

Marijuana Compact

Between

The Swinomish Indian Tribal Community

and

The State of Washington

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I. INTRODUCTION

This compact is entered into pursuant to House Bill 2000, Chapter 207, Laws of 2015 (the “Compacting legislation”). This document will be cited as the “Marijuana Compact Between the Swinomish Tribe and the State of Washington,” hereinafter referred to as the “Compact”.

II. PARTIES

The Parties to this Compact are the Swinomish Indian Tribal Community (“Tribe”) and the State of Washington (“State”) (collectively, “Parties”).

The Tribe is located on the Swinomish 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. RCW 43.06.490 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 Swinomish Tribe and the State of Washington, as it may be amended.

- D. “Indian Country,” as defined by 18 U.S.C. § 1151, means all lands within the Tribe’s Swinomish Indian Reservation and all lands held in trust or restricted fee status by the United States for the Tribe or its Tribal Members. For purposes of illustration only, the Tribe will provide to the Board an electronic map of Indian country in a form that is compatible with the Board’s computer hardware and software.
- 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. “SDA” means the Swinomish Development Authority, a chartered entity under Swinomish Tribal law and wholly owned by the Tribe. SDA includes any subsidiary of the SDA.
- 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 there under.
- 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” if applicable means the Swinomish Police Department.
- O. “Tribal Code” means the Swinomish Tribal Code.
- P. “Tribal Enterprise” means the SDA or other business owned in whole or in part by the Tribe or the SDA and authorized to sell marijuana products under the Swinomish Tribal Code.
- Q. “Tribe” means the Swinomish 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 subdivisions 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 law.
- 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 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 and Tribal Enterprises may purchase marijuana products from or sell marijuana products to State Licensees or any other entity operating under a valid Compact authorized by RCW 43.06.490, 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 labelling.

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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 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 Code 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 Code 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 will impose buffer zone requirements as outlined in RCW 60.50.331(8), and any subsequent 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 Code.
 - J. References to Laws, Rules and Policies. References herein to Tribal ordinances, Tribal and State laws, and to Tribal, State, and Board rules and policies, include ordinances, laws, rules, and policies in existence as of the effective date of this Compact, together with any amendments that may be adopted during the term of the Compact. References herein to specific titles, chapters, or sections of the Tribal Code, the Revised Code of Washington, or the Washington Administrative Code, include the cited titles, chapters, and sections as they exist on the effective date of this Compact, together with any amendments or renumbering that may be adopted during the term of this Compact.
 - K. The parties may agree to expand this Compact, by written amendment after its initial adoption (pursuant to section XIII(B)), to cover other elements of marijuana activity and regulation, including marijuana research, testing, or laboratory services.

VI. RETAIL SALES

- A. Retail Sales. The Tribe and/or its Tribal Enterprise may sell marijuana products in Indian Country pursuant to the Tribal Code and this Compact. This compact does not permit Tribal Member Businesses to conduct retail sales of marijuana products in Indian Country.
- B. Sales by the Tribe or a Tribal Enterprise. The Tribe shall notify the State at least 30 days prior to the opening of any 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 the Tribal Code and the internal policies and controls of the Tribe or Tribal Enterprise. Tribal Code Title 15, Chapter 8 as it exists on the date of this Compact is attached as Exhibit A. Current copies of Tribal Code Title 15, Chapter 8 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 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 that has a current compact pursuant to RCW 43.06.490 , 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 that has a current compact pursuant to RCW 43.06.490, 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 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 Tribal Code Title 15, Chapter 8 and the internal policies and controls of the Tribe or Tribal Enterprise. Current copies of Tribal Code Title 15, Chapter 8 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 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. 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) and RCW 69.50.331 to address problems arising out of cross-border commerce, when any business that is not a Tribal business applies to the

Board for a Producer, Processor or Retailer license for a location in Indian Country, the Board agrees that such license will not be granted without the person or business 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 XII(C) Notice. If the Tribe does not respond within 30 days, the Board will assume that the Tribe does not consent to the license.

IX. 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 RCW 69.50.555, 82.08.9997, and 82.12.9997 provide exemptions from certain state taxes under the circumstances described in those sections.

A. State Tax.

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. Audits. 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.

X. SAFETY AND ENFORCEMENT

- A. The Tribe shall address safety and enforcement issues in accordance with the 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 shall serve as the primary enforcement agency to conduct 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 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 to observe compliance with this Compact. 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 shall serve as the primary enforcement agency to conduct 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 to observe compliance with this Compact. 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.

XI. 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. 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.
- F. 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.
- G. 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.

XII. 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: Office of Tribal Attorney
11404 Moorage Way
La Conner, WA 98257

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: Tribal Chairman
11404 Moorage Way
La Conner, WA 98257

With a copy to: Office of Tribal Attorney
11404 Moorage Way
La Conner, WA 98257


XIII. 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, Procedure if the Dispute Remains Unresolved Section above or the Change in Classification section below. 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, or notice that declines to renew 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. . If, at any time, 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 other 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.
- 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 marijuana enforcement policy (as described above) 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.


This Compact is hereby made this 29th day of January, 2018.

STATE OF WASHINGTON

SWINOMISH TRIBE



Jay Inslee, Governor



Brian Cladoosby, Chairman

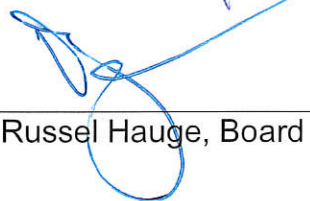
WASHINGTON STATE LIQUOR AND
CANNABIS BOARD



Jane Rushford, Board Chair



Ollie Garrett, Board Member



Russel Hauge, Board Member



Rick Garza, Agency Director

Exhibit A

Title 15 – Business Regulations Chapter 8 – Cannabis

Sec.

15-08.010	Title
15-08.020	Purpose and Intent
15-08.030	Authority
15-08.040	Findings
15-08.050	Definitions
15-08.060	Sales
15-08.070	Production and Processing
15-08.080	Security Procedures
15-08.090	Tracking
15-08.100	Packaging, Labeling and Advertising
15-08.110	Tax
15-08.120	Community Education
15-08.130	Medical Cannabis Specialist Licensing
15-08.140	Permitted Acts
15-08.150	Industrial Hemp
15-08.160	Repealer
15-08.170	Severability
15-08.180	Effective Date

Legislative History

Enacted:

Ordinance 374 Amending STC Title 15 Business Regulations, Chapter 8 Cannabis (10/25/17).

Ordinance 370 Establishing STC Title 15, Chapter 8 and Amending Title 4, Chapters 6, 7, and 10 (8/9/17).

15-08.010 Title.

This Chapter shall be known as the Swinomish Cannabis Code.

[History] Ord. 370 (8/9/17).

15-08.020 Purpose and Intent.

The general purposes of this Chapter are:

- (A) To establish a strict regulatory system for the production, possession, delivery, distribution and sale of cannabis that reduces the risk of harm to the health and welfare of the Tribe and Tribal members.

- (B) To establish and regulate the licensure of medical cannabis specialists.
- (C) To provide revenues for essential government services by levying a tax on the sale of cannabis products.

[History] Ord. 370 (8/9/17).

15-08.030 Authority.

This Chapter is enacted pursuant to Article VI, Section 1(k) and (s) of the Swinomish Constitution and By-Laws originally ratified by the Tribe on November 16, 1935 and approved by the Secretary of the Interior on January 27, 1936, and as most recently amended on May 23, 2017, and the inherent sovereign authority of the Swinomish Indian Tribal Community; rights reserved in the Treaty with the Dwamish, Suquamish, etc., (“Treaty of Point Elliott”), 12 Stat. 927 (January 22, 1855), and such other powers as have been delegated to, vested in, or confirmed in the Tribe through the actions of the United States.

[History] Ord. 370 (8/9/17).

15-08.040 Findings.

The Swinomish Indian Senate finds that:

- (A) The Tribe is a Federally-recognized sovereign with the right and responsibility to promote, protect and improve the health and welfare of its members, and to enhance the quality of the lives of all of its members by providing a combination of economic opportunities and a safety net of social services.
- (B) In 2012, Washington State legalized the production, processing and retail sale of cannabis products for recreational purposes. The federal Department of Justice issued a memorandum indicating that it would exercise prosecutorial discretion to interfere in states that legalize and strictly regulate cannabis within their jurisdictions, and in 2014 issued a memorandum indicating it would extend such prosecutorial discretion to Tribal governments.
- (C) The Swinomish Reservation is now surrounded by jurisdictions allowing legal cannabis possession, production and sales. As a result of these circumstances, the Tribe has determined that the continued total prohibition of cannabis on the Swinomish Reservation is ineffective, costly, and can result in disproportionate impacts on Native Americans.
- (D) The Tribe also recognizes that cannabis is a natural medicine that has the potential to help those who suffer from debilitating medical conditions. Numerous, well-controlled studies have proven the medical efficacy and safety of cannabis. In the interests of compassion, the Tribe desires to enable Tribal members, including Tribal elders, to access such medicines safely and legally.

- (E) The Tribe therefore enacts this Chapter in order to strictly regulate and control the production, processing, distribution, sale and use of cannabis in Indian Country consistent with (1) federal Department of Justice guidance, including the Policy Statement Regarding Marijuana Issues in Indian Country issued to all U.S. Attorneys on October 28, 2014; (2) the Marijuana Compact between the Tribe and the State of Washington; and (3) Tribal priorities to protect the health, safety, and general welfare of the Tribe, its members, its employees, residents and visitors.

[History] Ord. 370 (8/9/17).

15-08.050 Definitions.

- (A) **“Authorization”** means a form developed by the Washington State Department of Health or by the Tribe that is completed and signed by a qualifying patient’s health care professional, is printed on tamper-resistant paper, and includes a statement that in the health care professional’s opinion, the qualifying patient may benefit from the medical use of cannabis.
- (B) **“Cannabis”** means all parts of the *Cannabis* plant, also commonly known as “marijuana”, whether growing or not, with a THC concentration of greater than 0.3 percent on a dry weight basis; the resin extracted from any part of the plant; and any compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include industrial hemp. When used in this Chapter, “cannabis” also means cannabis products as defined below.
- (C) **“Cannabis concentrates”** means products consisting wholly or in part of the resin extracted from any part of the Cannabis plant and having a THC concentration greater than ten (10) percent.
- (D) **“Cannabis-infused products”** means products that contain cannabis or cannabis extracts, are intended for human use, and have a THC concentration of no greater than ten (10) percent. The term “cannabis-infused products” does not include useable cannabis.
- (E) **“Cannabis products”** means useable cannabis, cannabis concentrates and cannabis-infused products.
- (F) **“Designated Caregiver”** means a person who meets the definition of a “designated provider” under RCW 69.51A.010 or is:
- (1) The parent or guardian of a qualifying patient who is a Tribal member under the age of 21 with a Tribally-issued patient recognition card; or
 - (2) A family member or legal guardian of a qualifying patient and who has been designated in writing by the qualifying patient’s health care professional to be the designated caregiver of the qualifying patient.

- (G) **“Division of Licensing”** means the Swinomish Division of Licensing as defined in Swinomish Tribal Code (“STC”) Title 2, Chapter 10.
- (H) **“Industrial hemp”** means all parts and varieties of the genera *Cannabis*, whether growing or not, that contain a THC concentration of 0.3 percent or less by dry weight. Industrial hemp does not include plants that meet the definition of "cannabis" as defined in this Chapter.
- (I) **“Medical Cannabis Specialist”** means an individual licensed by the Tribe pursuant to this Chapter.
- (J) **“Health care professional”** means a licensed physician, a licensed physician assistant, a licensed osteopathic physician, a licensed osteopathic physician assistant, a licensed naturopath, or a licensed advanced registered nurse practitioner.
- (K) **“Qualifying Patient”** means a person who:
- (1) Meets the definition of a “Qualifying Patient” as in RCW 69.51A.010; or
 - (2) Is a Swinomish Tribal member who possesses valid documentation as defined in this Chapter, and is otherwise in compliance with the terms and conditions established in this Chapter.
 - (3) "Qualifying Patient" does not include a person who is actively being supervised for a criminal conviction by a governmental agency that has determined that the possession or use of cannabis is inconsistent with and contrary to his or her supervision.
- (L) **“Reservation”** means all lands and waters within the exterior boundaries of the Swinomish Indian Reservation of the Swinomish Indian Tribal Community.
- (M) **“SDA”** means the Swinomish Development Authority.
- (N) **“Senate”** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.
- (O) **“Tribe”** or **“Tribal Community”** shall mean the Swinomish Indian Tribal Community.
- (P) **“Tribal Enterprise”** means an enterprise owned in whole or in part by the Tribe that produces, processes or sells cannabis products under the Swinomish Tribal Code.
- (Q) **“Useable cannabis”** means dried cannabis flowers. The term “useable cannabis” does not include cannabis-infused products or cannabis concentrates.

(R) **“Valid documentation”** means:

- (1) Proof of identity, such as a Washington State driver’s license or identocard as defined in RCW 46.20.035, or a valid Tribal identification card; and either
- (2) A Tribal or State issued medical cannabis patient recognition card; or
- (3) A statement signed and dated by a qualifying patient’s health care professional written on tamper-resistant paper, which states that, in the health care professional’s professional opinion, the patient may benefit from the medical use of marijuana.

[History] Ord. 374 (10/25/17); Ord. 370 (8/9/17).

15-08.060 Sales.

(A) Authorized entities. The Swinomish Tribe and Tribal Enterprises are the only persons or entities authorized to deliver, distribute, or sell cannabis.

- (1) The Tribe or any Tribal Enterprise must obtain cannabis from the Tribe, a Tribal enterprise, a business operated by an Indian tribe that has entered into a compact with the State of Washington, or a business licensed by the State of Washington.
- (2) The SDA shall establish policies and procedures for Tribal Enterprises engaged in the sale of cannabis. At a minimum, such policies and procedures shall address inventory controls, disposal and waste, prevention of underage sales, and policies and procedures to satisfy the requirements of STC 15-08.080.

(B) Minors.

- (1) Sales of cannabis products to persons under 21 years of age is strictly prohibited.
- (2) No person under the age of 21 may be employed by or enter a retail facility.

(C) Location.

- (1) Except as provided in (2) of this subsection, cannabis may not be bought or sold outside the North End Economic Zone as defined in STC 17-03.030(G) or within one thousand (1,000) feet of:
 - i. a school or a college;
 - ii. a childcare center;
 - iii. a playground;

- iv. a housing facility owned by a public housing authority; or
 - v. a youth recreation center.
- (2) The Tribe may permit a Tribal Enterprise to operate within the North End Economic Zone within 1,000 feet but not less than 100 feet of the facilities listed above, except elementary schools and secondary schools, by Senate resolution, if such distance reduction will not negatively impact the interests of public safety or public health.

(D) Transaction Limits.

- (1) No retail facility may sell more than the following amounts of cannabis in a single transaction:
- (a) One (1) ounce of useable cannabis;
 - (b) Sixteen (16) ounces of cannabis-infused product meant to be eaten or swallowed in solid form;
 - (c) Seven (7) grams of cannabis-infused extract or marijuana concentrate for inhalation; and
 - (d) Seventy-two (72) ounces of cannabis-infused product in liquid form meant to be eaten or swallowed.
- (2) No retail facility may sell more than the following amounts of cannabis in a single transaction to Qualifying Patients or Designated Caregivers with Valid Documentation:
- (a) Three (3) ounces of useable cannabis;
 - (b) Forty-eight (48) ounces of cannabis-infused product meant to be eaten or swallowed in solid form;
 - (c) Twenty-one (21) grams of cannabis-infused extract or marijuana concentrate for inhalation; and
 - (d) Two hundred sixteen (216) ounces of cannabis-infused product in liquid form meant to be eaten or swallowed.

(E) Serving Limits.

- (1) A single serving of a cannabis-infused product may not exceed 10 milligrams active tetrahydrocannabinol (“THC”) or Delta 9.

- (2) The maximum number of servings in any one single unit of cannabis-infused product meant to be eaten or swallowed is 10 servings or 100 milligrams of active THC, or Delta 9.
- (F) Medical Cannabis Requirement. All Tribal Enterprises engaged in the sale of cannabis products must employ at least one Tribally-licensed Medical Cannabis Specialist, or Medical Cannabis Specialist in training.
- (G) Compliance Checks. The Tribal Police may conduct compliance checks in Swinomish Indian Country using minors ages 18, 19 or 20 in accordance with Tribal policies and procedures. No criminal action may be taken against any minor who purchases cannabis as part of such a compliance check.

[History] Ord. 374 (10/25/17); Ord. 370 (8/9/17).

15-08.070 Production and Processing.

- (A) Authorized entities. The Swinomish Tribe and Tribal Enterprises are the only persons or entities authorized to grow, produce or process cannabis or cannabis products. The SDA shall establish and document policies and procedures for Tribal Enterprises engaged in the production or processing of cannabis governing, at a minimum, the use of propagation materials, equipment and tools, inventory controls, pesticides, fertilizers, disposal and waste, indoor air quality, and worker safety.
- (B) Production and processing facilities shall:
 - (1) Comply with all Tribal laws and regulations, including but not limited to building codes, land use and zoning restrictions;
 - (2) Be secure against unauthorized entry, including locking doors and windows;
 - (3) Minimize unnecessary external evidence of cannabis production and/or processing; and
 - (4) Meet the safety and security protocols as outlined more specifically by SDA policies and procedures.
- (C) All processing facilities engaged in processing cannabis products intended to be eaten or swallowed must meet the standards as would be required for food handling under Indian Health Board requirements.
- (D) Before sale to any retailer, cannabis products shall be tested by a Tribally or State-licensed laboratory that follows quality assurance testing protocols that meet the minimum requirements provided under State law.

- (E) All cannabis products sold by a Tribal Enterprise to a State licensee must meet the testing, packaging, and labeling requirements otherwise required under State law.
- (F) No persons under 21 years of age may enter or be employed at a producing or processing facility.
- (G) Location.
 - (1) Except as provided in (2) of this subsection, cannabis products may not be produced or processed within one thousand (1,000) feet of:
 - i. a school or a college;
 - ii. a childcare center;
 - iii. a playground;
 - iv. a housing facility owned by a public housing authority; or
 - v. a youth recreation center.
 - (2) The Tribe may permit a Tribal Enterprise to operate within the North End Economic Zone within 1,000 feet but not less than 100 feet of the facilities listed above, except elementary schools and secondary schools, by Senate resolution, if such distance reduction will not negatively impact the interests of public safety or public health.

[History] Ord. 374 (10/25/17); Ord. 370 (8/9/17).

15-08.080 Security Procedures.

All Tribal Enterprises shall employ reasonable and effective security procedures and systems that safeguard cannabis from theft and diversion, including cannabis intended for destruction as waste. On an annual basis, any Tribal Enterprise engaged in the sale, production or processing of cannabis shall submit a security plan to the Law and Order Committee.

[History] Ord. 370 (8/9/17).

15-08.090 Tracking.

All Tribal Enterprises shall employ reasonable and effective inventory methods that allow cannabis to be tracked from seed to sale.

[History] Ord. 370 (8/9/17).

15-08.100 Packaging, Labeling and Advertising.

- (A) Cannabis products sold or advertised within the jurisdiction of the Tribe may not contain any statement or illustration that:
 - (1) Is false or misleading;
 - (2) Promotes over consumption;
 - (3) Depicts a child or other person under legal age to consume cannabis, or includes objects, such as toys, characters, or cartoon characters suggesting the presence of a child, or any other depiction designed in any manner to be especially appealing to children or other persons under legal age to consume cannabis; or
 - (4) Is designed in any manner that would be especially appealing to children or other persons under twenty-one (21) years of age.
- (B) Cannabis products may not be advertised within one thousand (1,000) feet of:
 - (1) a school or a college;
 - (2) a childcare center;
 - (3) a playground;
 - (4) a housing facility owned by a public housing authority; or
 - (5) a youth recreation center.
- (C) Cannabis products when sold at retail must include accompanying material that contains warnings regarding the potential intoxicating and health effects.
- (D) All cannabis products sold by a Tribal Enterprise to a State Licensee must meet the packaging and labeling requirements otherwise required under State law.

[History] Ord. 370 (8/9/17).

15-08.110 Tax.

- (A) There is levied a Tribal Cannabis Tax on the retail sale of cannabis products. The Tribal Cannabis Tax shall be equal to one hundred (100) percent of the State marijuana excise tax set forth in RCW 69.50.535. This tax is separate and in addition to the retail sales tax imposed by STC Title 17, Chapter 3 and is not part of the measure of the sales and use tax.

- (B) All revenues from taxes levied under this section shall be used for essential government services, including but not limited to youth education and law enforcement.
- (C) Sales of cannabis products that are grown, produced or processed in Indian country are exempt from the tax levied under this section.
- (D) The following sales may be exempted from the Tribal sales tax:
 - (1) Sales to Qualifying Patients;
 - (2) Sales of cannabis products identified by the Washington State Department of Health to have a low THC, high CBD ratio; or
 - (3) Sales that would otherwise be exempt from tax under state or federal law.

[History] Ord. 370 (8/9/17).

15-08.120 Community Education.

The Health, Education and Social Services (“HESS”) Committee shall oversee a community education program to provide evidence-based information about cannabis to protect public health and safety and prevent underage use. The HESS Committee may partner with other committees, Tribal departments or enterprises to carry out the program.

[History] Ord. 370 (8/9/17).

15-08.130 Medical Cannabis Specialist Licensing.

- (A) A Medical Cannabis Specialist license is hereby established.
- (B) Practice parameters. When acting in the capacity of an employee of the Tribe or Tribal Enterprise, a licensed Medical Cannabis Specialist may engage in the following activities:
 - (1) Provide customers with evidence-based information on the medical use of cannabis;
 - (2) Assist customers with the selection of cannabis products that may benefit the customer’s medical condition;
 - (3) Receive and process authorizations by health care providers for Qualifying Patients;
 - (4) Describe the medical risks and benefits of cannabis products sold at retail;
 - (5) Advise customers about the safe handling and storage of cannabis products, including strategies to reduce access by minors;

- (6) Provide information about substance use treatment services;
 - (7) Take steps to safeguard the privacy of Qualifying Patients' health information;
 - (8) Provide instruction to customers about proper use and application of cannabis products;
 - (9) Issue Tribal medical cannabis patient recognition cards to Swinomish Tribal members who present valid documentation; and
 - (10) Any other activities authorized by the Licensing Board.
- (C) License Requirements. The Division of Licensing shall issue a license to any applicant who demonstrates to the Division's satisfaction that the following requirements have been met:
- (1) Completion of an educational program approved by the Board, or successful completion of alternate training that meets established criteria;
 - (2) Successful completion of an approved examination, based on core competencies identified by the Board; and
 - (3) Successful completion of any additional requirements as established by the Board.
- (D) Medical Cannabis Specialist licenses are subject to annual renewals and continuing education requirements established by the Board.
- (E) There is established a Medical Cannabis Licensing Board, which shall:
- (1) Adopt rules in accordance with this Chapter;
 - (2) Establish forms and procedures necessary to administer this Chapter;
 - (3) Establish or approve medical cannabis specialist training or education programs that meet the requirements of this section and any rules adopted to implement it;
 - (4) Establish administrative procedures, administrative requirements, and fees in accordance with this Chapter;
 - (5) Consult with persons or entities with specialized expertise or experience that may be beneficial to the Board in carrying out its responsibilities; and
 - (6) Advise the Division of Licensing regarding matters related to the purposes and implementation of this Chapter.

- (F) The Medical Cannabis Licensing Board, shall be made up of five (5) members appointed by the Chairman of the Senate as follows:
- (1) One physician, nurse or other licensed health care provider, or medical researcher;
 - (2) One licensed mental health professional;
 - (3) One licensed chemical dependency professional;
 - (4) The senior health policy advisor for the Tribe; and
 - (5) The Chair of the Health, Education and Social Services (“HESS”) Committee.

The Board shall be advised by Tribal staff designated by the Chairman of the Senate.

- (G) The Board shall meet as often as necessary to carry out its responsibilities in a timely manner and no less than once annually. Meetings shall be scheduled at the call of the Board chairperson or the request of the Division of Licensing.
- (H) The Division of Licensing shall have the power to refuse, suspend, or revoke the license of any Medical Cannabis Specialist upon proof that:
- (1) The license was procured through fraud, misrepresentation, or deceit;
 - (2) The license holder has committed acts in violation of this Chapter; or
 - (3) The license holder has violated or has permitted any employee or volunteer to violate any of the laws of the Tribe relating to controlled substances.
- (I) Licensees or candidates may appeal adverse license actions by the Division of Licensing. Requests for appeals must be in writing and must comply with appeal procedures that shall be established by the Board. Appeals decisions by the Board are final.
- (J) Nothing in this section authorizes a Medical Cannabis Specialist to:
- (1) Offer medical advice;
 - (2) Diagnose or attempt to diagnose or treat any physical or mental condition; or
 - (3) Recommend or suggest modification or elimination of any course of treatment that does not involve the medical use of cannabis.

[History] Ord. 370 (8/9/17).

15-08.140 Permitted Acts.

(A) The following acts, when performed by employees or contractors of the Swinomish Tribe or Tribal Enterprises in compliance with this Chapter, shall not constitute criminal or civil violations of Tribal law:

- (1) Production or possession of marijuana within the scope of employment duties.
- (2) Possession, processing, packaging and labeling of quantities of marijuana, useable marijuana, and marijuana-infused products within the scope of employment duties.
- (3) Delivery, distribution and sale of cannabis within the scope of employment duties for retail sales by the Tribe or a Tribal Enterprise.

(B) No Liability for Health Care Professionals. A health care professional shall not be subject to criminal or civil liability under Tribal law for:

- (1) Advising a patient about the risks and benefits of medical use of cannabis or that the patient may benefit from the medical use of cannabis; or
- (2) Providing a patient with authorization, based upon the health care professional's assessment of the patient's medical history and current medical condition that cannabis use is necessary in the individual health care professional's medical judgment.

[History] Ord. 370 (8/9/17).

15-08.150 Industrial Hemp.

[Reserved]

15-08.160 Repealer.

[Reserved]

15-08.170 Severability.

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

[History] Ord. 370 (8/9/17).

15-08.180 Effective Date.

This Chapter shall take effect upon approval by the Senate.

[History] Ord. 370 (8/9/17).