

**JAMESTOWN S'KLALLAM TRIBE
TRIBAL CODE
TITLE 28 – PUBLIC HEALTH AND SAFETY CODE**

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Chapter 28.01 General

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Section 28.01.01 Purpose

This Title of the Tribal Code provides for a public health and safety code to cover certain activities that occur on the trust and reservation lands of the Jamestown S'Klallam Tribe and for other purposes.

For Tribal fee land and Tribal facilities on fee land, if a provision of this Title is stricter or more rigorous than the applicable state or federal requirement, then the provisions of this Title shall apply. Provisions of this Title not addressed by state or federal requirements shall apply to Tribal fee land and their associated facilities.

Some provisions of this Title are incorporated by reference from standard national and international codes and from the Revised Code of Washington, the Washington Administrative Code and the Clallam County Code.

This Title provides for minimum public health and safety standards to safeguard life, limb, public health and welfare by regulating and controlling: a) food preparation, handling, storage and vending; b) emergency preparedness and response; c) infectious diseases and their vectors; d) hazardous materials use, handling and storage; e) occupational related injuries; f) emergency medical care; g) facilities and equipment sanitation and disinfection; h) vehicle operation and maintenance; and i) fireworks.

Members of the Tribal staff charged with implementation of this Title shall cooperate and coordinate with other jurisdictions on investigations, inspections, surveys, reports and analyses that further the purposes of this Title and related national, state and local programs. Tribal staff shall further engage in training exercises with other jurisdictions, as appropriate, and provide or seek technical assistance, as the need arises. The Tribal programs implemented under this Title shall be consistent, to the degree necessary, with the programs of other jurisdictions to insure workability and interoperability while meeting any funding requirements, such as those under a grant program, which may be in effect. Provided, however, that nothing in this Title shall be construed as a waiver of the Tribe's sovereign immunity unless specifically granted pursuant to the provisions of the Tribal Code.

It shall be unlawful for any Person, as defined in this Title, to engage in any activity covered by this Title without complying with its provisions related to that activity, including any licensing or certification requirements.

Section 28.01.02 Definitions

The following definitions apply throughout this Title:

- A. "CCC" means the Clallam County Code;
- B. "CCFD3" means Clallam County Fire District 3;
- C. "CCSO" means the Clallam County Sheriff's Office, the official law enforcement entity on Tribal Non-Fee Land;
- D. "CEO" means the Chief Executive Officer of the Tribe or their designee;
- E. "COO" means the Chief Operations Officer of the Tribe or their designee;
- F. "FDA" means the United States Food and Drug Administration;

- G. “Food Worker” means any individual working with unpackaged food, food equipment or utensils, or food-contact surfaces, who performs a variety of work involved in the preparation, serving, storage, delivery of food, and maintaining kitchen and dining areas in a clean and sanitary condition;
- H. “Food Worker Card” means the document issued by the Clallam County Department of Health to a certified Food Worker;
- I. “Person” means individuals, governmental entities, business entities and non-profit entities;
- J. “PHSC” means the Public Health and Safety Committee, a committee within the administrative offices of the Tribal government;
- K. “PHSP” means the Public Health and Safety Plan of the Tribe;
- L. “Tribal Non-Fee Land” means the trust and reservation lands of the Tribe;
- M. “Tribal Facilities” means any facilities of the Tribal government or a Tribal entity on Tribal Non-Fee Land and Tribal fee land;
- N. “RCW” means the Revised Code of Washington; and
- O. “WAC” means the Washington Administrative Code.

Chapter 28.02
Public Health and Safety Committee

Sections:

Section 28.02.01 Establishment of the Public Health and Safety Committee

Section 28.02.01 Establishment of the Public Health and Safety Committee

There is hereby established a Public Health and Safety Committee (“PHSC”), as an administrative committee of the Executive Committee, consisting of members of the Tribal staff, designated by the heads of the various Tribal departments and approved by the Executive Committee.

Chapter 28.03
Tribal Food Code

Sections:

Section 28.03.01 Codes Incorporated By Reference

Section 28.03.02 Food Worker Card

Section 28.03.03 Commercial Food Service Entities

Section 28.03.04 Non-Commercial Food Service Entities

Section 28.03.05 Miscellaneous Food Vendors

Section 28.03.06 Inspections and Enforcement

Section 28.03.01 Codes Incorporated By Reference

- A. FDA Food Code, as amended from time-to-time, is hereby incorporated by reference into and made a part of this Title. Provided, however, that to the degree the provisions of WAC Chapter 246-215, as amended from time-to-time, modify the FDA Food Code, then the provisions of the WAC shall control.
- B. The provisions of WAC 246-217, as amended from time-to-time, related to requirements for food worker cards, is incorporated into and made a part of this Title by reference.
- C. This Title may amend or modify provisions of the FDA Food Code or state law, in which case this Title will control.

Section 28.03.02 Food Worker Card

- A. All food handlers receiving compensation for their services, whether employees or contractors, operating on Tribal Non-Fee Land, shall have a current Food Worker Card issued by the Environmental Health Division of the Clallam County Department of Health and Human Services pursuant to the provisions of WAC 246-417.
- B. Volunteers working as food handlers on an irregular basis on Tribal Non-Fee Land and associated facilities, such as at a Tribal picnic, are not required to have a Food Worker Card. However, their activities shall be overseen at all times by a supervisor with a current Food Worker Card. Such supervisor may be an employee, contractor or unpaid volunteer of the Tribe.
- C. Written guidelines, covering proper food storage, handling and serving, as set forth in this Title and in incorporated codes, will be posted in each kitchen or food preparation area located in Tribal facilities on Tribal Non-Fee Land.

Section 28.03.03 Commercial Food Service Entities

- A. Commercial food service entities, such as restaurants and caterers operating on Tribal Non-Fee Land, shall be subject to the relevant provisions of this Title.
- B. Each Food Worker employed by an entity listed in subsection A., above, shall have a current Food Worker Card, as provided for in this Title.

Section 28.03.04 Non-Commercial Food Service Entities

Non-commercial food service entities operating under Tribal government programs, such as, the Tribe's Elder's Program, Children's Program, Teen Youth Group, or Food Bank Program, shall comply with the relevant provisions of this Title, including the requirement that Food Workers have a Food Worker Card. Each Department Director is responsible for verifying and ensuring current Food Worker Card status of their staff.

Section 28.03.05 Miscellaneous Food Vendors

- A. Any Person who is a vendor of food products on Tribal Non-Fee Land shall comply with the requirements of this Title. This includes, but is not limited to, Tribal citizens or Tribal staff who

are vendors of shellfish, fish, game meat, eggs, etc.

- B. Donated shellfish, fish or game meat to be served at a public event, or given to individuals, will be prepared, cut and stored in accordance with the relevant provisions of this Title and delivered by the Tribe, in accordance with the FDA Food Code or, if delivered fresh, properly stored and distributed under the supervision of a member of the Tribal staff with a current Food Worker card.
- C. Tribal staff or Tribal citizens who choose to purchase or accept donated shellfish, fish, or game meat for their own use from vendors not in compliance with this Title will do so at their own risk.
- D. Any Person who utilizes the facilities of the Tribe on a contract basis for the preparation of food shall comply with the relevant provisions of this Title. Tribal staff will ensure that any contracts covering the rental of Tribal facilities where food preparation will be permitted, reference the applicability of this Title to food preparation activities under those contracts.

Section 28.03.06 Inspections and Enforcement

- A. The Tribal staff shall engage food safety consultants, on an as-needed basis, to conduct periodic inspections of all facilities covered by this Title that are used for the preparation of food.
- B. The CEO may take appropriate actions, both administrative and judicial, as deemed appropriate and as warranted by circumstances and as recommended by the food safety consultant, to enforce the provisions of this Title.
- C. For situations in which an imminent threat to public health is thought to exist (e.g. a foodborne disease outbreak), the Clallam County Health Officer may be contacted as outlined in the Olympic Regional Tribal-Public Health Mutual Assistance Agreement (MAA) for technical consultation and/or assistance in recommending actions to abate the public health threat on Tribal Non-Fee Land.

Chapter 28.04
Emergency Preparedness, Training, Response and Care

Sections:

Section 28.04.01 Service and Maintenance of Public Health and Safety Related Equipment

Section 28.04.02 Employee Safety Training

Section 28.04.03 Clallam County Emergency and Law Enforcement Services

Section 28.04.04 Miscellaneous Emergency Preparedness Provisions

Section 28.04.01 Service and Maintenance of Public Health and Safety Related Equipment

- A. The COO shall ensure that each fire detection and suppression system in any Tribal Facility is tested and serviced, as recommended by the manufacturer, and the results documented.
- B. The COO shall ensure that each fire extinguisher is inspected and serviced, according to the manufacturer's recommended procedures, and the results documented. Extinguishers shall be recharged, when and if necessary, according to the manufacturer's recommendations.
- C. The COO shall ensure that each emergency lighting system is tested and serviced, as recommended by the manufacturer, and the results documented. When appropriate, long-life bulbs, such as CFL or LED bulbs, shall be used to replace normal incandescent bulbs in emergency lighting. The appropriate members of the Tribal staff will be trained on this activity and a regular schedule for providing the service will be established and implemented.
- D. The COO shall ensure that each item of emergency medical equipment, such as a defibrillator, is tested and serviced, as recommended by the manufacturer, and the results documented. One member of the Tribal staff, in each building where a defibrillator is located, will be trained on this activity and a regular schedule for providing the service will be established and implemented.
- E. Emergency response kits, for non-medical situations, such as those for use in biohazard spills, shall be located in every occupied Tribal Facility. They shall be inspected periodically to ensure all the required items are present in sufficient quantity and all items are serviceable and sanitary, as appropriate, and the results of the inspection documented.
- F. In emergency situations, where the assistance of law enforcement personnel, fire or EMT services is required, the Tribal staff will coordinate with the appropriate local officials, as set out in section 28.04.03.3, below.

Section 28.04.02 Employee Safety Training

- A. Tribal staff and employees of Tribal entities shall receive training in the following areas, as appropriate, based on their job classification and duties:
 - 1. Fire Safety and Extinguishing;
 - 2. Basic Life Support: first aid, CPR and the use of defibrillators;
 - 3. Injury Prevention, Occupational Safety and the Use of Personnel Protective Equipment;
 - 4. Hazard Communication Standards;
 - 5. Control of Hazardous Energy through use of Lockout/Tagout; and
 - 6. Infectious Disease Control and Prevention; and
- B. Annual drills shall be conducted at all Tribal Facilities for the following:
 - 1. Emergency Action; and

2. Evacuation for Fires or Natural Disasters.

Section 28.04.03 Clallam County Emergency and Law Enforcement Services

- A. Fire, rescue and EMT services are provided to the Tribe by the CCFD3 from their facilities on Tribal trust land located at Highway 101 and Sophus Road in Blyn, Washington and other facilities in the area.
- B. The CCFD3, as time permits, is available to provide inspection, advisory and training services to Tribal staff regarding emergency preparedness and fire protection. Tribal staff is encouraged to make use of these services to further enhance the public health and safety of Tribal citizens, staff and visitors.
- C. Law enforcement services are provided on all Tribal Land by the CCSO.

Section 28.04.04 Miscellaneous Emergency Preparedness Provisions

- A. All emergency calls will be placed to 911.
- B. First aid kits appropriate for the ages served and the program size, will be maintained at each Tribal Facility and be made available on outings away from the site. Each kit must be accessible to Tribal staff members, but must be inaccessible to children. The contents of each first aid kit shall be maintained in accordance with recommendations of the American Red Cross, unless otherwise specified by the PHSC.
- C. In the event of a public health emergency, natural disaster, or related event, the Tribal Council, upon the request of the CEO, may temporarily grant command and control authority to federal, state or local officials for an initial period of ten (10) days. Any extension of such an order must be approved by the Tribal Council. Each such order shall include, at a minimum, the following:
 1. The name, title, organizational affiliation, address, phone number, fax number and email address of the official to whom the temporary grant of authority is to be made;
 2. The purpose of such grant;
 3. If the grant is being made pursuant to an existing interlocal agreement, such as the Mutual Aid Agreement, and if not, the terms of such commitment;
 4. Any provisions of the applicable state law which are being adopted as Tribal law for the duration of the grant;
 5. The contact person at the Tribe; and
 6. Any commitment of staff and/or resources being made by the Tribe.

Chapter 28.05
Control of Infectious Diseases and Vectors

Sections:

Section 28.05.01 Infectious Disease Control

Section 28.05.02 Vector Control

Section 28.05.01 Infectious Disease Control

- A. The Tribal staff shall make a good faith effort to comply with the most current standards set by the Control of Communicable Disease Manual published by the American Public Health Association, and relevant Centers for Disease Control Guidelines.
- B. Tribal staff will follow universal precautions when responding to, and disinfecting after, incidents involving blood or potentially infectious body fluids.
- C. Tribal staff will be trained on infectious disease control and prevention and on the use of personal protective equipment and disinfection procedures in accordance with 29 CFR 1910.1030 Bloodborne Pathogens and 29 CFR 1910-135 Respiratory Protection.
- D. Tribal staff will insure that the PHSP contains a section on preventing bloodborne pathogen and airborne pathogen exposures and conducting appropriate post-exposure evaluations and follow-up, should an exposure occur. The section should contain, at a minimum, provisions dealing with the following:
 - 1. Job risk classifications, with potential exposure determinations by classification, which are reasonably anticipated to involve exposure to airborne, blood, body fluids, or other potentially infectious materials. This can include information from the Tribe's medical clinic bloodborne pathogens exposure control plan ("MC-BBP");
 - 2. Medical screening, when appropriate, for all potential responders. This can include procedures similar to those set out in the MC-BBP on post-exposure evaluations and follow-up procedures;
 - 3. The exposure control procedures, by job risk classifications;
 - 4. A list of available personal protective equipment, its location, and posted guidelines for its use;
 - 5. The education and training needs, by job risk classification;
 - 6. An annual review of needle stick and sharps' injuries (if any) to determine if protective equipment needs to be changed or training enhanced to protect workers;
 - 7. How labels and signs are to be used to communicate risks;
 - 8. How compliance with the PHSP section will be monitored; and
 - 9. How the PHSP will be reviewed periodically and be kept updated.
- E. Tribal Health Care Providers Licensed in Washington State (Physicians, PA-C, ARNP) will report Notifiable Conditions in a timely manner as specified by WAC 246-101. Reports will be on standard reporting forms and submitted by FAX, mail, or a secure electronic reporting system in compliance with the Health Insurance Portability and Accountability Act (HIPAA). Tribal health care providers will assist local health officials in identifying exposed contacts of a communicable disease, when necessary, and assure appropriate testing, treatment, or chemoprophylaxis is carried out.

Section 28.05.02 Vector Control

- A. Tribal staff will insure that all Tribal Facilities are free of insects, rodents or other pests that may constitute a public health hazard or are potential vectors for human diseases or animal diseases with the potential to cross the species barrier. As part of this effort, vendors may be retained to provide periodic applications of various control agents for pests, such as pesticides, fungicides, rodenticides, etc. (“Control Agents”), as appropriate. If any of the various Control Agents are labeled for home and garden use only, then they will be classified as “Unregulated Control Agents” which may be applied by appropriate members of the Tribal staff. If any of the Control Agents are not labeled for “Home and Garden Use Only,” then they may only be applied, as set for the in Subsection 28.05.02.3, below, and will be referred to as “Regulated Control Agents.”
- B. Regulated and Unregulated Control Agents are to be applied according to manufacturer’s instructions.
- C. Any use of Regulated Control Agents shall be done or supervised by an individual certified by the State of Washington. The application of any Control Agents will be done in compliance with all provisions of the most recent editions of the FDA Food Code, Federal Insecticide, Fungicide, and Rodenticide Act, and 29 CFR 1910.1200 Hazard Communications Standard.
- D. All applications of Regulated Control Agents at Tribal Facilities are to be documented with records of contractual extermination services maintained at the Tribal offices, including the types and amounts of the Control Agents applied, the purpose for using the Control Agent, the date of application and who applied or supervised the application of the Control Agent.

Chapter 28.06
Handling Hazardous Materials

Sections:

Section 28.06.01 Chemical Hazard Communication

Section 28.06.02 Hazardous Materials Use, Handling and Storage

Section 28.06.03 Hazardous Materials Emergency Response

Section 28.06.01 Chemical Hazard Communication

- A. If chemical products, other than consumer products, or unusually large quantities of consumer chemical products, are used or stored in Tribal Facilities, then Tribal staff will develop a Hazard Communication Program. The Hazard Communication Program will include: identification of responsible staff, a written Hazard Communication Program document, a list of all hazardous chemicals in a given Tribal Facility, material safety data sheets (“MSDS”) for all hazardous chemicals present, specific labels on all hazardous chemicals, and employee information and training.
- B. In developing a Hazard Communication Program, the provisions of 29 CFR 1910.1200 Appendix E - Guidelines for Employer Compliance will be followed. Additionally, Tribal staff will follow the guidelines set out in OSHA Publication 3084 “Chemical Hazard Communication.”

Section 28.06.02 Hazardous Materials Use, Handling and Storage

- A. The use, handling and storage of hazardous materials shall be done in accordance with 29 CFR 1910 Subpart H - Hazardous Materials. All chemical products used or stored in Tribal Facilities shall be done in accordance with the manufacturer’s labeled instructions or MSDS, as applicable.
- B. The PHSC may elect to review the MSDS and information on any hazardous or toxic materials prior to purchase for use by the Tribal staff and, whenever possible, request that a toxic substance be replaced with non-toxic substitute.
- C. Access to those areas in Tribal Facilities where hazardous materials are stored shall be restricted to authorized personnel. Doors will be labeled appropriately so emergency response teams can verify the presence of hazardous materials stored in each facility. Hazardous storage areas can include, but not be limited to, storage rooms, utility spaces and rooms, furnace rooms, janitor's closets, and attics.
- D. Hazardous or toxic substances are to be kept in a restricted location separate from medications and food.
- E. Fireworks will be stored and handled in accordance with the manufacturers’ recommendations.

Section 28.06.03 Hazardous Materials Emergency Response

Emergency response to hazardous materials incidents shall be handled in accordance with the provisions of 27 CFR 1910.120 - Hazardous Waste Operations and Emergency Response and in cooperation with CCFD3 and the CCSO, as appropriate.

Chapter 28.07
Injury Prevention, Occupational Safety and Personal Protective Equipment

Sections:

Section 28.07.01 Injury Prevention and Safety

Section 28.07.02 Personal Protective Equipment

Section 28.07.03 General Environmental Controls

Section 28.07.01 Injury Prevention and Safety

- A. The Tribal staff is responsible for preparing and maintaining the PHSP which contains, along with the Tribe's General Operations Manual, written safety policies and procedures that include fire protection, fire detection, fire suppression, the use and storage of toxic and hazardous substances, safety, equipment inspection, injury prevention and emergency preparedness.
- B. The Tribal staff shall receive injury prevention and emergency response training appropriate to their job classifications and duties.
- C. Tribal staff will maintain records on all injuries that occur on Tribal Non-Fee Land. Records will be reviewed periodically to identify preventable injury trends and efforts will be made to address identified injury problems.

Section 28.07.02 Personal Protective Equipment

The provisions of 29 CFR 1910 Subpart I - Personal Protective Equipment shall be followed by Tribal staff in determining which members of the staff are required to be provided personal protective equipment, and to the degree necessary after such determination is made, the required personal protective equipment will be provided.

Section 28.07.03 General Environmental Controls

The provisions of 29 CFR 1910 Subpart J - General Environmental Controls shall be followed by Tribal staff in determining when such controls are needed and when such a determination is made, insuring those controls are implemented.

Chapter 28.08
Commercial Diving Operations

Sections:

Section 28.08.01 Commercial Diving Operations – Federal Standards

Section 28.08.02 Commercial Diving Operations – Washington State Standards

Section 28.08.03 Commercial Diving Operations – Tribal Standards

Section 28.08.04 Conflict in Standards

Section 28.08.01 Commercial Diving Operations – Federal Standards

Diving operations conducted on or off Tribal Non-Fee Land shall be conducted according to the provisions of 29 CFR 1910 Subpart T - Commercial Diving Operations.

Section 28.08.02 Commercial Diving Operations – Washington State Standards

If, at any time, the commercial diving operations being conducted by licensed Tribal commercial fishers fall under the jurisdiction of the State of Washington, then the relevant provisions of the RCW and WAC will be complied with by those fishers.

Section 28.08.03 Commercial Diving Operations – Tribal Standards

Diving operations conducted by licensed Tribal commercial fishers on or off Tribal Non-Fee land shall be conducted in such a manner as to meet the requirements set out in Title 6 – Fishing Code of the Tribal Code.

Section 28.08.04 Conflict in Standards

If a conflict arises among any of the standards set out in Section 28.08.01, 28.08.02 or 28.08.03, the stricter standards shall apply.

Chapter 28.09
Emergency Medical Care

Sections:

Section 28.09.01 Emergency Medical Care

Section 28.09.02 First Responders

Section 28.09.01 Emergency Medical Care

- A. Tribal staff shall insure the PHSP sets forth processes and procedures for responding to medical emergencies.

- B. Emergency medical kits, designed for care of injuries and Basic Life Support, shall be placed in the Tribal medical and dental clinics. The kits shall be inspected periodically by designated members of the staff of each clinic to insure all required items are present in sufficient quantity and all items are serviceable and sanitary, as appropriate.

Section 28.09.02 First Responders

The CCFD3 and the CCSO will be the designated first responders, in case of an emergency, to Tribal Facilities.

Chapter 28.10 Vehicle Operation

Sections:

Section 28.10.01 Vehicle Operation

Section 28.10.01 Vehicle Operation

The COO shall verify that all operators of Tribal vehicles are of driving age in the State of Washington and have a valid, current Washington State driver's license. Employees or interns 16 years of age and under may not drive Tribally owned or leased motor vehicles on public roads as part of their jobs, even if they possess a valid driver's license. Employees/interns 17 years of age may drive cars and small trucks on public roads as part of their jobs only in limited circumstances as outlined in the Tribal Operations Manual.

Chapter 28.11
Public Health and Safety Plans

Sections:

Section 28.11.01 Plan Requirements

Section 28.11.02 Training and Education in Public Health and Safety

Section 28.11.01 Plan Requirements

The Tribal government and each Tribal entity shall develop and implement its own Public Health and Safety Plan ("PHSP") appropriate to its operations and risks.

Section 28.11.02 Training and Education in Public Health and Safety

The Tribal government and each Tribal entity shall be responsible for establishing and implementing a program, set out in its PHSP, to educate and train its employees in health and safety issues, as appropriate to its operations and in compliance with applicable laws and regulations.

Chapter 28.12
Miscellaneous Provisions

Sections:

Section 28.12.01 Good Samaritan Immunity; Exceptions

Section 28.12.02 Notice

Section 28.12.03 Construction and Severability

Section 28.12.04 Tribal Sovereign Immunity and Jurisdiction Preserved

Section 28.12.05 Effective date

Section 28.12.01 Good Samaritan Immunity; Exceptions

- A. Any person, including but not limited to a volunteer provider of emergency or medical services, who without compensation or the expectation of compensation renders emergency care at the scene of an emergency or who participates in transporting, not for compensation, from there an injured person or persons for emergency medical treatment shall not be liable for civil damages resulting from any act or omission in the rendering of such emergency care or in transporting such persons, other than for acts or omissions constituting gross negligence or willful or wanton misconduct.
- B. Any person rendering emergency care during the course of regular employment and receiving compensation or expecting to receive compensation for rendering such care is excluded from the protection of this section.
- C. For the purposes of this section, the following words and phrases shall have the following meanings unless the context clearly requires otherwise:
1. "Compensation" has its ordinary meaning but does not include nominal payments, reimbursement for expenses, or pension benefits;
 2. "Emergency care" means care, first aid, treatment, or assistance rendered to the injured person in need of immediate medical attention and includes providing or arranging for further medical treatment or care for the injured person. Except with respect to the injured person or persons being transported for further medical treatment or care, the immunity granted by this section does not apply to the negligent operation of any motor vehicle; and
 3. "Scene of an emergency" means the scene of an accident or other sudden or unexpected event or combination or circumstances which calls for immediate action other than in a hospital, doctor's office, or other place where qualified medical personnel practice or are employed.

Section 28.12.02 Notice

Whenever notice is required under this Title, it shall be deemed given when personally delivered or deposited in the U.S. Mail with proper postage affixed thereto and addressed to the party to whom the notice is given as provided in an official statement of a party's address on file with the Tribe.

Section 28.12.03 Construction and Severability

- A. This Title is exempted from the rule of strict construction, and shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.
- B. If any section of this Title, or its application to any person or entity or circumstance, is held invalid, the remainder of the Title, or the application of the provision to other persons or entities or circumstances, shall not be affected and shall remain in full force and effect.

Section 28.12.04 Tribal Sovereign Immunity and Jurisdiction Preserved

Nothing in this Title shall be construed as a waiver of the sovereign immunity of the Tribe. Nothing in this

Title shall be construed as a grant of jurisdiction to the United States or to a State or local government or to another tribal government.

Section 28.12.05 Effective date

This Title shall become effective ten (10) days after its approval by the Tribal Council.

Chapter 28.13
State of Emergency Proclamations

Sections:

Section 28.13.01 Authority and Purpose

Section 28.13.02 Definitions

Section 28.13.03 Powers of the CEO Pursuant to Proclamation

Section 28.13.04 Report to Tribal Council Regarding State of Emergency

Section 28.13.05 Law Enforcement Issues Related to State of Emergency

Section 28.13.06 Criminal Penalties Related to the State of Emergency

Section 28.13.01 Authority and Purpose

- A. The Tribal Council may, as an inherent power granted it under the Tribe's Constitution, establish laws, regulations and policies, including those: 1) of a temporary nature, or 2) those that are temporary changes to existing laws, regulations and policies, related to the exercise of emergency powers by the CEO of the Tribe.
- B. The purpose of this Chapter is to establish a statutory structure for the approval of a proclamation of a state of emergency, as defined in Section 28.13.02, below, by the CEO, with the approval of the Council, or by the Council, upon its own initiative.
- C. The CEO of the Tribe may, after finding that a public disorder, disasters, natural or otherwise, including forest fires, earthquakes, etc., energy emergency, or riot exists within the trust or reservation lands of the Tribe which affects life, health, property, or the public peace, proclaim a state of emergency in the area affected, and the powers granted the CEO during a state of emergency shall be effective only within the area described in the proclamation.
- D. The Council may, if the CEO does not take timely action under Subsection C., above, after finding that a public disorder, disaster, energy emergency, or riot exists within the trust or reservation lands of the Tribe which affects life, health, property, or the public peace, proclaim a state of emergency in the area affected, and direct the CEO to exercise such powers during the declared state of emergency, but only within the area described in the proclamation.
- E. If the CEO acts under Subsection C., above, they will notify the Council, within twenty-four (24) hours, of the decision to exercise the authority granted under this Chapter. The Council, by a super-majority vote (four out of five), may rescind the proclamation issued by the CEO. Otherwise, the Council may, by simple majority, approve the proclamation by the CEO.

Section 28.13.02 Definitions

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this Chapter shall have the following meaning:

- A. "Proclamation of a State of emergency" or "Proclamation" means an emergency proclaimed under this Chapter, by either the CEO or the Council, as such emergencies are generally recognized under existing federal and Washington State laws and regulations;
- B. "CEO" means the Chief Executive Officer of the Tribe, in case of their removal, death, resignation or inability to discharge the powers and duties of their office, then the person who may exercise the powers of the CEO as provided for by the Council; and
- C. "Criminal offense" means any prohibited act for which any criminal penalty is imposed by the Tribal Code, or applicable federal or Washington State law or regulation, and includes any misdemeanor, gross misdemeanor, or felony.

Section 28.13.03 Powers of the CEO Pursuant to Proclamation

- A. The CEO, after issuing a Proclamation, and such Proclamation's approval by the Council, and prior to terminating such, may, in the area described by the Proclamation, issue an order

prohibiting:

1. Any person being on the public streets, or in the public parks, or at any other public place during the hours declared by the CEO to be a period of curfew;
 2. Any number of persons, as designated by the CEO, from assembling or gathering on the public streets, parks, or other open areas of this state, either public or private;
 3. The manufacture, transfer, use, possession or transportation of a Molotov cocktail or any other device, instrument or object designed to explode or produce uncontained combustion;
 4. The transporting, possessing or using of gasoline, kerosene, or combustible, flammable, or explosive liquids or materials in a glass or uncapped container of any kind except in connection with the normal operation of motor vehicles, normal home use or legitimate commercial use;
 5. The sale, purchase or dispensing of alcoholic beverages;
 6. The sale, purchase or dispensing of other commodities or goods, as the CEO reasonably believes should be prohibited, to help preserve and maintain life, health, property or the public peace;
 7. The use of certain streets, highways or public ways, under the jurisdiction of the Tribe, by the public or Tribal citizens; and
 8. Such other activities as the CEO reasonably believes should be prohibited, or required (such as the wearing of protective masks, social distancing, and limiting assemblies of persons during a pandemic), to help preserve and maintain life, health, property or the public peace.
- B. The CEO may, additionally, issue an order or orders concerning waiver or suspension of statutory obligations or limitations in the following areas:
1. Liability for Tribe's participation in interlocal agreements;
 2. Fees owed to the Tribe;
 3. Application of any emergency assistance programs;
 4. Application of tax due dates and penalties relating to collection of taxes;
 5. Permits for industrial, business, or medical uses of alcohol; and
 6. Such other statutory and regulatory obligations or limitations prescribing the procedures for conduct of Tribal business, or the orders, rules, or regulations of any Tribal department or business if strict compliance with the provision of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency, unless (i) the waiver or suspension would conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the Tribe, or (ii) the waiver or suspension would conflict with the rights, under the Indian Civil Rights Act of 1968.
- C. In imposing the restrictions provided for in this Chapter, the CEO may impose them for such times, upon such conditions, with such exceptions and in such areas, under the jurisdiction of the Tribe, as they, from time to time, during the period of the Proclamation, deem reasonably

necessary.

- D. No order or orders concerning waiver or suspension of statutory obligations or limitations under this Chapter may continue for longer than thirty (30) days unless extended by the Council by resolution. If the Council is not able to convene, because of the state of emergency giving rise to the Proclamation, the waiver or suspension of statutory obligations or limitations may be extended in writing by the Tribal Chair until the Council can extend the waiver or suspension by resolution.
- E. Any person willfully violating any provision of an order issued by the CEO under this Chapter is guilty of a gross misdemeanor under the Tribal Code.

Section 28.13.04 Report to Tribal Council Regarding State of Emergency

The CEO, or any party acting in the capacity of the CEO by direction of the Council, will keep the Council apprised, in a timely and reasonable manner, given the emergency situation(s) being addressed, as follows:

- A. The state of the emergency;
- B. Any actions that are being taken to deal with it; and
- C. The funds needed to deal with the emergency and the potential source of those funds, including any funding from the federal or Washington State governments.

Section 28.13.05 Law Enforcement Issues Related to State of Emergency

The CEO, or any party acting in the capacity of the CEO by direction of the Council, will:

- A. Direct the Tribe's law enforcement personnel to coordinate with the Clallam County Sheriff's Office ("CCSO"), the law enforcement entities of the State of Washington and of the federal government regarding law enforcement activities during the State of Emergency Proclamation; and
- B. Contact the Tribe's Prosecutor to coordinate the activities of that officer with the various law enforcement entities identified in Subsection A, above, during the period of the Proclamation.

Section 28.13.06 Criminal Penalties Related to the State of Emergency

- A. After a Proclamation has been declared pursuant to this Chapter, any person who maliciously destroys or damages any real or personal property or maliciously injures another person will be subject to prosecution under Title 21 of the Tribal Code.
- B. After the proclamation of a state of emergency pursuant to this Chapter, every person who:
 - 1. Willfully causes public inconvenience, annoyance, or alarm, or recklessly creates a risk thereof, by:
 - a. Engaging in fighting or in violent, tumultuous, or threatening behavior; or
 - b. Making an unreasonable noise or an offensively coarse utterance, gesture, or display, or addressing abusive language to any person present; or
 - c. Dispersing any lawful procession or meeting of persons, not being a peace officer of the Tribe and without lawful authority; or
 - d. Creating a hazardous or physically offensive condition which serves no legitimate purpose; or
 - 2. Engages with at least one other person in a course of conduct as defined in Subsection 1., immediately above, which is likely to cause substantial harm or serious inconvenience, annoyance, or alarm, and refuses or knowingly fails to obey an order to disperse made by a law enforcement officer shall be guilty of disorderly conduct and subject to prosecution

under Title 21 of the Tribal Code; and

3. Any person upon any property under the jurisdiction of the Tribe, within the area described in the state of emergency, who is directed by a public official to leave the property and refuses to do so shall be guilty of a misdemeanor under Title 21 of the Tribal Code.

Chapter 28.14
Codification and Amendments

Sections:

Section 28.14.01 Codification

Section 28.14.02 Amendments

Section 28.14.01 Codification

Title 28 Public Health and Safety Code was approved on August 31, 2010 at a Tribal Council meeting by Resolution 27-10.

Section 28.14.02 Amendments

Title 28 was amended on March 13, 2012 by Resolution #10-12, to clarify the provisions of Chapter 08 – Commercial Diving Operations. Title 28 was further amended on November 2, 2020 by Resolution #46-2020, by adding a new chapter dealing with Emergency Proclamations by the Tribal government.