

## Title 18 – Natural Resources

### Chapter 7 – Procedure

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#### Legislative History

Enacted:

Ord. 228 (4/5/05), BIA (4/20/05).  
Ord. 249 (10/12/06), BIA (10/16/06).

Repealed or Superseded:

Codifying Title 18, Ord. 207 (1/27/04), BIA (2/9/04).  
Hunting Ordinance, Ord. 59 (1/10/89), Enacting Res. 89-1-5, BIA (1/24/89) (modifying Ord. 57 with respect to the scope of tribal jurisdiction and repealing and superseding all previous hunting related ordinances).  
Hunting Ordinance, Ord. 57, Enacting Res. 88-8-55 (8/31/88), BIA (1/24/89) (approved subject to the condition that it be modified regarding the scope of tribal jurisdiction; repealing and superseding all previous hunting ordinances).

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**18-07.010     Initiation of Prosecution.**

- (A) **Civil Infractions.** All prosecutions for civil infractions under this Title shall be prosecuted under the terms and provisions of this Chapter.
  
- (B) **Criminal Offenses.** All prosecutions for criminal offenses under this Title or any fishing or hunting related violation of Title 4 – Criminal Code shall be prosecuted under the terms and provisions of Chapter 3-03 – Rules of Criminal Procedure.

[History] Ord. 228 (4/5/05).

**18-07.020 Commencement.**

Prosecutions initiated pursuant to this Title may be commenced either:

- (A) **By Citation.** When a Tribal Enforcement Officer issues a citation based on the terms and provisions of Section 18-06.050 to the defendant and files a copy of the citation in Tribal Court; or
- (B) **By Complaint.** When the Tribal Prosecutor files a complaint upon receipt of evidence or a written statement from any enforcement officer that there is reasonable cause to believe that an infraction has been committed.

[History] Ord. 228 (4/5/05).

**18-07.030 Evidence from Other Sources.**

- (A) In cases where evidence, including testimony of violations of the terms and provisions of this Title or any rules or regulations issued hereunder, or a fishing or hunting related violation of Title 4 – Criminal Code, has been provided to the Tribe’s Enforcement Officers or Tribal prosecutor by officers of state or federal governments or other tribal governments, such evidence may be used to initiate and prosecute any violation of this Title in Tribal Court.
- (B) Evidence from other sources shall meet the following conditions:
  - (1) It must be admissible in Swinomish Tribal Court pursuant to Section 3-02.250, Informal Rules of Evidence Governing Trials.
  - (2) Evidence gathered by other tribal enforcement agencies may not be used unless and until a reciprocal agreement has been made with the other Tribe that allows Swinomish Enforcement Officers to cite members of the other Tribe into that Tribe’s court under appropriate circumstances.

[History] Ord. 228 (4/5/05); Ord. 59 (1/10/89).

**18-07.040 Charging Document.**

- (A) **Contents of Citation or Complaint.** The citation or complaint shall state the following:
  - (1) The date and location of the alleged violation;
  - (2) The nature of the alleged violation and the provision of this Title allegedly violated;

- (3) The penalty range for the alleged violation;
- (4) The defendant's response options as established by Section 18-07.060;
- (5) An express warning informing the defendant of the consequences of his or her failure to respond as provided by Subsection 18-07.080;
- (6) The date of the initial hearing; and
- (7) The address to which the defendant is to send his or her payment or appear for the initial hearing.

(B) **Support for Charging Document.**

- (1) **Citation.** In all cases, the Tribal Enforcement Officer shall attach to the citation a written declaration under oath alleging the facts in support of the citation.
- (2) **Complaint.** Where the Tribal Prosecutor files a complaint, he or she shall attach to the complaint a written declaration made under oath of the Enforcement Officer with knowledge of the infraction.

[History] Ord. 228 (4/5/05).

**18-07.050 Time of Initial Hearing.**

The citation or complaint shall set a time for an initial hearing to be held no sooner than seven (7) days and not more than forty-five (45) calendar days from the date of the citation or complaint.

[History] Ord. 228 (4/5/05).

**18-07.060 Response Options to Citation or Complaint.**

A person shall respond to a notice of infraction as follows:

- (A) **Pay the Fine.** As provided by Section 18-07.090, the person, on a first infraction only, may pay the fine any time prior to the date of the initial hearing or at the initial hearing. Payment shall be made to the clerk of the Swinomish Tribal Court.
- (B) **Request a Mitigation Hearing.** As provided by Section 18-07.110, the person, on a first or subsequent infraction, may request a mitigation hearing to explain any mitigating circumstances without contesting that he or she committed the infraction; or

- (C) **Request a Hearing to Contest.** As provided by Section 18-07.120, the person, on a first or subsequent infraction, may request a hearing to contest whether he or she committed the infraction.

[History] Ord. 228 (4/5/05); Ord. 59 (1/10/89).

**18-07.070 Notice and Time of Hearing.**

- (A) When a person at an initial hearing requests a Mitigation Hearing or a Hearing to Contest the Charge, the Court shall set the date, time, and location for the hearing and provide the defendant with oral notice of the same. The defendant shall sign a written promise to appear on the date scheduled.
- (B) The Court shall hear all civil fishing, hunting and gathering cases commenced by citation or complaint where the defendant requests a hearing within ninety (90) days from the date of the initial hearing.

[History] Ord. 249 (10/12/06); Ord. 228 (4/5/05); Ord. 59 (1/10/89).

**18-07.080 Failure to Respond to Citation or Complaint.**

- (A) If a person fails to respond to a citation as required by the terms and provisions of this Chapter, the Court shall enter a judgment and order, which shall:
- (1) Find that the defendant committed the infraction;
  - (2) Assess up to the maximum penalty(ies) for the violation; and
  - (3) Prohibit the defendant from receiving any new fish tags or permits (if a fishing infraction), game tags or permits (if a game infraction) or gathering permit (if a gathering infraction) until the fine(s) are paid in full.
- (B) The Court shall provide copies of the judgment and order to the defendant and the Fisheries Manager or the Game Manager, as appropriate.
- (C) Upon payment of the fines in full, the Court shall enter a Satisfaction of Judgment stating that the fines have been paid in full and provide copies to the defendant and the Fisheries Manager or Game Manager, as appropriate.
- (D) Failure to appear is a criminal offense under Section 4-09.120 of the Swinomish Criminal Code.

[History] Ord. 249 (10/12/06); Ord. 228 (4/5/05); Ord. 59 (1/10/89).

**18-07.090 Payment of Civil Fine on First Infraction.**

If, on a first infraction, a defendant chooses to pay the fine on or before the date set for the initial hearing, he or she may, in lieu of appearing before the Court:

- (A) Pay one-half (1/2) the maximum civil fine specified for the alleged violation; and
- (B) Agree not to contest the suspension of his or her fishing or hunting privileges for the minimum period of time specified for the alleged violation or the forfeiture of any confiscated gear or catch.
- (C) Sign a Statement of Defendant as follows:

I, \_\_[Name of Defendant]\_\_, admit that I have violated Section \_\_\_\_\_ of the Swinomish Tribal Code in that on \_\_\_ day of \_\_[month]\_\_\_, 200[], I do not disagree with the information set forth in the citation or complaint describing the violation, have paid to the Court a fine of \$\_\_\_\_\_ which constitutes one-half (1/2) the maximum civil fine specified for the alleged violation, and agree to a suspension of my fishing/hunting privileges for a period of \_\_\_\_[days or months] and the forfeiture of all gear and/or catch seized by the Enforcement Officer.

Dated: \_\_\_\_\_

Signature of Defendant: \_\_\_\_\_

The Clerk of the Court shall prepare for entry by the Court a judgment and order that the person committed the infraction and paid fine in full, reflects the period of suspension of privileges, if any, and the terms of any forfeiture of catch and/or gear required by Chapter 18-03. The judgment and order shall be based upon the aforementioned statement of defendant.

[History] Ord. 228 (4/5/05).

**18-07.100 Mandatory Court Appearances.**

Appearance before the Court is mandatory for:

- (A) **Failure to Pay by Date of Initial Hearing:** where the person has not paid the fine by the date of the initial hearing pursuant to Section 18-07.090; and
- (B) **Second and Subsequent Infractions.** Second and subsequent infractions commenced by citation and complaint under this Chapter.

[History] Ord. 228 (4/5/05); Ord. 59 (1/10/89).

**18-07.110 Mitigation Hearing.**

- (A) **Purpose.** A mitigation hearing shall be for the purpose of allowing a person to explain any mitigating circumstances that might arguably lessen the amount of the penalty.
- (B) **Rules.** A mitigation hearing shall be an informal proceeding to which the following rules apply:
- (1) The defendant may not contest the determination that he or she committed the infraction;
  - (2) The hearing shall be before the Court without a jury;
  - (3) The defendant has a right to be represented by an attorney or spokesperson at his or her own expense, and may be eligible for appointed counsel, depending on the availability of services;
  - (4) Neither the Tribe nor the defendant may compel witnesses to attend;
  - (5) The defendant will have an opportunity to request time payments, community service hours in lieu of up to twenty-five percent (25%) of the fine, a reduced fine, a reduced suspension of fishing, hunting or gathering privileges, or the return of any confiscated property; and
  - (6) The right to appeal is limited to appealing a penalty imposed by the Court that is contrary to this Chapter.
- (C) **Determination.**
- (1) **Penalty.** After hearing the defendant's explanation of mitigating circumstances, the Court shall determine whether the defendant's explanation justifies a penalty in the lower end of the penalty range. The Court may not suspend a mandatory minimum fine, but may grant a request for time payments or community service as provided under this Title. Nor may the Court suspend a mandatory minimum suspension of fishing or hunting privileges
  - (2) **Judgment and Order.** The Court shall enter a judgment and order stating that the defendant committed the infraction, assessing the appropriate civil penalties, and disposing of confiscated property, if any.
  - (3) **Continuing Jurisdiction.** The Court has continuing jurisdiction and authority to supervise the judgment and order.

[History] Ord. 249 (10/12/06); Ord. 228 (4/5/05); Ord. 59 (1/10/89).

**18-07.120 Hearing to Contest the Charge.**

(A) **Rules.** The following rules apply to Hearings to Contest the Charge:

- (1) The hearing shall be before the Court without a jury;
- (2) The defendant may be represented by counsel or a spokesperson at his or her own expense. The Tribe may provide the defendant with appointed counsel, depending on the availability of services;
- (3) The Tribe and the defendant shall have the right to subpoena witnesses;
- (4) The defendant shall have the right to confront and cross-examine witnesses against him or her;
- (5) The defendant shall have the right to present evidence and examine witnesses;
- (6) The Tribe shall have the burden of proving the defendant committed the infraction by a preponderance of the evidence; and
- (7) Any appeal shall be governed by Chapter 3-04, Rules of Appellate Procedure.

(B) **Determination.**

- (1) After hearing the evidence and arguments, the Court shall determine whether the defendant committed the alleged infraction(s).
- (2) Where the Tribe has not established by a preponderance of the evidence that the defendant committed the infraction(s), the Court shall enter a judgment and order finding that the defendant did not commit the infraction and dismissing the citation(s)
- (3) Where the Tribe has established that the defendant committed the infraction(s), the Court shall enter a judgment and order accordingly. The terms of the judgment and order may include requiring payment of a fine, suspending part of the fine, ordering community service in lieu of part of the fine, ordering payments over time, suspending fishing or hunting privileges, and disposing of confiscated property.
- (4) The Court has continuing jurisdiction and authority to supervise the judgment and order.

[History] Ord. 228 (4/5/05); Ord. 59 (1/10/89).

**18-07.130 Statute of Limitations.**

No citation or complaint shall be filed under this Chapter after one (1) year from the date the commission of the infraction was discovered; Provided, however, that the one-year (1 yr) period shall not run during any period that the defendant is beyond the Court's jurisdiction.

[History] Ord. 228 (4/5/05); Ord. 59 (1/10/89).

**18-07.140 Reciprocity with Other Tribal Courts.**

In appropriate circumstances, persons violating any of the terms or provisions of this Title, or any rules or regulations issued hereunder, or a fishing or hunting related violation of Title 4 – Criminal Code, may be haled into other courts as provided for by agreement between the Swinomish Tribe and any other Tribe.

[History] Ord. 228 (4/5/05); Ord. 59 (1/10/89).