

## **Title 11 – Utilities**

### **Chapter 1 – General Provisions**

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#### **Legislative History**

**Enacted:**

Codifying Title 11, Ord. 195 (11/5/03), BIA (11/25/03).

**Repealed or Superseded:**

Amendment to Utility Ordinance, Ord. 123 (5/12/97) (adding new sections to Art. XVII, “Violations of Ordinance”).

Amendment to Utility Ordinance, Ord. 121 (9/10/96), BIA (10/20/96) (promulgating additional enforcement measures to ensure timely payments of assessments).

Amendment to Utility Ordinance, Ord. 109 (2/7/95) (amending the provision for judicial review).

Amendment to Utility Ordinance, Ord. 108 (1/10/95), BIA (2/2/95) (clarifying meaning of amendment 106).

Amending Ordinance No. 65, Utility Ordinance, Ord. 106 (7/12/94) (amending provision for collection of assessments).

Amending Ordinance No. 65, Utility Ordinance, Ord. 105 (6/22/94), BIA (6/29/94) (amending provisions regarding the final roll and the appeal of assessments).

Amendment to Ordinance 65, Ord. 67 (12/5/89), BIA (9/24/90) (amending the provision for an assessment lien).

Resolution to Adopt “Legislative Findings” as Appendix No. 1 to Utility Ordinance No. 65, Enacting Res. 89-12-97 (12/5/89).

Swinomish Indian Tribal Community Utility Ordinance, Ord. 65 (10/10/89), Enacting Res. 89-10-95, BIA (10/23/89) (repealing and superseding Ord. 51).

Utility and Environmental Service Ordinance, Ord. 51, Enacting Res. 85-6-41 (6/4/85), BIA (7/10/85).

Setting New Water Rates for the Swinomish Tribal Community Water System, Res. 81-4-824 (4/14/81).

Rescinded:

Ord. 73 (7/19/90), BIA (disapproved).

[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.]

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#### **11-01.010 Title.**

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

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

#### **11-01.020 Purpose and Scope.**

The purpose of this Chapter is to define the policies, establish the organization, and identify the necessary rules and regulations for the operation, maintenance and management of the public utilities within the exterior boundaries of the Swinomish Indian Reservation.

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

#### **11-01.030 Declaration of Policy.**

- (A) It shall be the policy of the Swinomish Indian Tribal Community to operate, maintain and manage the public utilities on the Reservation so that the Reservation residents have available a level of service designed to minimize exposure to adverse conditions that could negatively impact the physical and environmental health of any individual or the community as a whole.
- (B) It shall also be the policy of the Swinomish Indian Tribal Community that the operation, maintenance and management of the public utilities shall be carried out through a safe and efficient program and in a financially responsible, cost-effective and self-sufficient manner.

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

#### **11-01.040 Authority.**

The Swinomish Indian Tribal Community's authority to establish a Utility organization and to levy appropriate user fees and assessments to all residents and organizations on the Reservation and to regulate the discharge, collection, disposal, distribution, transport and final disposal of all drinking water, solid waste and sewage on the Reservation is derived

from its governmental status as a federally recognized Indian Tribe organized pursuant to Section Sixteen of the Indian Reorganization Act of 1934, and is provided in Article VI Section 1(c), (f), (i), (k), (l), (m), (q) and (s) and Section 5 of the Tribe's duly adopted Constitution. The Tribal Community's authority to borrow funds and to provide for the sale and issuance of bonds, warrants, notes and other obligations is provided in Article VI, Section 1(l) of the Tribal Constitution.

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

#### **11-01.050 Findings.**

As part of the Senate's deliberations on the adoption of Ordinance No. 65, on December 5, 1989, the Swinomish Tribal Community Utility Ordinance, the Senate found as follows:

- (A) The Senate is the governing body of the Swinomish Indian Tribal Community and the Reservation, which occupies the peninsula at the southeast end of Fidalgo Island in Skagit County, Washington. The Reservation comprises approximately 7,000 acres of uplands.
- (B) Fidalgo Island is surrounded by saltwater bays, straits, and channels and has limited quantities of fresh water available from wells in the island's underlying groundwater aquifers. During the island's early settlement by non-Indians, relatively shallow wells provided a satisfactory water supply to the residents of the Reservation as well as the rest of Fidalgo Island. For the last ten (10) years or more, however, increased population, residential development, and the full-time occupation of previously seasonal residences has resulted in a shortage of potable water. As a result, wells located near the island's waterfront have gone dry for several months during the summer and have experienced saltwater intrusion. Older homes with shallow wells have experienced longer shortages due to construction of newer deeper wells.
- (C) Although a supply of water is piped from the Skagit River to the City of Anacortes on Fidalgo Island, the domestic water supply is not available to communities that are not located near the pipeline or the municipal boundaries of the City of Anacortes.
- (D) In 1984, the Skagit County Board of Commissioners determined that Fidalgo Island constituted a critical water supply area for the purposes of applicable state statutory law. That law required, among other things, that local state governments having jurisdiction over Fidalgo Island, including Skagit County, municipal governments, and public utility districts, meet to resolve problems associated with the water supply shortage. Although not required to participate, the Tribe voluntarily participated in all of the critical water supply meetings, which resulted in the adoption of the Fidalgo Island Critical Water Supply Plan (the "Plan").
- (E) In 1986, the State of Washington, Department of Social and Health Services, imposed a moratorium on residential and other construction on Fidalgo Island as a result of the

water shortage. Although the state moratorium is not applicable to trust lands or other lands owned by tribal members, the State's action recognized a serious health problem associated with the lack of sufficient amounts of safe drinking water.

- (F) As part of the Plan, the affected jurisdictions executed a Memorandum of Understanding recognizing the Tribe as the purveyor of public drinking water for all lands within the exterior boundaries of the Reservation. Under the MOU, the Tribe accepted the responsibility for providing water to all residents of the Reservation.
- (G) In 1986, the Tribe adopted Ordinance No. 51, creating the Swinomish Utility Commission. The Commission was formed initially to oversee the construction and development of a water supply system for the delivery of safe drinking water to all residents of the Reservation. Non-Indian representation has been provided for on the Commission.
- (H) In 1987, with partial funding from, and the full support of, the Washington State Department of Ecology, the Tribe constructed a centrally located well on the Reservation that withdraws water from a high quality and productive groundwater aquifer lying within the reservation boundaries. The Tribe also constructed water supply lines to the southern part of the Reservation where a majority of tribal members reside and where the Tribe's public housing is located. For the first time ever, satisfactory fire flow pressure was established at the higher elevations of the Reservation and reservation residents were no longer dependent upon water supplied from the neighboring town of LaConner, located east of the Reservation and Fidalgo Island.
- (I) Subsequently, in 1987, the Tribe extended its water system to several communities on the west side of the Reservation along Skagit Bay. These communities are predominantly comprised of non-Indian residents who had been subject to the State's building and construction moratorium. The State moratorium was subsequently rescinded in those areas receiving water from the Tribe's Utility Authority.
- (J) In 1988, the Tribe constructed an additional well to increase the capacity of the Tribe's water system and in addition constructed a water supply line connecting the Tribe's water system to the domestic water supply of the City of Anacortes. As a result, the Tribe has access to a supply of drinking water for reservation residents on an as needed and back-up basis.
- (K) For the past twenty (20) years or more, a small group of approximately one hundred (100) homes located within the Reservation ("Westshore neighborhood") has operated a primary wastewater treatment facility to treat residential sewage. Effluent from that system does not receive secondary or tertiary treatment and is presently discharged into Skagit Bay through a transmission pipeline crossing tidelands owned by the United States in trust for the Tribe.

- (L) During the past two (2) or three (3) years, the following events have occurred:
- (1) The right-of-way granted by the Tribe for the pipeline crossing Tribal tidelands has expired and been terminated;
  - (2) The U.S. Environmental Protection Agency and the State Department of Ecology have required the homeowners group to construct and provide secondary treatment for its sewage; and
  - (3) The U.S. Environmental Protection Agency and the State have denied the homeowners group a waiver from this secondary treatment requirement.
- (M) The failure to adequately and sufficiently treat residential sewage now poses a serious health problem and threat to the residents of the Reservation and the members of the Tribe. In addition to the residential population that provides only primary treatment to its sewage, the increasing residential population along the Reservation waterfront, particularly on the west shore, relies exclusively on inadequate septic tanks or cesspools that discharge into the marine waters surrounding the Reservation. As a result, all but a very limited portion of the tidelands surrounding the Reservation have excessive fecal coliform and other forms of contamination that prevent such tidelands from being certified by the State of Washington as safe for the production of shellfish for human consumption.
- (N) Unhealthy and unsanitary conditions exist on residential upland areas of the Reservation to be served by the proposed sewer utility system as well as tribal tidelands and marine areas. Serious disease associated with sewage seepage and cesspools pose a significant health threat to the Reservation.
- (O) Pollution of marine areas and tidelands around the Reservation reduces the potential productivity of aquaculture projects and natural reproduction on tribally owned tidelands. Both activities have been conducted successfully in the past and new aquaculture projects are now being contemplated to create tribal revenue and employment.
- (P) Over half of the lands within the areas proposed for sewer construction are individual Indian trust lands that are leased in small residential lots to produce trust revenue for their Indian owners. Approximately fifty percent (50%) of the lots available for lease are presently not leased. Provision of sewer services and water will ensure that more lots are leased and that the income potential to the Indian owners is maximized.
- (Q) Non-Indian owned fee lands are checkerboarded throughout the Reservation. The inclusion of non-Indian fee lands within the Tribe's sewer system is necessary to meet engineering requirements for the efficient operation of a comprehensive and economically feasible system.

- (R) The Tribe has received federal grant funds from the U.S. Environmental Protection Agency as well as state funds from the State Department of Ecology to construct a sewage collection system and provide for the treatment of sewage generated on the Reservation. One of the principal purposes for such funding is to provide secondary treatment for the Westshore neighborhood, now providing only primary treatment. In 1988, the Tribe employed a Project Engineer to coordinate the construction of the sewage system as well as the construction of additional water transmission lines and to coordinate these projects with a road improvement project that has been funded by the Bureau of Indian Affairs.
- (S) Several public hearings have been held to determine the level of interest in the construction of sewage facilities. The result has been near unanimous approval of the Tribe's proposed project.
- (T) Because of the physical location of the Reservation on the southeast peninsula of Fidalgo Island, it is geographically impractical and economically infeasible to provide sewer and other utility services to Reservation residents with more than one utility system. Non-Indian and Indian land ownership and residences are interspersed throughout the reservation in a checkerboard pattern.

[History] Ord. 195 (11/5/03); Ord. 65, Appendix No. 1 (12/5/89).

**11-01.060 Nonwaiver of Sovereign Immunity.**

- (A) The Swinomish Indian Tribal Utility Authority established by this Title is a governmental agency of the Tribe, and thereby retains all the rights of sovereign immunity of the Tribe. The Authority is not authorized to waive, and shall not waive, the sovereign immunity of the Tribe or any of its officers, agents, attorneys or employees, or anyone else acting at the direction of or on behalf of the Tribe.
- (B) Any waiver of sovereign immunity made for the purpose of providing for the sale and issuance of bonds, warrants, notes or other obligations incurred by the Tribe shall only be made by the duly authorized resolution of the Senate and approval of the Bureau of Indian Affairs.

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

**11-01.070 Agency.**

Any person who has the care, custody, control or management of any premises or building, or who has control of the operation thereof or the collection of rentals therefrom, shall, for the purposes of this Title, be deemed the agent of the owner of such premises or building, and the giving of all notices herein provided to that agent shall be deemed due notice to the owner. The mailing or delivery of bills for utility service charges, permit fees, connection, or

trunkage charges, or other charges to that agent shall be deemed mailing or delivery to the owner.

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

#### **11-01.080 Definitions.**

- (A) Unless the context specifically indicates otherwise, the meaning of terms used in this Title shall be those meanings set forth in this Section.
- (1) **“Appurtenances”** shall mean the real and personal property owned by the Utility Authority or the Tribe located on, near, or under the roadway and streets, including but not limited to fire hydrants, street lamps, street signs, valves, manholes, covers and drains.
  - (2) **“Authority”** shall mean the Swinomish Indian Tribal Utility Authority.
  - (3) **“Building Drain”** shall mean that part of the lowest horizontal piping of a drainage system that receives the discharges from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer.
  - (4) **“Building Sewer”** or **“side sewer”** shall mean the piping connecting the building drain to the public sewer or other place of disposal, beginning two and one-half (2-1/2) feet outside the foundation wall.
  - (5) **“Commission”** shall mean the five (5) member Swinomish Tribal Utility Commission serving as the policy setting and governing body of the Swinomish Indian Tribal Utility Authority. This Commission shall constitute a “subordinate board” as defined in Article VI, Section 1(s) and a “subordinate organization” as defined in Article VI, Section 1(m) of the Constitution of the Tribe.
  - (6) **“Commissioner”** shall mean a member of the Commission.
  - (7) **“Comptroller”** shall mean the Tribal Controller of the Swinomish Indian Tribal Community.
  - (8) **“Engineer”** shall mean the person or firm designated by the Senate or Commission to perform engineering service for the Authority or his or her authorized assistants, representatives or employees.
  - (9) **“Industrial Wastes”** shall mean the liquid wastes from industrial processes.

- (10) **“Manager”** shall mean the manager of the Authority, or his or her authorized deputy, agent, or representative.
- (11) **“Owner”** shall mean the legal owner of deeded property or the tenant who has a present right of possession on tribal or allotted lands, or the beneficial owner of land held in trust by the United States.
- (12) **“Paunch Manure”** shall mean the partially digested contents of the stomach of a ruminant, especially including the first chamber of said stomach (the rumen) during the time period immediately before and after the animal is slaughtered for meat and other by-products.
- (13) **“Person”** shall mean any individual or firm, company, association, society, corporation or group.
- (14) **“Private Sewage Disposal System”** shall mean any privately owned and maintained system that holds, treats, and disposes of sewage within the boundaries of a lot or parcel. Such systems include but are not limited to privies, septic tanks, and cesspools.
- (15) **“Property”** shall mean the lot, tract, or parcel of land and any residential structure(s) affixed thereto for purposes that include, but are not limited to, foreclosure proceedings undertaken pursuant to this Chapter.
- (16) **“Public Sewer”** shall mean a sewer that is owned or controlled by the Authority.
- (17) **“Reservation”** shall mean all lands and waters within the exterior boundaries of the Swinomish Indian Reservation of the Swinomish Indian Tribal Community.
- (18) **“Reservation Sewer and/or Water District”** shall mean a tribally chartered organization with authority under Chapter 11-04 of this Title to acquire, construct, operate, maintain, develop and regulate a system for disposal of sewage and provision of drinking water including treatment and disposal plants and all necessary appurtenances within a tribally authorized area of the Reservation.
- (19) **“Reservation Utility Improvement District (RUID)”** shall mean a Reservation Utility Improvement District established under Chapter 11-03 of this Title.



- (20) **“Sanitary Sewer”** shall mean a sewer pipe connected to building drains that carries sewage and into which storm, surface and ground waters are not intentionally admitted.
- (21) **“Senate”** shall mean the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.
- (22) **“Sewage”** or **“wastewater”** shall mean a combination of water-carried wastes from dwellings, business buildings, institutions, industrial establishments and other sewer users.
- (23) **“Sewage Treatment Plant”** shall mean all facilities for treating and disposing of sewage.
- (24) **“Sewage Works”** shall mean all facilities for collecting, pumping, treating and disposing of sewage.
- (25) **“Sewer”** shall mean a pipe or conduit for carrying sewage.
- (26) **“Sewer Stub”** shall mean a public sewer line constructed to the property line or other designated location of the lot or parcel being served by the public sewer, and to which the building sewer may be connected.
- (27) **“Single Family Dwelling”** shall mean any structure including a condominium, trailer, or mobile home, designed for occupancy by a single family.
- (28) **“Structure”** shall mean anything constructed or located on the ground, including but not limited to trailers and house trailers, but not including fences and walls.
- (29) **“Swinomish Indian Tribal Community,” “Tribe,” or “Tribal Community”** shall mean the federally recognized Indian Tribe organized pursuant to Section Sixteen of the Indian Reorganization Act of 1934 that has jurisdiction over the Swinomish Indian Reservation
- (30) **“Tribal Court”** shall mean the Swinomish Tribal Court.
- (31) **“Water body”** shall mean any body of standing water.
- (32) **“Watercourse”** shall mean any channel, streambed, or bottomland through which water flows, either continuously or intermittently.
- (33) **“Wetlands”** shall mean any land that is inundated with surface or groundwater with sufficient frequency to support hydrophytic vegetation

typically adapted for life in saturated or seasonally saturated soil. Wetlands generally include swamps, marshes, bogs, sloughs, potholes, wet meadows, river overflows, mudflats, and ponds.

(34) **“Shall”** is mandatory; **“May”** is permissive.

(B) The definitions found in this Section shall not be exclusive. Terms used in this Chapter may be defined in other Sections.

(C) Where a term is not defined it shall be given its usual and ordinary meaning.

[History] Ord. 195 (11/5/03); Ord. 108 (1/10/95); Ord. 106 (7/12/94); Ord. 78 (7/16/91); Ord. 65 (10/10/65).

**11-01.090 Repealer.**

This Title repeals and supersedes Swinomish Indian Tribal Utility Ordinance No. 65.

[History] Ord. 195 (11/5/03).

**11-01.100 Severability.**

The invalidity of any section, clause, sentence or provision of this Title shall not affect the validity of any part of this Title that can be given effect without such invalid part or parts.

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

**11-01.110 Effective Date.**

This Title shall become effective immediately upon enactment.

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