

## **TRIBAL COUNCIL ACT 8.9**

### **AN ACT RELATING TO**

### **COMMERCIAL MARIJUANA ACTIVITY**

### **BE IT ENACTED BY THE SNOQUALMIE TRIBAL COUNCIL**

#### **SECTION 1.0—TITLE AND CODIFICATION**

This Chapter will be known as the Snoqualmie Tribe Commercial Marijuana Activity Act and will be codified as Title 8, Chapter 9 of the Snoqualmie Tribal Code.

#### **SECTION 2.0—STATUTORY AUTHORIZATION**

The aboriginal and inherent sovereign powers of the Snoqualmie Indian Tribe to govern are vested in the Snoqualmie Tribal Council. The Snoqualmie Tribal Council has the authority to safeguard and promote the peace, safety, and moral and general welfare of the members of the Tribe by regulating the behavior and actions of all persons within the jurisdiction of the Tribe, and to provide for the enactment and enforcement of the laws of the Tribe. Snoq. Tr. Const. Art. VIII, Section 1(j). This authority includes the power to manage all economic affairs and enterprises of the Tribe, to levy taxes, to delegate powers to subordinate boards, to charter and regulate corporations and other entities, and to regulate and license the conduct of business activities within the Tribe's jurisdiction. Snoq. Tr. Const. Art. VIII, Section 1 (e), (h), (l), (p), and (t).

#### **SECTION 3.0—PURPOSE AND SCOPE**

The purpose of this Chapter is to establish a legal framework for the producing, processing, and retail sale of marijuana and marijuana derived products.

#### **SECTION 4.0—FINDINGS**

Historically, starting in 1937, 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 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. The State has further refined the laws which, along with the rules of the Washington State Liquor and Cannabis Board, attempt to accomplish the following priorities: 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.

In moving marijuana from a criminal framework to a civil/regulatory framework, the State no longer has jurisdiction over marijuana cultivation and sale in Indian country. At the same time, if the Tribe were to continue to criminalize marijuana, the Tribe would have a disparity between members and non-members, with little if any assistance from the State with criminal prosecution of non-members. In consideration of this jurisdictional gap and after serious deliberation, the Tribe, as a sovereign nation, has 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 priorities described above, the need still exists for strict regulation and control over the production, possession, delivery, distribution, sale, and use of marijuana in Indian country.

As such, and in furtherance of the collaborative approach pursued in its marijuana compact, the Tribe adopts the following regulatory code provisions to provide a robust regulatory program that protects the priorities described above.

#### **SECTION 5.0—DEFINITIONS**

In this Chapter, the following words and terms will have the following meanings, unless the context otherwise requires:

**AUTHORIZATION** has the same meaning as in RCW 69.51A.010.

**BOARD** means the Washington State Liquor and Cannabis Board and its staff.

**COMMERCIAL MARIJUANA ACTIVITY** means all planting, growing, producing, cultivating, processing, selling, testing, and conducting research of marijuana products in Indian country in accordance with Snoqualmie Tribal laws.

**COMPACT** means the Marijuana Compact between the Snoqualmie Indian Tribe and the State of Washington, as it may be amended.

**DESIGNATED PROVIDER** has the same meaning as in RCW 69.51A.010.

**INDIAN COUNTRY** as defined by 18 U.S.C. § 1151, means all lands within the Tribe's Indian Reservation and all lands held in trust or restricted fee status by the United States for the Tribe or its Tribal members.

**MARIJUANA, MARIJUANA CONCENTRATES, MARIJUANA-INFUSED PRODUCTS, and USEABLE MARIJUANA** as used in this Code or in the Compact have the same meanings as in RCW 69.50.101 or any amendments thereto. Together, these terms may be referred to as **MARIJUANA PRODUCT** or **MARIJUANA PRODUCTS**.

**MEDICAL MARIJUANA AUTHORIZATION DATABASE** has the same meaning as in RCW 69.51A.010.

**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.

**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.

**QUALIFYING PATIENT** has the same meaning as in RCW 69.51A.010.

**RECOGNITION CARD** has the same meaning as in RCW 69.51A.010.

**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.

**STATE** means the State of Washington.

**STATE LICENSEE** means any entity licensed by the Board pursuant to chapter 69.50 RCW, chapter 314-55 WAC, or any other regulations promulgated thereunder.

**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.

**TRIBAL CODE** means the Snoqualmie Tribal Code.

**TRIBAL ENTERPRISE** means a business wholly or majority owned by the Tribe that is authorized to produce, process, or sell marijuana products.

**TRIBAL MEMBER** means an enrolled member of the Tribe.

**TRIBAL POLICE** means the Tribe's police department or another entity with which the Tribe contracts for statutory and regulatory compliance of marijuana.

**TRIBAL TAX** means a tax imposed by the Tribe on marijuana activities.

**TRIBE** means the Snoqualmie Indian Tribe.

## **SECTION 6.0—AUTHORIZATION AND LICENSING**

- (a) Limited Authorization to engage in Commercial Marijuana Activities. The Tribal Council does hereby establish and approve a charter for Above It All Corporation and does hereby delegate sole authority to locate, manage, and operate all Commercial

Marijuana Activity on behalf of the Tribe to Above It All Corporation, subject to oversight by the Tribal Council as stated herein and in the charter for Above It All Corporation. Provided, however, that Above It All Corporation may not commence any Commercial Marijuana Activities unless or until Tribal Council authorizes such commencement, at a later date. Excluding Above It All Corporation, no other Tribal entity, Enterprise, or agency, or Tribal Member is authorized to engage in Commercial Marijuana Activities. Furthermore, Above It All Corporation's Authorization to participate in Commercial Marijuana Activities is conditioned upon the following:

- (i) Above It All Corporation is prohibited from comingling its assets with any gaming facility operating under the Snoqualmie Tribal-State Gaming Compact;
  - (ii) Above It All Corporation is prohibited from conducting any activities, including but not limited to Commercial Marijuana Activities, at any gaming facility operating under the Snoqualmie Tribal-State Gaming Compact; and
  - (iii) Above It All Corporation is prohibited from using profits generated under this Code to further the development or advancement of at any gaming facility operating under the Snoqualmie Tribal-State Gaming Compact.
- (b) Above It All Corporation does not need a license; however, the Tribe may revoke Above It All Corporation's charter if it fails to meet its obligations under this Code and under the Compact.
- (c) Employees. All employees must be 21 years of age or older. Employees need not be licensed; however, all employees of any Tribal Enterprise engaged in Commercial Marijuana Activity must undergo a background check prior to employment.

#### **SECTION 7.0—BUFFER RESTRICTIONS**

- (a) Location. No Commercial Marijuana Activity may occur within one thousand feet of the perimeter of the grounds of any of the following entities, whether they are located within or outside of Indian country:
- (i) Elementary or secondary school; or
  - (ii) Playground.
- (b) No Commercial Marijuana Activity may occur within one hundred feet of the perimeter of the grounds of any of the following entities, whether they are located within or outside of Indian country:
- (i) Recreation center or facility;
  - (ii) Child care center;
  - (iii) Public park;

- (iv) Public transit center;
- (v) Library; or
- (vi) Any game arcade (where admission is not restricted to persons age twenty-one or older).

#### **SECTION 8.0—PRODUCTION AND PROCESSING**

- (a) The Tribe or a Tribal Enterprise may procure from another Producer or Processor and/or produce, harvest, trim, dry, cure, process, package, and/or label Marijuana in accordance with this Code:
  - (i) To be provided for sale at retail by the Tribe or a Tribal Enterprise;
  - (ii) To be sold to another tribe with a marijuana compact; or
  - (iii) To be sold to a State Licensee in accordance with its license type.
- (b) The Tribe or a Tribal Enterprise may also produce and sell:
  - (i) Immature Marijuana plants or clones and seeds to members of a registered cooperative as described under RCW 69.51A.250.
  - (ii) Immature Marijuana plants or clones and seeds for sale to Qualifying Patients and Designated Providers as provided under RCW 69.51A.310.
- (c) Any Marijuana produced and/or processed by the Tribe or a Tribal Enterprise must be produced and processed in safe and secure manner and meet all quality assurance testing requirements in accordance with the Tribe’s Compact, this Code, and applicable policies and procedures. Marijuana products must also be packaged and labeled in such a way as to not be especially appealing to children, and for “edibles,” must be packaged in child-proof packaging. In addition, any Marijuana to be sold to a State Licensee must also comply with all applicable State laws and regulations regarding quality assurance testing, packaging, and labeling; and for Marijuana “edibles,” this must include State preapproval of the product, packaging, and labeling prior to sale to the State Licensee (provided that such preapproval is not unreasonably withheld or delayed).
- (d) Minors. No person under the age of 21 years may be present at any production or processing facility owned by the Tribe or a Tribal Enterprise.
- (e) Consumption. No Marijuana may be consumed in any facility where the Tribe or Tribal Enterprise produces or processes Marijuana.
- (f) Samples. No Marijuana samples may be received from any Producer or Processor or given to another Producer, Processor, Retailer, or employee except in accordance with the Tribe’s Compact, this Code, and applicable policies and procedures. Samples

provided to a State Licensee must also comply with all applicable State laws and regulations regarding sampling.

- (g) Storage and inventory. All Marijuana will be stored in a way to minimize theft and in accordance with the Tribe's Compact, this Code, and applicable policies and procedures. In any event, no more than six months of average inventory will be kept on site.
- (h) Waste disposal. All waste must be disposed of in a way that renders the Marijuana unusable and in accordance with the Tribe's Compact, this Code, and applicable policies and procedures.
- (i) Traceability. Any transaction between the Tribe or Tribal Enterprises and a State Licensee will be executed through the State traceability system following the same rules as apply to State Licensees. All Marijuana products sold to any State Licensee will be fully traceable in the State's traceability system. Such 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 State's traceability system by a Board-certified testing lab.

#### **SECTION 9.0—RETAIL SALES**

The Tribe or Tribal Enterprise may sell at retail Marijuana products processed by a Processor.

- (a) Hours. Hours will be set by the manager of the Tribe or Tribal Enterprise's retail operations.
- (b) Minors.
  - (i) No person under the age of 21 years may enter the retail store or purchase any Marijuana product, except that a qualified patient with a Recognition Card (a) who is at least 18 years of age may enter the retail store and purchase Marijuana products for personal medical use or (b) who is under the age of 18 years and is accompanied by their Designated Provider may enter the retail store, but may not purchase products for their personal medical use.
  - (ii) The forms of identification that are acceptable to verify a person's age for the purpose of purchasing Marijuana must not be expired and include only the following:
    - (A) Driver's license, instruction permit, or identification card of any state, or province of Canada, from a U.S. territory or the District of Columbia, or "identocard" issued by the Washington State Department of Licensing per RCW 46.20.117;
    - (B) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents, which may include an embedded, digital signature in lieu of a visible signature;

(C) Passport;

(D) Merchant Marine identification card issued by the United States Coast Guard; and

(E) Enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the Department of Licensing for Washington driver's licenses.

(c) Transaction limits.

(i) A single transaction is limited to one ounce of useable Marijuana, sixteen ounces of Marijuana-infused product meant to be eaten or swallowed in solid form, seven grams of Marijuana-infused extract or Marijuana concentrate for inhalation, and seventy-two ounces of Marijuana-infused product in liquid form meant to be eaten or swallowed.

(ii) A single transaction to a Qualifying Patient or Designated Provider who is entered into the medical Marijuana database is limited to three ounces of useable Marijuana, forty-eight ounces of Marijuana-infused product meant to be eaten or swallowed in solid form, twenty-one grams of Marijuana-infused extract or Marijuana concentrate for inhalation, and two hundred sixteen ounces of Marijuana-infused product in liquid form meant to be eaten or swallowed.

(d) Postings. The retail store will post all notices and warning in accordance with the Tribe's Compact, this Code, and applicable policies and procedures.

(e) Samples. No free samples of Marijuana products may be provided to customers. Samples may be provided to employees in accordance with the Tribe's Compact, this Code, and applicable policies and procedures.

(f) Intoxicated persons. No Marijuana products may be sold to persons who appear to be intoxicated.

(g) Consumption. No Marijuana products may be consumed on the retail premises.

(h) Storage and inventory. All Marijuana products must be stored in such a way to protect from theft and in accordance with the Tribe's Compact, this Code, and applicable policies and procedures. In any event, no more than four months' inventory may be kept on site.

(i) Waste disposal. All unsold products will be returned to the entity from which they were purchased or disposed of in accordance with the Tribe's Compact, this Code, and applicable policies and procedures.

(j) Traceability. All Marijuana products delivered from a Producer or Processor licensed by the State will be input into the State's traceability system within 24 hours after receipt. All Marijuana products purchased from a Producer or Processor operated by another

tribe, tribal Enterprise, or Tribal Member will be recorded in either the Tribe's or the State's tracking system within 24 hours after delivery.

#### **SECTION 10.0—SAFETY AND SECURITY**

- (a) Alarm systems. A security alarm system must be maintained on all perimeter entry points and perimeter windows. The security alarm system must comply with Tribal policies and procedures.
- (b) Cameras and surveillance. Cameras must cover the entire premises, including all points of ingress and egress. The camera and surveillance system, including how long the information must be maintained, must comply with Tribal policies and procedures.
- (c) Identification.
  - (i) All employees on the premises or engaged in the transportation of Marijuana products must hold and display an identification badge, including name and photograph.
  - (ii) All nonemployee visitors, other than retail store customers, must hold and properly display an identification badge at all times while on the premises.
  - (iii) A log must be kept and maintained showing the full name of each visitor entering the premises, badge number issued, the time of arrival, time of departure, and the purpose of the visit.
- (d) Transport. All transportation of product to or from a State Licensee must comply with State transportation laws. All other transportation of product must comply with Tribal policies and procedures.

#### **SECTION 11.0—ADVERTISING AND SIGNAGE**

- (a) The Tribe or Tribal Enterprise may display signage or engage in advertising within Indian country, provided that it does not contain any statement or illustration that:
  - (i) Is false or misleading;
  - (ii) Promotes overconsumption;
  - (iii) Is designed in any manner that would be especially appealing to children or persons under 21 years of age.
- (b) No signage or advertising may violate the buffer requirements contained in Section 7.0.
- (c) Any signage or advertising located outside of Indian country must comply with RCW 69.50 and WAC 314-55.

## **SECTION 12.0—MEDICAL MARIJUANA**

- (a) Compliant products. The Tribe or Tribal Enterprise may produce, process, and/or sell Marijuana for medical use.
  - (i) Produced or processed. Any Marijuana products produced and processed by the Tribe or Tribal Enterprise for sale to a State Licensee as a compliant Marijuana product must meet the requirements of WAC 246-70.
  - (ii) Sold at retail. Any Marijuana products sold by the Tribe or Tribal Enterprise at retail as a compliant product must meet the requirements of WAC 246-70.
- (b) Recognition Cards. At a retail outlet, the Tribe or Tribal Enterprise may accept valid Authorizations, enter data into the Medical Marijuana Authorization Database, and issue Recognition Cards to Qualifying Patients and Designated Providers consistent with the Tribe's Compact and Tribal policies and procedures. All Recognition Cards will meet the requirements of WAC 246-71-040(3).
- (c) Access to Medical Marijuana Authorization Database.
  - (i) All employees of the retail outlet will have access to the Medical Marijuana Authorization Database sufficient to electronically verify whether a Recognition Card is valid.
  - (ii) Only employees of the retail outlet with the proper training and certification as a medical consultant under WAC 246-72 will have access to the Medical Marijuana Authorization Database necessary to enter new Qualifying Patients and Designated Providers into the database and issue a Recognition Card or to enter information to obtain a renewed or replacement Recognition Card.
  - (iii) Notwithstanding the foregoing, Tribal Police and prosecutorial officials will have access to the database consistent with RCW 69.51A.230(1)(d).
- (d) Confidentiality and Nondisclosure.
  - (i) No records from the Medical Marijuana Authorization Database may be disclosed, other than as permitted herein.
  - (ii) Any person who knowingly or intentionally accesses or discloses information from the Medical Marijuana Authorization Database other than as permitted in this Section will be subject to the penalty as stated in RCW 69.51A.240(2).

## **SECTION 13.0—COMPLIANCE AND ENFORCEMENT**

The Tribal Police may conduct premises and compliance checks of any Commercial Marijuana Activity to observe compliance with this Chapter and Tribal policies and procedures and to provide support and education to Tribal Enterprises and staff to ensure any problems are

corrected. For any serious or ongoing non-compliance, results will be reported to Tribal Council.

Notwithstanding the prohibition on minors contained in this Chapter, the Tribal Police may use minors 18, 19, or 20 years of age to conduct any minor compliance checks. No criminal action may be taken against any minor who purchases Marijuana as part of such a compliance check.

#### **SECTION 14.0—TRIBAL MARIJUANA TAX**

- (a) There is a Tribal Tax equal to at least 100% of the State Tax in effect at any given time levied on all Commercial Marijuana Activity.
- (b) The Tribal Tax must be remitted to the Tribe on at least a quarterly basis.
- (c) No other tax besides the Tribal Tax may be imposed on Commercial Marijuana Activity.
- (d) The Tribe may, in its discretion, allow an exemption from the Tribal Tax in the following circumstances:
  - (i) Sales to the Tribe, Tribal enterprises, Tribal member-owned businesses, or Tribal members on marijuana grown, produced, or processed within Indian Country;
  - (ii) Activities to the extent they are exempt under state or federal law from the state marijuana excise tax imposed under RCW 69.50.535 or state and local sales or use taxes on sales of marijuana; or
  - (iii) Medical marijuana products used in the course of medical treatments by a clinic, hospital, or similar facility owned and operated by a the Tribe within its Indian Country.

#### **SECTION 15.0—INDEMNITY**

- (a) The Tribe indemnifies any Tribal Council member, board member, manager, or employee of the Tribe, Above It All Corporation, or other Tribal Enterprise who is made party to any proceeding because of their role in Commercial Marijuana Activity against personal liability incurred in a proceeding if:
  - (i) the individual acted in their official capacity;
  - (ii) the individual acted in good faith;
  - (iii) the individual believed their conduct was in the best interests of the Tribe; and
  - (iv) the individual acted in accordance with the Tribe's Compact, this Code, and applicable policies and procedures.
- (b) "Proceeding" means any threatened, pending, or completed action, suit, claim, or other legal proceeding whether civil, criminal, administrative, or investigative related to Commercial Marijuana Activity.

- (c) “Liability” means the obligation to pay a judgment, settlement, penalty, or fine, or reasonable expenses, including legal expenses, incurred with respect to a proceeding.

**SECTION 16.0—SEVERABILITY**

If any provision of this Chapter, or its application to any person under any circumstances, is held invalid by any court of competent jurisdiction, the remaining provisions of this Chapter will remain in full force and effect.

**SECTION 17.0—NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing in this Chapter waives or may be interpreted to waive the sovereign immunity of the Tribe or any of its officers, employees, or agents acting within the scope of their authority.

**SECTION 18.0—EFFECTIVE DATE**

This Act will take effect immediately upon approval by the Tribal Council and will supersede and replace any and all prior ordinances of the Tribe relating to the subject matter of this Act.

**ENACTED BY THE SNOQUALMIE TRIBAL COUNCIL ON THE 23RD DAY OF JULY, 2020 IN SESSION DULY MET, WITH 9 FOR, 0 AGAINST, AND 0 ABSTAINING. RESOLUTION # 133-2020.**

**CODIFIED AS AMENDED BY THE SNOQUALMIE TRIBAL SECRETARY ON THE 23RD DAY OF JULY, 2020.**

  
TRIBAL SECRETARY