

# Marijuana Compact

---

Between

Muckleshoot Tribe

and

The State of Washington

## Table of Contents

I. INTRODUCTION .....	2
II. PARTIES.....	2
III. PURPOSE AND INTENT .....	2
IV. DEFINITIONS.....	4
V. GENERAL MATTERS.....	6
VI. RETAIL SALES.....	8
VII. PRODUCING AND PROCESSING.....	9
VIII. RESEARCH AND TESTING OF MARIJUANA PRODUCTS.....	10
IX. NOTICE TO LOCAL JURISDICTIONS .....	12
X. TAXATION AND RECORD-KEEPING .....	13
XI. SAFETY AND ENFORCEMENT.....	14
XII. DISPUTE RESOLUTION .....	16
XIII. COMMUNICATION AND NOTICE .....	18
XIV. EFFECT, DURATION, AND AMENDMENT.....	19

## I. INTRODUCTION

This compact is entered into pursuant to RCW 43.06.490, Chapter 207, Laws of 2015 (the “Compacting legislation”). This document will be cited as the “Marijuana Compact Between the Muckleshoot Tribe and the State of Washington, hereinafter referred to as the “Compact.”

## II. PARTIES

The Parties to this Compact are the Muckleshoot Tribe (“Tribe”) and the State of Washington (“State”) (collectively, “Parties”).

The Tribe is located on the Muckleshoot Indian Reservation, which is in the state of Washington, and the Tribe is a federally-recognized sovereign Indian tribal government.

The State of Washington is a state within the United States of America, possessed of the full powers of a state government. The Washington State Liquor and Cannabis Board (“Board”) is an executive department of the State government with statutory authority with respect of marijuana under chapters 69.50 and 69.51A RCW. The Compacting legislation allows the Governor to enter into an agreement with any federally recognized Indian tribe located within the geographical boundaries of the State regarding marijuana and to delegate the power to negotiate such agreement to the Board.

## III. PURPOSE AND INTENT

Historically, the production, possession, delivery, distribution and sale of marijuana have been illegal across the United States and in Indian Country. In 2012, Washington voters passed Initiative 502 (“I-502”) which sets forth a tightly regulated, state-licensed system allowing for the production, processing, and retail sale of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products for recreational purposes within the State of Washington.

While the federal Controlled Substances Act continues to designate marijuana as a Schedule 1 substance, the United States Department of Justice on August 29, 2013, issued a memorandum to all United States Attorneys setting forth guidance regarding marijuana enforcement. In that memo, James M. Cole, Deputy Attorney General, set forth eight enforcement priorities of particular importance to the federal government,

including: preventing the distribution of marijuana to minors; preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; preventing the diversion of marijuana from states where it is legal under state law in some form to other states; preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; preventing violence and the use of firearms in the cultivation and distribution of marijuana; preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and preventing marijuana possession or use on federal property. The memo further states that the focus of federal law enforcement resources and efforts will be on those whose conduct interferes with the stated priorities and that state and local governments should provide sufficiently robust regulatory and enforcement systems to protect against these harms.

On October 28, 2014, the United States Department of Justice issued another memorandum to all United States Attorneys providing a policy statement regarding marijuana issues in Indian Country. In that memo, Monty Wilkinson, Director, Executive Office for United States Attorneys, acknowledged that “the eight priorities in the Cole Memorandum will guide United States Attorneys’ marijuana enforcement efforts in Indian Country, including in the event that sovereign Indian Nations seek to legalize the cultivation or use of marijuana in Indian Country.” That memo effectively treats tribal governments the same as state governments in the decision to legalize marijuana.

Through State law and the Board’s implementing rules, the State has legalized possession of limited amounts of marijuana and the production, processing, and sale of marijuana by licensed businesses and has set forth a civil regulatory system that accomplishes the federal priorities set forth above and keeps marijuana production, processing, and sale in the State regulated and safe for the public.

After serious deliberation, the Tribe, as a sovereign nation, has also determined that present day circumstances make a complete ban of marijuana within Indian Country ineffective and unrealistic and has decriminalized its sale and possession in certain circumstances. At the same time, consistent with the federal priorities, the need still exists for strict regulation and control over the production, possession, delivery, distribution, sale, and use of marijuana in Indian Country.

The State and the Tribe have recognized the need for cooperation and collaboration with regard to marijuana in Indian Country. The State has authorized the entry of this Compact by the Compacting legislation, enacted by the 2015 Regular Session of the Legislature on April 24, 2015, signed by the Governor on May 8, 2015, and effective on July 24, 2015. Laws of 2015, Chapter 207. Through Section 2 of this legislation, codified at RCW 43.06.490, the State authorized the Governor to enter Compacts concerning the regulation of marijuana and to delegate the authority to negotiate the Compacts to the Board.

The Parties share a strong interest in ensuring that marijuana production, processing, and sales in Indian Country are well-regulated to protect public safety and community interests. The Parties acknowledge that pursuant to federal law, 21 U.S.C. § 812, marijuana is a Schedule I controlled substance and that this Compact does not protect the sales or regulation of marijuana in Indian Country from federal law; however, the Parties have entered into this Compact in order to strengthen their ability to meet these mutual interests and to provide a framework for cooperation to ensure a robust tribal and state regulatory and enforcement system sufficient to meet the federal priorities.

The Parties agree that it is in the best interests of the Tribe and the State that they further implement the government-to-government relationship between them, as recognized in the Centennial Accord of August 4, 1989, by entering into a compact to protect public health and safety, ensure a lawful and well-regulated marijuana market, encourage economic development in Indian Country, and provide fiscal benefits to both the Tribe and the State.

#### **IV. DEFINITIONS**

- A. "Auditor" means a certified public accountant licensed and in good standing in the State of Washington.
- B. "Board" means the Washington State Liquor and Cannabis Board and its staff.
- C. "Compact" means this Marijuana Compact Between the Muckleshoot Tribe and the State of Washington, as it may be amended.
- D. "Indian Country" means all land located within the Muckleshoot Indian Reservation and all lands held in trust or restricted fee status by the United States for the Tribe or its Tribal Members which incorporates land defined under 18 USC 1151.

- E. "Marijuana," marijuana concentrates," "marijuana-infused products," and "useable marijuana" as used in this Compact shall have the same meanings as in RCW 69.50.101 or any amendments thereto. Together, these terms shall be referred to as "marijuana product" or "marijuana products."
- F. "Parties" means the Tribe and the State.
- G. "Processor" means any marijuana processor licensed to process, package, and label useable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale to processors and retailers by the Board pursuant to RCW 69.50.325 and any marijuana processor in Indian Country licensed or otherwise allowed by the Tribe or any other tribe with a marijuana compact with the Board.
- H. "Producer" means any marijuana producer licensed to produce and sell marijuana at wholesale to processors and other producers by the Board pursuant to RCW 69.50.325 and any marijuana producer in Indian Country licensed or otherwise allowed by the Tribe or any other tribe with a marijuana compact with the Board.
- I. "Retailer" means any marijuana retailer licensed to sell useable marijuana, marijuana concentrates, and marijuana-infused products in a retail outlet by the Board pursuant to RCW 69.50.325 and any marijuana retailer in Indian Country licensed or otherwise allowed by the Tribe or any other tribe with a marijuana compact with the Board.
- J. "Research and Testing Facility" means any business that conducts research and testing of marijuana products for quality control, potency and safety compliance for medical and other uses.
- K. "State" means the State of Washington.
- L. "State Licensee" means any marijuana producer, marijuana processor, or marijuana retailer licensed by the Board pursuant to chapter 69.50 RCW, chapter 314-55 WAC, or any other regulations promulgated thereunder.

- M. "State Tax" means the marijuana excise tax as stated in RCW 69.50.535 and the State and local sales and use tax on sales of marijuana as stated in chapters 82.08 and 82.12 RCW, all as may be amended from time to time.
- N. "Tribal Police" means the Muckleshoot Police Department.
- O. "Tribal Law" means the Muckleshoot Tribal Code.
- P. "Tribal Enterprise" means a business owned in whole or in part by the Tribe and authorized to transact business with marijuana products.
- Q. "Tribe" means the Muckleshoot Tribe.
- R. "Tribal Member Business" means a business owned by an enrolled member of the Tribe.
- S. "Tribal Tax" means a tax imposed by the Tribe on marijuana activities.

## **V. GENERAL MATTERS**

- A. Sovereign Immunity. The Parties agree that, except for the limited purpose of resolving disputes in accordance with the Dispute Resolution Section below, the signing of this Compact by the Tribe does not imply a waiver of sovereign immunity by the Tribe or any of its subdivision or enterprises and is not intended as a waiver of sovereign immunity and that any action by the State in regard to marijuana regulation by the Tribe shall be in accord with this Compact.
- B. Tribe Does Not Submit to State Jurisdiction. By entering into this Compact, the Tribe does not concede that the laws of the State apply to the Tribe, its businesses, agents, or members regarding activities and conduct within Indian country.
- C. State Does Not Concede Tribal Immunity. By entering into this Compact, the State does not concede that the Tribe has any immunity from the State's tax and collection provisions.
- D. This Compact Does Not Create any Third Party Beneficiaries. No third party shall have rights or obligations under or be considered a beneficiary of this Compact.

- E. Jurisdiction. This Compact does not increase or reduce the jurisdiction of either the Tribe or the State.
- F. No Limitation. The Parties agree that the signing of this Compact and the resultant benefits and obligations shall not be construed as limiting any otherwise lawful activity of the Tribe or its subdivisions or enterprises nor subject the Tribe or its subdivisions or enterprises to any State jurisdiction not agreed to in this Compact.
- G. Applicability. Consistent with RCW 43.06.490, this Compact applies to the production, processing, and sale of marijuana products in Indian Country where the Tribe or Tribal Enterprise (i) delivers or causes delivery to be made to or receives delivery of marijuana products from a State Licensee or (ii) physically transfers possession of marijuana products from the seller to the buyer within Indian Country. Except as otherwise provided herein, the production, processing, sale, and possession of marijuana products in Indian Country pursuant to the Muckleshoot Tribal Code and in accordance with this Compact are not subject to the terms of chapter 69.50 RCW and chapter 314-55 WAC, or any other regulations promulgated under that RCW Chapter, and any such activities will not be a criminal or civil offense under Washington state law.
- H. State Licensees.
1. The Tribe may purchase marijuana products from or sell marijuana products to State Licensees or any other entity operating under a valid Compact authorized by the Compacting legislation, including any amendments thereto, with or otherwise authorized by the State. All transactions between the Tribe or Tribal Enterprise and State Licensees must be executed through the State traceability system, and marijuana products purchased from or sold to State Licensees must be fully compliant with all State marijuana laws and rules, including packaging, testing, and labeling.
  2. The State will not cite, fine, or otherwise take any other adverse licensing or other action against any State Licensee for the mere fact that it bought or sold marijuana products from or to the Tribe or a Tribal Enterprise in accordance with the terms of this Compact and the Muckleshoot Tribal Code.
  3. To the extent necessary, the State will work with the Tribe and with any State Licensees or otherwise authorized producers, processors, or retailers to assure such entities that the Tribe and Tribal Enterprises are legally



authorized to purchase and sell marijuana products pursuant to the terms of this Compact.

4. The current Tribal Law does not permit Tribal Member Businesses to conduct retail sales, producing, processing, research or testing of marijuana products in Indian Country. However, if the Tribal Law is revised to allow it, then the Tribal Member Business may not purchase from or sell to a State Licensee, or conduct research or testing for transactions with a State Licensee, until such time as this Compact is amended to allow it.

I. Buffer Zone Requirements.

To maintain community safety and compliance with the United States Department of Justice memoranda, tribal marijuana producer, processor, and retail businesses in Indian Country must follow buffer zone requirements outlined in RCW 69.50.331(8), and any amendments thereto as may be modified by the Tribe consistent with subsections (b) through (d), and subject to interpretations of the grounds identified in subsection (a) that are within Indian Country all as codified in Tribal Law.

## VI. RETAIL SALES

- A. Retail Sales. The Tribe and/or its Tribal Enterprise may sell marijuana products in Indian Country pursuant to the Muckleshoot Tribal Code and this Compact. This compact does not permit Tribal Member Businesses to conduct retail sales of marijuana products in Indian Country without the approval of the Muckleshoot Indian Tribe.
- B. Other sales by the Tribe or a Tribal Enterprise. The Tribe shall notify the State at least 30 days prior to the opening of any other Retailer owned by the Tribe or Tribal Enterprise. Such notifications shall include:
  1. The identity of the entity which is operating the retail location;
  2. Location of the premises; and
  3. Certification that the premises is located in Indian Country.
- C. Conditions on Retail Sales.
  1. Retail sales of marijuana products by the Tribe and any Tribal Enterprise must be conducted in accordance with Muckleshoot Tribal Code and the

internal policies and controls of the Tribe or Tribal Enterprise. Muckleshoot Tribal Code Title 11 Chapter 11.07 as it exists on the date of this Compact is attached as Exhibit A. Current copies of Muckleshoot Tribal Code Title 11 Chapter 11.07 and marijuana internal policies and controls of the Tribe and any Tribal Enterprise will be made available online or made available for review by the Board upon request. The Tribe agrees to notify the Board of any changes to the Muckleshoot Tribal Code that may affect marijuana products within ten days of the date of adoption by the Tribe.

2. All marijuana products purchased by the Tribe or a Tribal Enterprise from a State-licensed producer or processor will be verified upon delivery in Indian Country, and confirmation of receipt will be made by executing the delivery invoice. The Tribe or Tribal Enterprise will input or cause to be input all delivered purchases into the State's tracking system within 24 hours of receiving any such delivery.
3. All marijuana products purchased by the Tribe or a Tribal Enterprise from the tribal government, Tribal Enterprise, or member of another federally recognized Indian Tribe with a reservation located within the state of Washington, or sold by the Tribe or a Tribal Enterprise to a tribal government, Tribal Enterprise, or member of another federally recognized Indian Tribe with a reservation located within the state of Washington, will be recorded in either the Tribe's or the State's tracking system within 24 hours of any such receipt or delivery. The Tribe and any Tribal Enterprise will make such records available for review by the Board upon request.

## **VII. PRODUCING AND PROCESSING**

A. Producing and Processing of Marijuana Products. The Tribe may allow the production and processing of marijuana products in Indian Country pursuant to the following terms:

1. Production and/or Processing by the Tribe or a Tribal Enterprise. The Tribe shall notify the State at least 90 days prior to the start of operations of any Producer or Processor owned by the Tribe or a Tribal Enterprise. Such notifications shall include:

- a. The identity of the entity which is operating the Producer or Processor location;

- b. Location of the premises; and
- c. Certification from the Tribe that the premises are located in Indian Country.

2. Conditions on Producers and Processors.

- a. Production and processing of marijuana products by the Tribe and any Tribal Enterprise must be conducted in accordance with Muckleshoot Tribal Code Title 11. Chapter 11.07 and the internal policies and controls of the Tribe or Tribal Enterprise: Muckleshoot Tribal Code Title 11 Chapter 11.07 as it exists on the date of this Compact is attached as Exhibit A. Current copies of Muckleshoot Tribal Code Title 11 Chapter 11.07 and any internal marijuana policies and controls of the Tribe and any Tribal Enterprise will be made available online or made available for review by the Board upon request. The Tribe agrees to notify the Board of any changes to the Muckleshoot Tribal Code that may affect marijuana products within ten days of the date of adoption by the Tribe.
- b. The State requires that marijuana products sold by Producers or Processors to State Licensees be packaged, tested, and labeled in compliance with State marijuana laws. With respect to “edibles” this must include State preapproval of the product, packaging, and labeling before sale to State Licensees; PROVIDED, that such preapproval shall not be unreasonably withheld and shall be timely provided. All transactions between the Tribe or Tribal Enterprises and State Licensees will be executed through the state traceability system following the same rules as State Licensees. All marijuana products sold to State Licensees will be fully traceable in the state's traceability system. Marijuana products will trace back to the plant(s) they were derived from and include results for all required quality assurance testing. All required test results must be entered into the traceability system by a Board-certified testing laboratory.

## **VIII. RESEARCH AND TESTING OF MARIJUANA PRODUCTS**

- A. The Tribe may allow the opening of a Research and Testing Facility pursuant to the following terms:
  - 1. The Tribe shall notify the State at least 90 days prior to the start of operations of any Research and Testing Facility owned by the Tribe or a Tribal Enterprise. Such notifications shall include:

- a. The identity of the entity which is operating the Research and Testing Facility.
  - b. Location of the premises.
- B. Research and Testing Operations. The Tribe is authorized to operate a research and testing lab that will for a fee conduct scientific and safety testing services for substances including cannabis.
- C. Certification. The Tribe will obtain and maintain certification consistent with Board rules including any amendments thereto, from the Board or the Board's vendor before conducting testing for State Licensees, and will conduct no testing for State Licensees during any period in which the Tribe's Testing Lab is not certified. The Tribe must pay all vendor fees for certification, recertification, and ongoing monitoring directly to the vendor. The Tribe agrees that the Tribe's Testing Lab will meet the Board's certification criteria to be certified as a lab that meets the standards in state law for conducting quality assurance testing consistent with Board rules.
- D. Testing Standards. The Tribe's Testing Lab will perform the tests described in the Board rules when conducting testing for State Licensees.
- E. Federal Standards. The Tribe will conduct operations of the Testing Lab in a manner consistent and in compliance with the standards set forth by the United States Department of Justice in the Cole Memorandum and in other documents relevant to the enforcement of laws dealing with marijuana.
- F. Clientele. The Parties recognize that the Tribe's Testing Lab may offer its services to, among others, State-licensed producers, processors and retailers of marijuana, marijuana concentrates, and marijuana-infused products. The Tribe will obtain certification from the Board or the Board's vendor before conducting testing for State Licensees, and will conduct no testing for State Licensees during any period in which the Tribe's Testing Lab is not certified. When conducting testing for State Licensees, the Tribe's Testing Lab will report all required quality assurance test results directly into the Board's seed-to-sale traceability system within twenty-four hours of completion and record in the Board's seed-to-sale traceability system an acknowledgment of the receipt of samples from state-licensed producers or processors and verify if any unused portion of the sample was destroyed.

- G. Notice to Local Jurisdictions. The Parties agree that it is in the best interests of both Parties that notice be provided to neighboring jurisdictions prior to the commencement of operations of any business involving marijuana. The Parties agree that the purpose of the notice is to facilitate an exchange of information that may be helpful to all parties for dealing with any concerns that neighboring jurisdictions may have. The Parties recognize that this notice is a matter of intergovernmental courtesy and is not required by state law.
- H. The Tribe's Testing Lab may conduct quality assurance testing on marijuana product(s) produced or processed by the Tribe or Tribal Enterprise, as provided for herein.
1. In accordance with WAC 314-55-102(2), for marijuana products produced by the Tribe or Tribal Enterprise for sale to a State Licensee, the Tribe shall ensure that the products are tested by a certified third-party testing lab in which the Tribe has no financial interest, and that the products comply with all legal and regulatory testing and product requirements. At its option, the Tribe's Testing Lab may also test such products, but no label or statement of testing results shall appear on a marijuana product that differs from the results determined by the certified third-party testing lab in which the Tribe has no financial interest.
  2. The Tribe's Testing Lab may perform the tests described in the Board rules when conducting testing of marijuana products produced by the Tribe or Tribal Enterprise (1) for sale by the Tribe or Tribal Enterprise at a retail location within Indian Country.

## **IX. NOTICE TO LOCAL JURISDICTIONS**

- A. The Parties agree that it is in the best interests of both Parties that notice be provided to neighboring jurisdictions prior to the commencement of operations of a Producer, Processor, or Retailer.
1. When the Tribe or any other Tribal enterprise proposes to open a new Producer, Processor, or Retailer the Tribe will provide, at least 30 days prior to the commencement of operations, written notice to the county and to the cities in and adjacent to which the activity will occur. The Parties agree that the purpose of the notice is to facilitate an exchange of information that may

be helpful to all parties concerned in addressing unanticipated impacts with the understanding that such notice related to Indian country is a matter of intergovernmental courtesy and not required by state law.

2. In accordance with the direction of the Legislature in RCW 43.06.490(3)(c) to address problems arising out of cross-border commerce, when any business that is not owned by the Muckleshoot Indian Tribe applies to the Board for a Producer, Processor, Retailer or Research and Testing Facility license for a location in Indian Country, the Board agrees that such license will not be granted without the Board first obtaining express written consent of the Tribe. The tribe agrees to respond to the express written consent request within 20 days of notification from the Board. The express written consent request shall be delivered to each of the Tribe's contacts consistent with section XIII C. Notice. If the Tribe does not respond within 20 days, the Board will assume concurrence.

## **X. TAXATION AND RECORD-KEEPING**

The Parties recognize that RCW 43.06.490(2)(a) provides that "Each marijuana agreement adopted under this section must provide for a tribal marijuana tax that is at least one hundred percent of the state marijuana excise tax imposed under RCW 69.50.535 and state and local sales and use taxes on sales of marijuana." The Parties further recognize that Sections 3, 4, and 5 of the Compacting legislation, codified at RCW 69.50.555, 82.08.997, and 82.12.997, provide exemptions from certain state taxes under the circumstances described in those sections.

### **A. State Tax.**

- A. Pursuant to RCW 69.50.555 no State Tax or fee, assessment, or other charge imposed by RCW 69.50 may be assessed against or collected from the Tribe, Tribal Enterprise, or retail customer purchasing from the Tribe or Tribal Enterprises if covered under the provisions of this Compact.

### **B. Tribal Tax.**

1. Sales of marijuana products. The Tribe shall impose and maintain a Tribal Tax that is equal to at least 100 percent of the State Tax on all sales of marijuana products in Indian country, except that, consistent with RCW 43.06.490(2), the tribe may allow an exemption from tax for sales to the Tribe,

Tribal Enterprise, Tribal Member Business, or an enrolled member of the Tribe on marijuana grown, produced, or processed within Indian Country, or for transactions otherwise exempt from state marijuana taxation under state or federal law. Medical marijuana products used in the course of medical treatment by a clinic, hospital, or similar facility owned and operated by the Tribe within Indian Country are exempted from tax. The Tribe may choose to levy a Tribal Tax on any transaction that may otherwise be exempt.

- C. At the State's request, the Tribe will retain, at its own expense, an Auditor to test the Tribe's compliance with this Taxation and Record-Keeping Section of the Compact. The Auditor will review a sample of records to verify the requirements of this section and will provide the State with a report detailing the results of the testing procedures, to include identification of any instances of noncompliance with the terms of this section.

## **XI. SAFETY AND ENFORCEMENT**

- A. The Tribe shall address safety and enforcement issues in accordance with Muckleshoot Tribal Code, this Compact, and internal policies and controls of the Tribe or Tribal Enterprise.

### **1. Premises Checks**

- a. Premise Checks by the Tribe. The tribal police or other authorized agency may conduct its own premises checks in Indian Country to observe compliance with Tribal Code and this Compact and to provide support and education to Tribal Enterprises and staff. To the extent it is informed of the results of such premises checks, the Muckleshoot Tribe will share the results of the premises checks with the Board.
- b. Premise Checks by the Board. The Board, through its staff, may also conduct premises checks. Prior to conducting any such check, the Board will contact the tribal police to provide reasonable notice of such premises check. Except as provided in the Cooperation Section below, the tribal police may observe and participate in all premises checks. The Board will share the results of such premises checks with the Tribe.
- c. Cooperation. Both Parties will cooperate in good faith to undertake all Board requested checks jointly. The tribal police will make reasonable efforts to arrange and conduct all Board requested premises checks

within 24 hours of being provided written notice of such request by the Board. All such written notice shall be sent to the Chief of the Tribal Police and the Chairman of the Tribe. However, if the tribal police are unable or unwilling to arrange and conduct such requested premises checks 48 hours after receiving the original written notice, the Board may then perform the premises check on its own without the tribal police. Should either Party have any concerns arising out of a premises check or the results thereof, the Parties will meet in good faith to discuss any suggested changes to protocols for the premises checks themselves or for marijuana sales by the Tribe or Tribal Enterprise that were checked.

2. Compliance Checks - Minors

- a. Compliance Checks by the Tribe. The Tribe may conduct its own compliance checks in Indian Country using minors ages 18, 19, or 20 through the tribal police or other authorized agency in accordance with Tribal regulations and policies. To the extent it is informed of the results of such checks, the Tribe will provide the results of the checks to the Board. No criminal action may be taken against any minor who purchases marijuana as part of such a compliance check.
- b. Compliance Checks by the Board. Board staff may also conduct compliance checks. Prior to conducting any such check, the Board will contact the tribal police to provide reasonable notice of such compliance check. Except as provided in the Cooperation Section below, the tribal police may observe and participate in all compliance checks. The Board will share the results of such compliance checks with the Tribe.
- c. Cooperation. Both Parties will cooperate in good faith to undertake all Board requested checks jointly. The tribal police will make reasonable efforts to arrange and conduct all Board requested compliance checks within 24 hours of being provided written notice of such request by the Board. All such written notices shall be sent to the Chief of Police and the Chairman of the Tribe. However, if the tribal police are unable or unwilling to arrange and conduct such requested compliance check 48 hours after receiving the original written notice, the Board may then perform the compliance check on its own without the tribal police.



Should either Party have any concerns arising out of a compliance check or the results thereof, the Parties will meet in good faith to discuss any suggested changes to protocols for the compliance checks themselves or for marijuana sales by the Tribe or Tribal Enterprise that were checked.

3. Transportation Outside Indian Country. Transportation of marijuana products outside the boundaries of Indian Country shall be conducted in compliance with state law and Board rules.

## **XII. DISPUTE RESOLUTION**

- A. Process Required. Neither Party, nor any officer or official acting on behalf of a Party, may petition any court to enforce this Compact unless (a) the dispute resolution process described in this Dispute Resolution Section has been followed in good faith to completion without successful resolution or (b) the other Party fails to enter into the dispute resolution. Should a dispute arise between the Parties regarding compliance with this Compact by either Party, the Parties will attempt to resolve the dispute through the following dispute resolution process:
- B. Notice. Either Party may invoke the dispute resolution process by notifying the other, in writing, of its intent to do so. The notice must set out the issues in dispute and the notifying Party's position on each issue.
- C. Meet and Confer. The first stage of the process will include a face-to-face meeting between representatives of the two Parties to attempt to resolve the dispute by negotiation. The meeting must be convened within 30 days after the receiving Party's receipt of the written notice described in the Notice Section above. The representatives of each Party will come to the meeting with authority to settle the dispute. If the dispute is resolved, the resolution will be memorialized in a writing signed by the Parties.
- D. Mediation. The second stage of the process will be that if the Parties are unable to resolve the dispute within sixty (60) days after receipt of the initial written notice, the Parties will engage the services of a mutually agreed-upon qualified mediator to assist them in attempting to negotiate the dispute. Costs for the mediator will be divided equally by the Parties. The Parties will pursue the mediation process in good faith until the dispute is resolved or until ninety (90) days after the date of the mediation demand, whichever occurs first. The Parties

may continue mediation after the 90-day period by mutual agreement. If the Parties cannot agree on a format for the mediation process, the format will be determined by the mediator. If the dispute is resolved, the resolution will be memorialized by the mediator in a writing signed by the Parties, which will bind the Parties.

E. Arbitration.

1. If a Party terminates the process before completion, or if the mediator determines that the dispute cannot be resolved in the mediation process, or if the dispute is not resolved within one hundred and twenty (120) days after the date the mediator is selected, either Party may initiate binding arbitration proceedings under the rules of the American Arbitration Association ("AAA"), but AAA need not administer the arbitration. If the arbitrator determines that a Party is in violation of a material provision of this Compact, and such violation is not or cannot be cured within thirty (30) days after the arbitrator's decision, then the other Party may terminate this Compact with sixty (60) days' prior written notice.
2. The arbitrator shall have no authority to award monetary damages or issue injunctive or other equitable relief.
3. Each Party will bear its own legal costs incurred under this section. All costs of the arbitrator will be shared equally.

F. Procedure if the Dispute Remains Unresolved. After completion of the process described in the Dispute Resolution, Process Required Section above or one hundred eighty (180) days after the written notice described in Dispute Resolution, Notice Section above, whichever occurs first, either Party may terminate this Compact upon thirty (30) days' written notice sent to the persons listed in the Communication and Notice, Designated Contacts Section.

G. Defense of This Compact. In any action filed by a third party challenging either the Tribe's or the State's authority to enter into or enforce this Compact, the Parties each agree to support the Compact and defend each of their authority to enter into and implement this Compact; provided, however, that this provision does not waive, and shall not be construed as a waiver of, the sovereign immunity of the Tribe or any of its subdivisions or enterprises.

- H. Traceability. Should either Party have any concerns arising out of operation of the traceability system or the results thereof, the Parties will meet in good faith to discuss any issues. If parties fail to come to a resolution, either Party may invoke the Dispute Resolution Process of this Compact.

### **XIII. COMMUNICATION AND NOTICE**

- A. Designated Contacts. The Parties agree to maintain regular and open communication regarding the administration and implementation of this Compact. The Parties agree that the following individuals will be designated primary contacts regarding administration of this Compact:

For the State:

Agency Director  
Liquor and Cannabis Board  
3000 Pacific Ave SE  
PO Box 43080  
Olympia WA 98504 3080  
360-664-1650

For the Tribe:

Muckleshoot Tribal Chair  
39015 172nd Ave SE  
Auburn, WA 98092  
253-939-3311

- B. The Parties agree that if either Party believes that the goals and objectives of this Compact are not being met, that they will meet promptly to discuss any issues and concerns.

- C. Notice. Any notice that may be or is required to be sent under this Compact shall be sent as follows:

If to the State:

Office of the Governor  
PO Box 40002  
Olympia WA 98504 0002

With a copy to:

Agency Director  
Liquor and Cannabis Board  
3000 Pacific Ave SE

PO Box 43080  
Olympia WA 98504 3080  
360-664-1650

If to the Tribe:

Chair  
Muckleshoot Indian Tribe  
39015 172nd Ave SE  
Auburn, WA 98092  
(253) 939-3311

With a copy to:

Office of the Tribal Attorney  
Chief Legal Officer  
39015 172nd Ave SE  
Auburn, WA 98092  
(253) 939-3311

#### **XIV. EFFECT, DURATION, AND AMENDMENT**

- A. Term. This Compact shall remain in effect for a term of ten years unless the Parties mutually agree in writing that the Compact should be vacated or terminated and superseded by a new compact between the Parties within that time frame, or unless the Compact is terminated pursuant to the Dispute Resolution Provision above. The Compact shall be automatically renewed for successive periods of ten years, unless a Party provides written notice to the other, no later than 120 days before the expiration of the then current ten-year period, that it wishes to modify the terms of the Compact.
- B. Amendment. No amendment or alteration of this Compact shall arise by implication or course of conduct. This Compact may be altered only by a subsequent written document, approved by the Parties, expressly stating the Parties' intention to amend this Compact.
- C. Severability. If any provision of this Compact or its application to any person or circumstance is held invalid, the remainder of the Compact shall not be affected.
- D. Change in Classification. If the classification of marijuana as a Schedule I drug is altered in any way or federal laws governing marijuana changes, the Parties agree to meet and discuss the need to modify this Compact. If such modifications

cannot be agreed upon, then either Party may terminate this Compact upon 60 days written notice.

E. Most Favored Nation Provision In Another Compact. If, at any time after the effective date of this Compact, the State enters into an agreement, compact, or consent decree with any other federally recognized Indian tribe or governmental agency thereof, of or relating to the regulation of marijuana in Indian country which includes a "most favored nation" provision, then, upon the Tribe's written request, this Compact will be amended to include such provision. A "most favored nation" provision is defined as language by which the State agrees to accord a tribe or tribal government agency the same favorable terms that are offered in later agreements with any other tribe or tribal government agency. This will not be construed to require that the State offer the Tribe the option to receive the same terms offered to every tribe or tribal government agency, in the absence of a most favored nation provision in the Compact. The parties recognize that terms regarding taxation may fall within the scope of this paragraph. However, notwithstanding any other provision in this section, should it be determined that a Tribe is entitled to a refund or payment of any State tax, fee, assessment or other charge imposed on a Tribe's marijuana product sold off the Tribe's reservation, then the parties agree that such more favorable terms shall be added to this Compact under this provision upon the Tribe's written request to the Board.

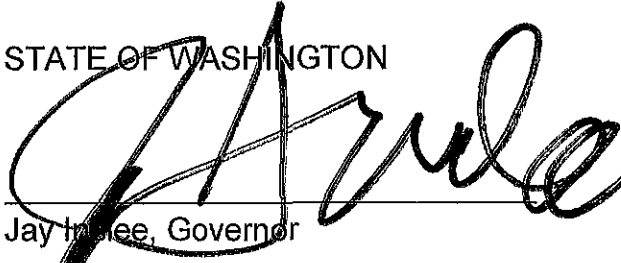
F. Renegotiation. The parties may renegotiate the nature and/or scope of this Compact upon the written notice and request by either party if and when:

1. Laws in the State governing marijuana are enacted allowing activities which are now prohibited, or prohibiting activities which are now allowed;
2. The Tribe wishes to engage in forms of marijuana-related businesses other than those authorized in this Compact; or
3. Federal laws governing marijuana change.

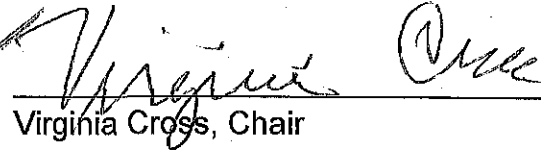
This Compact is hereby made this 7<sup>th</sup> day of March, 2017.

STATE OF WASHINGTON

MUCKLESHOOT INDIAN TRIBE

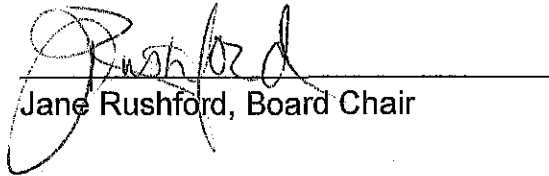


Jay Insee, Governor



Virginia Cross, Chair

WASHINGTON STATE LIQUOR AND  
CANNABIS BOARD



Jane Rushford, Board Chair



Ollie Garrett, Board Member



Russ Hauge, Board Member



Rick Garza, Agency Director

## TITLE 11. COMMERCE

### Chapter 11.07

#### COMMERCIAL MARIJUANA ACTIVITY

##### Sections:

11.07.01	Title.
11.07.02	Definitions.
11.07.03	Findings.
11.07.04	Establishment and Delegation.
11.07.05	Tribal Marijuana Tax.
11.07.06	Producing and Processing of Marijuana Products.
11.07.07	Purchase and Sale of Marijuana Products.
11.07.08	Retail Sales.
11.07.09	Licensing and Background Investigations.
11.07.10	Indemnity.
11.07.11	Medical Marijuana.
11.07.12	Civil Enforcement.
11.07.13	Criminal Enforcement.
11.07.14	Sovereign Immunity.
11.07.15	Severability.

##### 11.07.01 Title.

This ordinance shall be known as the “Muckleshoot Commercial Marijuana Activity Ordinance.”

##### 11.07.02 Definitions.

As used in this ordinance, the following words and phrases shall each have the designated meaning unless a different meaning is expressly provided or context clearly indicated.

- A. “Commercial Marijuana Activity” means all *planting, growing, producing, cultivating, processing, and selling marijuana, marijuana concentrates, marijuana- infused products, and useable marijuana in Indian Country in accordance with Muckleshoot Tribal laws that govern medical and recreational marijuana.*
- B. “Compact” means an agreement between the Tribe and the State or the Liquor and Cannabis Board (LCB) regarding marijuana.
- C. “Designated Provider” shall have the same meaning as in RCW 69.51A.010.
- D. “Essential Government Services” means services provided by the Tribe including, but not limited to, administration, public facilities, fire, police, health, education, elder care, social services, sewer, water, environmental and land use, transportation, utility services, community development, and economic development.

- E. "Indian Country" means the lands of the Muckleshoot Indian Tribe as defined by 18 U.S.C. § 1151, including the Tribe's Reservation and all lands held in trust or restricted fee status by the United States for the Tribe or its Tribal Members.
- F. "LCB" means the Washington State Liquor and Cannabis Board or its successor agency that regulates Marijuana.
- G. "Marijuana," "marijuana concentrates," "marijuana-infused products," and "useable marijuana" shall have the same meanings as in RCW 69.50.101 or any amendments thereto. Together, such terms shall be known as "Marijuana Products."
- H. "Medical Marijuana Authorization Database" shall have the same meaning as in RCW 69.51A.010.
- I. "Muckleshoot Marijuana Enterprise" means a business entity wholly owned by the Muckleshoot Tribe that is authorized to engage in a Commercial Marijuana Activity.
- J. "Qualifying Patient" shall have the same meaning as in RCW 69.51A.010.
- K. "Recognition Card" shall have the same meaning as in RCW 69.51A.010.
- L. "State" means the State of Washington.
- M. "State Licensee" means any entity licensed by the LCB pursuant to RCW 69.50 or WAC 314-55, as amended.
- N. "State Tax" means the marijuana excise tax as stated in RCW 69.50.535 and the State and local sales and use tax on sales of marijuana as stated in RCW 82.08 and RCW 82.12, all as may be amended from time to time.
- O. "MTC" means the Muckleshoot Tribal Code.
- P. "Tribal Council" means the Muckleshoot Tribal Council.
- Q. "Tribal Member" means an enrolled member of the Tribe.
- R. "Tribe" means the Muckleshoot Indian Tribe

**11.07.03 Findings.**

- A. Historically, the production, possession, delivery, distribution, and sale of marijuana have been illegal across the United States and in Indian Country. In 2012, the voters of Washington State passed Initiative 502 ("I-502") which sets forth a system allowing for the production, processing, and retail sale of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products for recreational purposes within the State.
- B. While the federal Controlled Substances Act continues to designate marijuana as a Schedule I substance, on August 29, 2013, the United States Department of Justice issued a memorandum to all United States Attorneys setting forth guidance regarding marijuana enforcement. In that memo, James M. Cole, Deputy Attorney General, set forth eight



enforcement priorities of particular importance to the federal government, including: preventing the distribution of marijuana to minors; preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; preventing the diversion of marijuana from states where it is legal under state law in some form to other states; preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; preventing violence and the use of firearms in the cultivation and distribution of marijuana; preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and preventing marijuana possession or use on federal property. The memo goes on to indicate that the focus of federal law enforcement resources and efforts will be on those persons whose conduct interferes with the stated priorities and that state and local governments should provide sufficiently robust regulatory and enforcement systems to protect against these harms.

- C. On October 28, 2014, the United States Department of Justice issued another memorandum to all United States Attorneys providing a policy statement regarding marijuana issues in Indian Country. In that memo, Monty Wilkinson, Director, acknowledged that “[t]he eight priorities in the Cole Memorandum will guide United States Attorneys’ marijuana enforcement efforts in Indian Country, including in the event that sovereign Indian Nations seek to legalize the cultivation or use of marijuana in Indian Country.” That memo effectively treats tribal governments the same as state governments in the decision to legalize marijuana.
- D. After serious deliberation, the Tribe has determined that present day circumstances — including the State’s legalization of marijuana — make a complete ban of marijuana within Indian Country ineffective and unrealistic and has decriminalized its possession in very limited circumstances as set forth in the MTC 5.11.
- E. The Tribe also finds that, particularly considering the commercial marijuana activity occurring throughout the State, raising funds through the sale of marijuana in Indian Country may be a useful economic development tool.
- F. The Tribe therefore enacts this ordinance in an effort to strictly regulate and control the production, distribution, sale, and use of marijuana in Indian Country, consistent with the Department of Justice’s eight priorities and to protect the health, safety, and general welfare of the Tribe and to visitors to Indian Country.

#### **11.07.04 Establishment and Delegation.**

The Tribal Council is the sole authority to locate, manage, and operate all Commercial Marijuana Activity on behalf of the Tribe.

#### **11.07.05 Tribal Marijuana Tax.**

- A. There shall be a Tribal marijuana tax equal to 100 percent of the State Tax then in effect levied on all non-Tribal Commercial Marijuana Activity.
- B. The Tribal marijuana tax shall be remitted to the Tribe on a quarterly basis
- C. The Tribe will use the proceeds of such tax for essential governmental purposes and other

purposes as determined by the Tribal Council.

- D. No other tax besides the Tribal marijuana tax may be imposed on Commercial Marijuana Activity.
- E. The Tribe may allow an exemption from the Tribal marijuana tax in the following circumstances:
  - (i) for sales on marijuana grown, produced, or processed within Indian Country;
  - (ii) for sales to the Tribe, Tribal Enterprise or Tribal Members that occur in Indian Country
  - (iii) for activities that would otherwise be exempt under state or federal law; and
  - (iv) for medical marijuana products used in the course of medical treatments by a clinic, hospital, or similar facility owned and operated by the Tribe within its Indian Country.

#### **11.07.06 Producing and Processing of Marijuana Products.**

- A. **Buffers.** No producing or processing of Marijuana Products may occur within 1,000 feet of a school or playground.
- B. **Minors.** No persons under 21 years of age may enter or be employed at a producing or processing facility.
- C. **Producing.** Production facilities may be located indoors or outdoors, provided that they are fully secure, have physical barriers, and meet safety and security protocols as outlined more specifically by Muckleshoot Marijuana Enterprises policy:
- D. **Processing.** All processing facilities must meet the standards as would be required for food handling under Indian Health Services requirements.
- E. **Testing.** Before sale to any retailer, Marijuana Products must be tested by a Tribally or State-licensed lab that follows quality assurance testing protocols at least as restrictive as state law.
- F. **Packaging and labeling.** All Marijuana Products must be packaged and labeled in accordance with standards at least as strict as State law. Packaging and labeling designed to be especially appealing to children are prohibited. All marijuana-infused products meant to be eaten, swallowed, or inhaled must be packaged in child proof packaging.
- G. **Sales to State Licensees.** All Marijuana Products sold by Muckleshoot to a State Licensee must meet the testing, packaging, and labeling requirements otherwise required under state law. Such sales shall be input into the State's traceability system.
- H. **Conditions of sale.** Any Muckleshoot Marijuana Enterprise approved for Commercial Marijuana Activity shall develop policies and procedures governing records to be maintained, security requirements, maximum quantities on premises, transport and delivery, and other matters related to the production and processing of Marijuana Products. Such policies and procedures shall be presented to the Tribal Council prior to implementation and thereafter upon request.

**11.07.07 Purchase and Sale of Marijuana Products.**

- A. Muckleshoot Marijuana Enterprises may purchase Marijuana Products only from (1) other tribes with sufficiently robust regulatory schemes sufficient to meet the Department of Justice's eight priorities, or (2) State Licensees.
- B. All Marijuana Products purchased from State Licensees will be inputted into the State's tracking system within 24 hours of delivery.

**11.07.08 Retail Sales of Marijuana Products.**

- A. Retail Locations. Retail locations on the Reservation must be pre-approved by the Tribal Council. Consideration of the potential impact to the community and the health and welfare of the community members shall be included in the approval decision. No retail locations may be located within 1,000 feet of a school or playground.
- B. Minors. No persons under 21 years of age may enter or be employed at a retail facility.
  - (i) Acceptable identification for proof of age includes: Driver's license, ID card, or Instruction Permit issued by any U.S. state or Canadian province; Washington temporary driver's license; Tribal enrollment card; passport from any nation; U.S. Military ID; or Merchant Marine card issued by U.S. Coast Guard.
  - (ii) The Tribe may conduct its own compliance checks in Indian Country using minors ages 18, 19, or 20 through the Muckleshoot Tribal Police Department or other authorized agency in accordance with Tribal regulations and policies. No criminal action may be taken against any minor who purchases marijuana as part of such a compliance check.
- C. Advertising. Any advertising located outside of Indian Country must comply with RCW 69.50 and WAC 314-55.
- D. Maximum sales.
  - (i) No retail location may sell more than one ounce of useable marijuana, 16 ounces of marijuana-infused product in solid form, 72 ounces of marijuana-infused product in liquid form, or seven grams of marijuana concentrate in a single transaction.
  - (ii) No retail location may sell more than three ounces of useable marijuana, 48 ounces of marijuana-infused product in solid form, 216 ounces of marijuana-infused product in liquid form, or 21 grams of marijuana concentrate to a Qualifying Patient or Designated Provider who has been entered into the Medical Marijuana Authorization Database and has been provided a Recognition Card pursuant to and in compliance with state law, and who is twenty-one years of age or older.
- E. Delivery. No deliveries of marijuana products may be made in Indian Country without the proper licenses for the pick-up and delivery locations or approval of the Tribe.
- F. Conditions of sale. Muckleshoot Marijuana Enterprises shall develop policies and procedures governing records to be maintained, security requirements, advertising, maximum quantities on premises, transport and delivery, and other matters related to retail sales. Muckleshoot

Marijuana Enterprises shall provide such policies and procedures to Tribal Council prior to implementation and thereafter upon request.

**11.07.09 Licensing and Background Investigations.**

- A. **Muckleshoot Marijuana Enterprises.** Wholly owned enterprises of the Muckleshoot Indian Tribe are the only persons or entities authorized to manufacture, process, package deliver, distribute, or sell; or possess marijuana in quantities in excess of the allowable quantities identified in Chapter 5.10 of the Muckleshoot Law and Order Code. Muckleshoot Marijuana Enterprises need not be licensed and shall be established by Tribal Council resolution.
- B. **Tribal Member and Non-Indian Businesses in Indian Country.** No such licenses for any purpose will be issued at this time.
- C. **Manager of Muckleshoot Marijuana Enterprise.** No manager of a Muckleshoot Marijuana Enterprise may have been convicted of, or entered a plea of guilty or no contest to, any of the following criminal offenses:
  - (i) Any felony in the proceeding 10 years; and,
  - (ii) Any crime involving dishonesty within the preceding ten (10) years, including, not exclusively: fraud; forgery; possession of a forgery device; theft; counterfeiting; embezzlement; making a false representation; obstruction of justice; intent to defraud; bribery; mail fraud; perjury; willful tax evasion; attempt, aiding and abetting, being an accessory, and/or conspiracy.

**11.07.10 Indemnity.**

- A. The Tribe shall indemnify any Tribal Council member, board member, manager, or employee of the Tribe, or Muckleshoot Marijuana Enterprises made party to a proceeding because of their role in Commercial Marijuana Activity against personal liability incurred in a proceeding if:
  - (i) The individual acted in his or her official capacity;
  - (ii) The individual acted in good faith;
  - (iii) The individual believed his or her conduct was in the best interests of the Tribe; and
  - (iv) The individual acted in accordance with the laws, regulations, and policies of the Tribe.
- B. "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal related to the production, processing, or sale of marijuana.
- C. "Liability" means the obligation to pay a judgment, settlement, penalty, or fine, or reasonable expenses incurred with respect to a proceeding.

**11.07.11 Medical Marijuana. Reserved.**

#### **11.07.12 Civil Enforcement.**

- A. The Tribal Council and/or its authorized delegate may direct Tribal law enforcement authorities to issue a Stop Work Order if they find reasonable grounds to believe that a person, business, or other entity is in violation of this ordinance. A Stop Work Order is valid if the Tribal Council and/or its authorized delegate based their determination on reasonable grounds.
- B. The alleged violator must immediately cease their alleged violations and comply with the provisions of the Stop Work Order. Failure to comply with a Stop Work Order is itself a violation of this ordinance which may result in additional penalties as set forth below.
- C. The Muckleshoot Tribal Court shall have jurisdiction to enforce this ordinance. This jurisdiction is limited to cases brought by the Tribe seeking an enforcement remedy, or by a person, business, or entity challenging a tribal Stop Work Order. The Court's decisions are appealable pursuant to the rules of appellate procedure set forth in ordinance 9.
- D. Upon a finding of a violation of this ordinance the Court may:
  - i) Enjoin any action that is in violation of this ordinance or a valid Stop Work Order.
  - ii) Impose a civil penalty of not more than \$500.00 per day per violation for each day that the violation persists.
  - iii) Revoke a license issued pursuant to this ordinance.
  - iv) Award damages and disgorge a violator of any profits or property acquired through a violation of this ordinance or violation of a valid Stop Work Order.
  - v) Enter any other order that the Muckleshoot Tribal Court would otherwise have jurisdiction to enter.
- E. The general rules of the Muckleshoot Tribal Court shall govern any action filed under this section. Enforcement pursuant to this ordinance does not foreclose the possibility of additional criminal or civil enforcement.

#### **11.07.13 Criminal Enforcement.**

- A. Actions of any person that violates this Ordinance and Title 5 Muckleshoot Law and Order Code may be referred to the proper authorities for prosecution.

#### **11.07.14 Sovereign Immunity.**

- A. Except as expressly provided in this ordinance, nothing in this ordinance nor its administration or enforcement is intended to nor shall it be deemed a waiver of the sovereign immunity of the Muckleshoot Indian Tribe, its officers, employees, agents, or attorneys. Nothing in this ordinance is intended to nor shall it be deemed to be a consent to suit against the Muckleshoot Indian Tribe, its officers, employees agents, or attorneys, Unless expressly set out in this ordinance, no court shall have jurisdiction pursuant to this ordinance to enter an order against the Tribe, its officers, employees, agents, or attorneys.

**11.07.15 Severability.**

- A. Should any section or provision of this ordinance or its application to any person or property be declared by a court with competent jurisdiction to be invalid, such decision shall not affect or invalidate any other part, section, provision, or application of this ordinance which shall continue to be given full force and effect.