

## **Title 13 – Real Property and Housing Chapter 1 – Housing Authority**

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### **Legislative History**

Enacted:

Codifying Title 13, Ord. 196 (11/24/03), BIA (11/28/03).

Amended:

Amending STC 13-01 and Chapter 13-01 of Ordinance 196, Ord. 210 (1/27/04), BIA (2/3/04).

Repealed and Superseded:

Amendment to Ord. 34, Ord. 56A (10/6/87), Enacting Res. 87-10-98, BIA (10/29/87) (changing the number of commissioners from seven to five).

Amendment to Tribal Ordinance No. 19, Ord. 26 (12/1/64) (amending Ord. 19).

Establishing the Swinomish Housing Authority, Ord. 34 (12/17/76), BIA (12/3/76) (repealing and replacing Ord. 19 and incorporating Ord. 26).

Adopting a workable program for community improvement, Ord. 23 (3/3/64).

Authorizing lease of tribal land to the Swinomish Housing Authority, Ord. 22 (3/3/64).

Ord. 19 (5/13/63) (declaring the need for low cost housing, chartering the Swinomish Housing Authority, and defining the Authority’s purposes, organization, and powers).

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**13-01.010 Title.**

This Chapter may be referred to as the “Housing Authority Code.”

[History] Ord. 196 (11/24/03).

**13-02.020 Authority.**

This Chapter is promulgated pursuant to the following provisions of Article VI of the Constitution of the Swinomish Indian Tribal Community:

Sec. 1(c)

Sec. 1(h)

Sec. 1(i)

Sec. 1(m)

Sec. 1(n)

Sec. 1(s)

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76).

**13-01.030 Definitions.**

(A) The following terms, wherever used or referred to in this Chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) **“Area of operation”** means all areas within the jurisdiction of the Tribe.

- (2) **“Authority”** means the Swinomish Housing Authority as established by this Chapter.
- (3) **“Board”** means the Board of Commissioners of the Authority.
- (4) **“Commissioner”** means a duly appointed member of the Board.
- (5) **“Federal government”** means the federal government of the United States of America, including the Department of Housing and Urban Development and any other agency or instrumentality, of the federal government of the United States of America.
- (6) **“Homebuyer”** means a person who has executed a lease-purchase agreement with the Authority and who has not yet achieved homeownership.
- (7) **“Housing project”** or **“project”** means any work undertaking to provide or assist in providing (by any suitable method, including but not limited to: rental; sale of individual units in single or multifamily structures under conventional condominium, or cooperative sales contracts or lease-purchase agreements; loans; or subsidizing or rentals or charges) decent, safe and sanitary dwellings, apartments, or other living accommodations for persons of low income. Such work or undertakings may include buildings, land, leaseholds, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, for streets, sewers, water service, utilities, parks, site preparation or landscaping, and for administrative, community, health, recreational, welfare, or other purposes. The term “housing project” or “project” also may be applied to the planning of the buildings and improvements, the acquisition of property or any interest therein, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration or repair of the improvements or other property and all other work in connection therewith, and the term shall include all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.
- (8) **“Low-Income Families”** means families whose income does not exceed eighty percent (80%) of the median income for the area served by the Authority.
- (9) **“Persons of low income”** means persons whose income does not exceed eighty percent (80%) of the median income for the area served by the Authority.
- (10) **“Secretary”** means the Secretary of the Senate.
- (11) **“Senate”** means the Swinomish Indian Senate.

(12) **“Treasurer”** means the Treasurer of the Senate.

(B) All other words and phrases shall have their ordinary and customary meanings.

[History] Ord. 210 (1/27/04); Ord. 196 (11/24/03); Ord. 34 (12/17/76).

**13-01.040 Declaration of Need.**

It is hereby declared:

- (A) That there exists on the Swinomish Reservation a shortage of decent, safe and sanitary dwelling accommodations available at rents or prices that Swinomish low-income families and persons of low income can afford; and that such shortage forces such families and persons to occupy unsanitary, unsafe and overcrowded dwelling accommodations;
- (B) That the provision of decent, safe and sanitary accommodations for Swinomish low-income families and persons of low income are public uses and purposes for which money may be spent and private property acquired and are governmental functions of tribal concern;
- (C) That residential construction activity and a supply of acceptable housing are important factors in generating economic activity, and that the undertakings authorized by this Chapter to aid the production of better housing and more desirable neighborhood and community development at lower costs will make possible a more stable and larger volume of residential construction and housing supply, which will assist materially in achieving full employment; and
- (D) That the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

[History] Ord. 210 (1/27/04); Ord. 196 (11/24/03); Ord. 34 (12/17/76).

**13-01.050 Sovereign Immunity.**

- (A) **Tort.** The Authority may waive its inherent sovereign immunity from any and all tort claims, subject to the following:
  - (1) The remedy for all tort claims shall be limited to:
    - (a) An injunction or similar equitable relief; and
    - (b) Monetary damages limited to the scope of the Authority’s liability insurance.
  - (2) All tort claims against the Authority shall be heard in Tribal Court.

- (B) **Contract.** The Authority may waive its inherent sovereign immunity pursuant to a written contract, subject to the following:
- (1) Any waiver of sovereign immunity is invalid without a majority vote of the Commission upon a written resolution calling for such a waiver;
  - (2) The remedy for breach of contract arising under the terms of this Chapter shall be limited to:
    - (a) Injunctive and declaratory relief to enforce the contract, provided that the relief does not impair the essential governmental functions of the Authority; or
    - (b) Monetary damages limited to a specifically designated fund or specific collateral approved by the Board, the loss of which will not impair essential operations of the Authority.
  - (3) All claims arising under a contract issued by the Authority shall be heard in Tribal Court unless specifically authorized by written resolution of the Senate.
- (C) The Senate may authorize a further waiver of sovereign immunity by resolution.

[History] Ord. 196 (11/24/03).

**13-01.060 Tribally Designated Housing Entity.**

The Senate does hereby appoint the Authority as the tribally designated housing entity (TDHE) as required by the Native American Housing Assistance and Self Determination Act of 1996 “NAHASDA” 25 U.S.C. § 4101, *et seq.*, for the purposes of formulating an Indian Housing Plan for the Tribe’s service area, to be the recipient of program funds on behalf of the Swinomish Tribe and to be responsible for carrying out other requirements of NAHASDA.

[History] Ord. 196 (11/24/03); Res. 97-5-33 A (5/22/97).

**13-01.070 Tribal Court.**

All disputes arising under the terms of this Chapter shall be heard in Tribal Court.

[History] Ord. 210 (1/27/04); Ord. 196 (11/24/03).

*Subchapter I – Authority and Board of Commissioners*

**13-01.080 Establishment of Authority.**

- (A) The Senate hereby establishes a public body known as the Swinomish Housing Authority and enacts this Chapter, which shall establish the purposes, powers and duties of the Authority.
- (B) In any suit, action or proceeding involving the validity or enforcement of or relating to any of its contracts, the Authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this Chapter. A copy of the Chapter duly certified by the Secretary of the Senate shall be admissible in evidence in any suit, action or proceeding.

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76).

**13-01.090 Purpose of Authority.**

The purposes of the Authority are:

- (A) To develop, maintain, and operate affordable housing in safe and healthy environments on or near the Reservation for occupancy by Swinomish tribal members, including low-income families and persons of low income;
- (B) To encourage and facilitate better access to private mortgage and other financing markets to promote private financing of affordable housing for Swinomish tribal members on and near the Reservation;
- (C) To coordinate the development of housing activities with other tribal economic and community development projects;
- (D) To plan for and integrate infrastructure resources for construction of homes;  
and
- (E) To provide employment opportunities through the construction, maintenance and operation of Swinomish housing.

[History] Ord. 210 (1/27/04); Ord. 196 (11/24/03); Ord. 34 (12/17/76).

**13-01.100 Board of Commissioners.**

The affairs of the Authority shall be managed by a Board of Commissioners composed of five (5) persons.

[History] Ord. 196 (11/24/03); Ord. 56A (10/6/87); Ord. 34 (12/17/76).

**13-01.110 Appointment of Commissioners.**

The Board members shall be appointed, and may be reappointed, by the Senate. A certificate of the Secretary of the Senate as to the appointment or reappointment of any commissioner shall be conclusive evidence of the due and proper appointment of the commissioner.

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76).

**13-01.120 Membership.**

A commissioner may be a member or non-member of the Tribe, and may be a member or non-member of the Senate.

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76).

**13-01.130 Housing Project Residents as Commissioners.**

- (A) No person shall be barred from serving on the Board because he or she is a tenant or homebuyer in a housing project of the Authority; and such commissioner shall be entitled to fully participate in all meetings concerning matters that affect all of the tenants or homebuyers, even though such matters affect him or her as well, subject to Subsection 13-01.130(B).
- (B) No such commissioner shall be entitled or permitted to participate in or be present at any meeting, except in his or her capacity as a tenant or homebuyer, or to be counted or treated as a member of the Board, concerning any matter involving his or her individual rights, obligations or status as a tenant or homebuyer.

[History] Ord. 210 (1/27/04); Ord. 196 (11/24/03); Ord. 34 (12/17/76).

**13-01.140 Term of Office.**

The term of office shall be four (4) years and staggered. When the Board is established, one member's term shall be designated to expire in one (1) year, another to expire in two (2) years, a third to expire in three (3) years, and the last two (2) in four (4) years. Thereafter, all appointments shall be for four (4) years, except that in the case of a prior vacancy, an appointment shall be only for the length of the unexpired term. Each member of the Board shall hold office until his or her successor has been appointed.

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76).

**13-01.150 Housing Commission Officers.**

The Senate shall name one (1) of the commissioners as Chair of the Board. The Board shall elect from among its members a Vice-Chair, a Secretary, and a Treasurer. Any member may

hold two (2) of these positions. In the absence of both the Chair and Vice-Chair, the Secretary shall preside.

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76).

**13-01.160 Conflicts of Interest.**

- (A) **While in Office and One Year Thereafter.** During his or her tenure and for one (1) year thereafter, no commissioner, officer or employee of the Authority, or any member of any governing body of the Tribe, or any other public official who exercises any responsibilities or functions with regard to the project, shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract relating to any project, unless prior to such acquisition, he or she discloses his or her interest in writing to the Authority and such disclosure is entered upon the minutes of the Authority, and the commissioner, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he or she has any such interest.
- (B) **Before Holding Office.** If any commissioner, officer or employee of the Authority involuntarily acquires any such interest, or voluntarily or involuntarily acquired any such interest prior to appointment as a commissioner, officer or employee, the commissioner, officer or employee shall immediately disclose his or her interest in writing to the Authority, and such disclosure shall be entered upon the minutes of the Authority, and the commissioner, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he or she has any such interest.
- (C) **Misconduct.** Any violation of the foregoing provisions of this Section shall constitute misconduct in office.
- (D) **Exception.** This Section shall not be applicable to the acquisition of any interest in obligations of the Authority issued in connection with any project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility services the rates for which are fixed or controlled by a government agency, or to membership in the Board as provided in Section 13-01.090.

[History] Ord. 210 (1/27/04); Ord. 196 (11/24/03); Ord. 34 (12/17/76).

**13-01.170 Removal of Commissioners.**

- (A) The Senate may remove a commissioner for serious inefficiency or neglect of duty or for misconduct in office.
- (B) The Senate shall not remove a commissioner without first providing the



commissioner with notice and an opportunity to be heard.

- (1) The notice shall be in writing and shall contain the specific charges against the commissioner.
- (2) The notice shall be provided to the commissioner at least ten (10) days prior to the hearing.
- (3) At the hearing, the commissioner shall have the opportunity to be heard in person or by counsel and to present witnesses in his or her behalf.
- (4) If the Senate decides to remove a commissioner, it shall cause to be made a record of the proceedings, together with the charges and findings thereon. The record shall then be filed with the Senate.
- (5) A copy of the record shall be sent to the appropriate office of the Department of Housing and Urban Development.

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76).

**13-01.180 Compensation for Expenses.**

- (A) The commissioners may receive a reasonable stipend for their services and compensation for expenses, including travel expenses, incurred in the discharge of their duties.
- (B) The Board shall determine the amount of the stipend on an annual basis.

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76).

**13-01.190 Quorum.**

A majority of the full Board (i.e., the number of commissioners plus the number of vacancies, if any) shall constitute a quorum for the transaction of business, but no Board action shall be taken by a vote of less than a majority of such full Board.

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76).

**13-01.200 Scheduling of Meetings.**

Board meetings shall be held at regular intervals as provided by the bylaws. Emergency meetings may be held, at which business may be transacted, upon twenty-four (24) hours actual notice, provided that not less than a majority of the full Board concurs in the proposed action.

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76).

*Subchapter II – Powers and Duties of the Authority*

**13-01.210 Powers of the Authority.**

The Authority shall have the following powers, which it may exercise consistent with the purposes for which it is established:

- (A) To enter into agreements, contracts and understandings with any governmental agency, federal, tribal, state or local, or with any person, partnership, corporation or Indian tribe and to agree to any conditions attached to federal financial assistance;
- (B) To agree, notwithstanding anything to the contrary contained in this Chapter or in any other provision of law, to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards in the development or operation of projects. Provided, the Authority may include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum salaries or wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid to the project;
- (C) To obligate itself, in any contract with the federal government, for annual contributions to the Authority, to convey to the federal government possession of, or title to, the project to which such contract relates, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the Authority is subject. Provided, that such contract may further provide that in case of such conveyance the federal government may complete, operate, manage, lease, convey or otherwise deal with the project and funds in accordance with the terms of such contract: provided, that the contract requires that, as soon as practicable after the federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the Authority the project as then constituted;
- (D) To lease property from the Tribe and others for such periods as are authorized by law, and to hold and manage or to sublease the same;
- (E) To borrow or lend money, to issue temporary or long term evidence of indebtedness, including bonds or other obligations, and to repay the same;
- (F) To pledge the assets and receipts of the Authority as security for debts; and to acquire, sell, lease, exchange, transfer or assign personal property or interests therein;
- (G) To purchase land or interests in land or take the same by gift; to lease land or interests in land to the extent provided by law;

- (H) To undertake and carry out studies and analyses of housing needs, to prepare housing plans, to execute the same, to operate projects and to provide for the construction, reconstruction, improvement, extension, alteration or repair of any project or any part thereof;
- (I) With respect to any dwellings, accommodations, lands, buildings, or facilities embraced within any project (including individual cooperative or condominium units): to lease or rent, sell, enter into lease-purchase agreements or leases with option to purchase; to establish and revise rents or required monthly payments; to make rules and regulations concerning the selection of tenants or homebuyers, including the establishment of priorities, and concerning the occupancy, rental, care and management of housing units; and to make such further rules and regulations as the Board may deem necessary and desirable to effectuate the powers granted by this Chapter;
- (J) To finance purchase of a home by an eligible homebuyer;
- (K) To terminate any lease or rental agreement or lease-purchase agreement when the tenant or homebuyer has violated the terms of such agreement, or failed to meet any of its obligations thereunder, or when such termination is otherwise authorized under the provisions of such agreement, and to bring action for eviction against such tenant or homebuyer;
- (L) To establish income limits for admission that ensure that dwelling accommodations in a housing project shall be made available only to persons of low income;
- (M) To insure any person or property against any risk or hazards related to Authority activities;
- (N) To invest funds that are not required to finance an immediate development;
- (O) To establish and maintain such bank accounts as may be necessary or convenient;
- (P) To employ an executive director, technical and maintenance personnel, and such other officers and employees, permanent or temporary, as the Authority may require; and to delegate to such officers and employees such powers or duties as the Board shall deem proper;
- (Q) To take such further actions as are commonly engaged in by other similar public bodies as the Board may deem necessary and desirable to effectuate the purposes of the Authority;
- (R) To join or cooperate with any other public housing agency or agencies operating under the laws or ordinances of a State or another tribe in the exercise, either jointly or otherwise, of any or all of the powers of the Authority and such other public

housing agency or agencies for the purpose of financing (including but not limited to the issuance of notes or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating, or contracting with respect to a housing project or projects of the Authority or such other public housing agency or agencies, so joining or cooperating with the Authority, to act on the Authority's behalf with respect to any or all powers, as the Authority's agent or otherwise, in the name of the Authority or in the name of such agency or agencies; and

(S) To adopt such bylaws as the Board deems necessary and appropriate.

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76); Ord. 26 (12/1/64).

### **13-01.220 Federal Assistance.**

It is the purpose and intent of this Chapter to authorize the Authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance or operation of any Authority project.

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76).

### **13-01.230 Records of Meetings.**

The Secretary shall keep complete and accurate records of all meetings and actions taken by the Board.

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76).

### **13-01.240 Financial Records.**

The Treasurer shall keep full and accurate financial records, make periodic reports to the Board, and submit a complete annual report, in written form, to the Senate as required by Section 13-01.220 of this Chapter.

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76).

### **13-01.250 Annual Reports.**

The Authority shall submit an annual report, signed by the Chair of the Board, to the Senate showing:

- (A) A summary of the year's activities;
- (B) The financial condition of the Authority;
- (C) The condition of the properties;

- (D) The number of units and vacancies;
- (E) Any significant problems and accomplishments;
- (F) Plans for the future; and
- (G) Such other information as the Authority or the Senate shall deem pertinent.

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76).

**13-01.260 Federal and Tribal Law.**

- (A) The Authority shall comply with all requirements of tribal law.
- (B) The Authority shall comply with all requirements of federal law.
- (C) The Authority shall comply with all requirements of any contract it may enter into with the federal government or any other party.

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76).

**13-01.270 Insurance.**

The Authority shall obtain or provide for the obtaining of adequate insurance coverage for its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76).

**13-01.280 Public Property.**

The property of the Authority is declared to be public property used for essential public and governmental purposes and such property and the Authority are exempt from all taxes and special assessments of the Tribe.

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76).

***Subchapter III – Repealer and Severability***

**13-01.290 Repealer.**

This Chapter repeals and supersedes Ordinance Nos. 56A, 34, and 26.

[History] Ord. 196 (11/24/03); Ord. 34 (12/17/76).

**13-01.300 Severability.**

[Reserved]