as a precondition for resumption of water service:

- (a) A service charge, as set by the Commission to defray the full cost of removing or rendering ineffective the mechanism used to perform the unauthorized resumption of water service, has been paid in full, and
- (b) An additional enforcement fee has been paid in full. The enforcement fee shall be fifty dollars (\$50.00) for the first violation of this Section. For the second or subsequent violation of this Section, the enforcement fee shall be two hundred fifty Dollars (\$250.00).

[History] Ord. 195 (11/5/03); Ord. 123 (5/12/97).

Article VI – Judicial and Administrative Review

11-02.530 Dispute Resolution.

Any disputes regarding the right to use the utility services of the Authority, refusal or failure to provide service, operational problems affecting service, and other service-related issues shall be resolved according to this Subchapter.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.540 Commission Review.

- (A) Any person aggrieved by an order or decision of the Authority shall first petition the Commission for a hearing. This petition shall be in writing, although the Authority may waive this requirement.
- (B) The hearing shall be on the record and the Commission shall cause a verbatim record of the hearing to be kept and transcribed.
- (C) The Commission shall issue a written decision, which shall become a part of the written record and shall be open for inspection at the offices of the Authority during regular working hours.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.550 Senate Review.

- (A) The decision of the Commission shall be reviewable by the Senate. Any person who desires any review of the Commission decision shall petition the Senate for such review within ten (10) working days of the date of the Commission decision. The review power of the Senate shall be limited to ascertaining whether a fair hearing upon the dispute was held.

- (B) The Senate shall take up the review within thirty (30) calendar days of the date of the receipt of the petition for review. Failure of the Senate to act within this period shall be an affirmation of the Commission decision.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.560 Judicial Review.

- (A) Any party dissatisfied with the decision of the Senate may petition the Swinomish Tribal Court for judicial review of the decision.
- (B) For the purposes of this review, the Senate agrees not to raise as a defense to the appeal any immunity from this type of action that it or the Tribe may possess in Tribal Court.
- (C) The petition for review shall be filed within ten (10) working days of the date of the decision of the Senate, or within forty (40) calendar days of the date of the petition for review to the Senate.
- (D) The Tribal Court shall conduct a review upon the written record, and shall permit time for each party to present oral argument in support of this position. The standard used in this review shall be whether there was substantial evidence in the record to support the decision of the Commission. The Tribal Court shall issue a written decision, which shall be final.

[History] Ord. 195 (11/5/03); Ord. 109 (2/7/95); Ord. 65 (10/10/89).

11-02.570 Appeal of Assessments.

- (A) Limited Procedures. Appeals of assessments are limited to the procedures described in this Section.
- (B) Petition for Review. An owner entitled to appeal the final assessment roll must file a petition for review with the Tribal Court within ten (10) days of the date of publication of the Senate's confirmation of the final assessment roll in a local newspaper of suitable size and general circulation. The appeal shall describe the property and the appellant's objections to the assessment.
- (C) Bond. The owner must simultaneously execute and file a bond with the Tribal Court, subject to the following conditions:
 - (1) The sum shall be ten percent (10%) of the assessed amount, with at least two sureties approved by the Court.
 - (2) The bond shall be forfeited if the owner does not prosecute the appeal without delay.

- (3) If the appeal is unsuccessful, the owner must pay all reasonable costs and expenses the Tribe incurred litigating the appeal.
- (4) Upon application, the Tribal Court may order the appellant to execute and file such additional bonds as are reasonably necessary to protect the interests of the Tribe.
- (D) No Jury. The Tribal Court shall hear and determine the appeal without a jury.
- (E) Priority. The cause of action shall have priority over all other civil causes of action.
- (F) Standard of Review. The Tribal Court shall confirm the assessment and presume that the Senate's action was legal, proper, and procedurally correct, unless it finds from the record that the assessment is founded upon a fundamentally wrong basis and/or the decision of the Senate was arbitrary and capricious; in which event the Tribal Court's judgment shall correct, modify, or annul the assessment insofar as it affects the appellant's property. The Tribal Court's review is solely based on the record presented during the hearing held pursuant to Section 11-02.550, and is not de novo.
- (G) Finality. The decision of the Tribal Court shall be final.

[History] Ord. 195 (11/5/03); Ord. 105 (6/22/94).

11-02.580 Costs.

- (A) As a condition of appealing or petitioning in any of the above steps, the party wishing to file the appeal or petition shall first pay all costs of the previous step from which the appeal or petition is sought.
- (B) Costs shall include, but not be limited to, the preparation of the written transcript of each hearing or meeting, reasonable filing fees, and other costs, provided that these costs shall not include attorney's or spokesman's fees for any of the above stages of proceeding.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.590 Minor Disputes.

Operational problems or complaints of a minor nature may, at the option of the complaining party, be resolved informally through contact with the manager or staff of the Authority. The use or nonuse of these informal proceedings shall not affect a complaining party's right to appeal as set out in this Subchapter.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).

11-02.600 Other Appeals.

- (A) Any other decisions of the Commission or Senate, including rate setting and class of service decisions, may be reviewed in the Tribal Court by filing an appeal therein within ten (10) working days of the date at which the decision of the Commission or Senate was taken.
- (B) The procedures and rules of the Tribal Court governing civil actions shall be applicable to such an appeal, and the decision of the Tribal Court shall be final.

[History] Ord. 195 (11/5/03); Ord. 65 (10/10/89).