

Title 6 – Citizenship

Chapter 1 – Adoption and Membership

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Legislative History

Enacted:

Ordinance 349 Amending Ordinance Nos. 183 and 288 (Codified at STC Title 6, Chapter 1 (8/11/15); BIA (8/28/15)
Ordinance 326 Amending Ordinance No. 288 (Codified at STC Title 6, Chapter 1, Sections .030, .050, .100, .110, .120, .130, .140, .150, .160, .170, .190, and .280), (7/9/13), BIA (7/31/13).
Ordinance 298 Amending Ordinance 288 (Codified at STC Title 6, Chapter 1, Section .050), (9/13/11), BIA (9/19/11)
Ordinance 293 Amending Ordinance 288 (Codified as STC Title 6, Chapter 1, Sections .060, .100-.130, .150, .170 and .180) (7/7/11), BIA (7/14/11)
Ordinance 289 Amending Ordinance 288 (5/26/11), BIA (6/3/11).
Ordinance 288 Repealing and Superseding Ordinance Nos. 42, 120, 183, 214, and 247 and Amending Ordinance No. 197 (5/10/11), BIA (5/17/11).
Ordinance 197 Amending STC Chapter 6-01 and Ord. 183 (11/05/03), BIA (11/12/03).

Repealed or Superseded:

Ordinance 247 Amending STC Chapter 6-01 and Repealing Resolution 2005-10-127 (3/7/06), BIA (3/21/06).
Ordinance 214 Amending STC Chapter 6-01 and Ord. 183 and 197 (01/06/04), BIA (01/22/04).
Ordinance 183 Establishing the Swinomish Enrollment Code and Repealing and Superseding Ords. 165, 35 and 33 (09/30/03), BIA (10/08/03).
Ordinance 165 Regulating Adoption, Defining Procedures for Approving Membership, Repealing Ord. 162, and Reinstating Ord. 120 (repealed by Ord. 183 (09/30/03), BIA (10/08/03)).
Ordinance 162 Regulating Adoption, Defining Procedures for Approving Membership, and Amending, Superseding and Replacing Ord. 120 (repealed by Ord. 165 (03/22/03).
Ordinance 120 Amending Ord. 42 (8/19/96), BIA (10/2/96).
Ordinance 42 Governing the Adoption of New Members and Setting Qualifications on Future Membership (05/23/80)(repealed by Ord. 120 (8/19/96), BIA (10/2/96).
Ordinance 10 Tribal Enrollment (03/03/42)(repealed by Ord. 42 (05/23/80).

Rescinded:

Ordinance 33 Associate Membership (5/18/76), BIA (1/28/77).

Subchapter I – General Provisions

6-01.010 Title.

This Chapter shall be known as the “Swinomish Tribal Membership Code.”

[History] Ord. 183 (9/30/03); Ord. 165 (4/1/03); Ord. 162 (9/10/02); Ord. 120 (8/19/96).

6-01.020 Authority.

This Chapter is intended to implement Article II of the Swinomish Constitution, including authority under Article II, section 2 to promulgate ordinances that govern future membership and the adoption of new members and Article VI, Section 1(j) to enact resolutions and ordinances governing the adoption and abandonment of membership. This Chapter is enacted in accordance with 25 CFR Part 249.

[History] Ord. 349 (8/11/15); Ord. 288 (5/10/11); Ord. 247 (3/21/06); Ord. 214 (1/6/04); Ord. 183 (9/30/03); Ord. 165 (4/1/03); Ord. 162 (9/10/02); Ord. 120 (8/19/96); Ord. 10 (3/3/42).

6-01.025 Findings.

The Senate hereby makes the following findings: (1) that tribal enrollment is an issue that is within its inherent authority to regulate; (2) that tribal enrollment is an issue that is central to the Swinomish Indian Tribal Community’s health, welfare, economic security, and political integrity; (3) that tribal enrollment is elemental to the Tribe’s very existence as an independent political community; (4) that no issue is more vital to the Tribe’s continued existence and integrity than its children and that the Tribe therefore has a compelling Tribal interest in maintaining the membership of such children; and (5) that tribal membership imposes minimal or no burdens on children and their families but that it has myriad benefits, in which a child and his or her family may partake at their option.

[History] Ord. 247 (3/7/2006; BIA (3/21/2006)).

6-01.030 Definitions.

(A) For the purposes of this Title, the following words and phrases shall have the following meanings, unless explicitly stated otherwise:

- (1) **“Adult”** means a person who is twenty-one (21) years of age or older.
- (2) **“Biological genealogical information”** means documentation which tends to support or negate an assertion that the person to whom the documentation

relates is or was a lineal descendant of an individual belonging to one (1) or more of four (4) aboriginal bands: Swinomish, Kikiallus, Samish, or Lower Skagit. Such documentation may include but is not limited to: current and historic tribal membership rolls; census records; records of birth, death, marriage and divorce; records relating to the ownership, possession, transfer and status of real property. Such documentation may be supplemented by the following records: school, church, and courthouse records; records relating to military service; newspaper and other publications; diaries; correspondence; scrapbooks; and photographs and notations thereon.

- (3) **“Child”** or **“children”** means a person or persons under the age of twenty-one (21).
- (4) **“Committee”** or **“Enrollment Committee”** means the Enrollment Committee appointed by the Swinomish Indian Senate pursuant to Art. VI, § 1(j) of the Swinomish Constitution.
- (5) **“Conviction”** means a finding or admission that the person committed a criminal offense in a court of competent jurisdiction.
- (6) **“Descendant”** means a person related by blood in any degree to an individual belonging to one (1) or more of four (4) aboriginal bands: Swinomish, Kikiallus, Samish, or Lower Skagit. **“Non-descendant”** means a person not related by blood in any degree to an individual belonging to one (1) or more of four (4) aboriginal bands: Swinomish, Kikiallus, Samish, or Lower Skagit.
- (7) **“Disenrollment”** means the involuntary termination of membership in the Swinomish Indian Tribal Community and removal from the membership roll, including termination of Provisional membership by adoption under Section 6-01.130(D)(1) and (E) and 6-01.140.
- (8) **“Federally recognized tribe”** means a tribe recognized by the United States government pursuant to 25 C.F.R. Part 83.
- (9) **“Member”** or **“Swinomish tribal member”** or **“tribal member”** means an enrolled member of the Swinomish Indian Tribal Community, whether automatic or by adoption. However, when the reference is to committee or board members, it means an individual appointed by the Senate as a delegate to the committee or board.
- (10) **“Membership”** means the status of being a member.
- (11) **“Membership roll”** means the membership roll of the Swinomish Indian Tribal Community.
- (12) **“Near the Swinomish Reservation”** means within Skagit County.

- (13) **“Parents”** or **“parent”** means the father and mother, or father, or mother of a person under the age of twenty-one (21). It includes biological parents and parents who have legally adopted a child. It refers to both of a child’s parents, unless one parent shows by clear and convincing evidence that the other parent is deceased, legally insane, permanently or semi-permanently legally incapacitated, or that the other parent’s parental rights have been terminated, in which case “parent” shall refer to the parent whose rights have not been terminated.
- (14) **“Provisionally adopted member”** or **“Provisional member by adoption”** means a person who has been adopted into the membership of the Tribe pursuant to Section 6-01.110 and who may exercise all of the rights and privileges of membership, except the privilege of conferring upon non-descendant children born to the Provisionally adopted member a right to automatic membership in the Community pursuant to Art. II § 1 of the Swinomish Constitution and Section 6-01.100(A).
- (15) **“Relinquishment”** means the voluntary withdrawal from membership in the Swinomish Indian Tribal Community. Under this chapter, only adult members are considered capable of relinquishing their membership; and all requests to withdraw a child from tribal membership shall be deemed to be involuntary on the part of the child.
- (16) **“Reservation”** means the Swinomish Indian Reservation.
- (17) **“Reside”** as used in both Article II, Section 1 of the Swinomish Constitution and this Title means to physically live at and maintain as his or her one and only true home, and
- (a) for automatic membership: the person must physically live within the exterior boundaries of the Reservation at the time of the applicant child’s birth, except no person who is a direct descendant gains or loses residency by reason of absence due to employment in the military services of the United States; physical matriculation (*i.e.* enrollment) in a degree program at an accredited educational, technical or vocational institution outside of Skagit County; incarceration in a facility for offenders; or treatment in a hospital or other in-patient medical, treatment or care facility, provided that during any such absence, the person considers the Reservation to be his or her one and only true home, maintains substantial, recurring contacts with the Reservation, and intends to return to the Reservation immediately following the absence.
 - (b) membership by adoption: the person must physically live on or near the Reservation for a substantial period of time immediately preceding the submission of an application for membership.

- (18) **“Residence”** as used in both Article II, Section 1 of the Swinomish Constitution and this Title, means the act or fact of residing in a given place for some time.
- (19) **“Resident”** as used in both Article II, Section 1 of the Swinomish Constitution and this Title, means a person who has a residence in a particular place for some time.
- (20) **“Residency”** as used in both Article II, Section 1 of the Swinomish Constitution and this Title, means the fact or condition of residing in a given place for some time.
- (21) **“Secretary of the Senate”** means the duly elected Secretary of the Senate of the Swinomish Indian Tribal Community.
- (22) **“Senate”** means the duly constituted governing body of the Swinomish Indian Tribal Community.
- (23) **“Sex offense”** means any offense, other than the offense of indecent exposure, which would fall under STC 4-03 – Sexual Offenses, or that is classified as a crime with a sexual motivation under STC 4-01.110, and/or which is defined as a sex offense by the laws of the jurisdiction wherein the person was convicted or received a deferred prosecution or a deferred or suspended sentence.
- (24) **“Spouse”** means a partner by a marriage recognized as valid under STC Chapter 7-02.
- (25) **“Swinomish Indian Tribal Community”** or **“Community”** or **“Tribe”** means the federally recognized Indian Tribe reorganized pursuant to Section 16 of the Indian Reorganization Act of 1934, which is a successor-in-interest to signatories of the Treaty of Point Elliott, 12 Stat. 927, which signatories included numerous bands, among which are the aboriginal Swinomish, aboriginal Samish, Kikiallus and Lower Skagit bands of Indians. It includes all enrolled members of the Tribe.
- (26) **“Swinomish Roll Book”** means the membership book maintained by the Enrollment Officer pursuant to this Title.
- (27) **“Tribal Court”** or **“Court”** means the Swinomish Tribal Court established pursuant to Title 3 of the Swinomish Tribal Code.
- (B) All other words and phrases shall have their ordinary and customary meanings.

[History] Ord. 349 (8/11/15); Ord. 326 (7/9/13); Ord. 288 (5/10/11), BIA (5/17/11); Ord. 247 (3/7/2006).

6-01.040 Notices.

All notices required by this Chapter shall be in writing and sent to the last known address on file with the Enrollment Office by first-class United States mail, certified, return receipt requested.

[History] Ord. 288 (5/10/11).

Subchapter II -- Powers

6-01.050 Enrollment Committee - Generally.

(A) **Responsibility.** Pursuant to direction from the Senate, the Enrollment Committee shall work with the Enrollment Officer to ensure that:

- (1) tribal enrollment, which is an issue central to the Swinomish Indian Tribal Community's health, welfare, economic security, and political integrity, is fostered and maintained;
- (2) the Tribe's continued existence and integrity is maintained through its children; and
- (3) tribal membership imposes minimal or no burdens on children and their families but rather has myriad benefits, in which a child and his or her family may partake at their option.

(B) **Members.**

- (1) **Appointment.** The Enrollment Committee shall consist of nine (9) members appointed by the Senate. Enrollment Committee members shall serve for a one-year term. At least two members shall also be members of the Election Board.
- (2) **Quorum.** A quorum of the Enrollment Committee shall consist of five (5) members.

[History] Ord. 326 (7/9/13); Ord. 298 (9/13/11), BIA (9/19/11); Ord. 288 (5/10/11).

6-01.060 Enrollment Committee – Authorities.

(A) **Delegated Authority.** The Enrollment Committee is delegated the authority to:

- (1) review all applications for Tribal membership and supporting documentation;
- (2) determine whether an applicant for membership is eligible for membership;

- (3) request an applicant appear before the Committee to respond to inquiries by Committee members;
- (4) determine what weight should be given to evidence relevant to an application for membership provided by the applicant or obtained by the Enrollment Officer or Committee;
- (5) make recommendations to the Senate on all membership applications;
- (6) make recommendations to the Senate on removal of a Provisionally Adopted member from the membership roll and on disenrollment of membership;
- (7) issue tribal identification cards to members;
- (8) revoke tribal identification cards of dis-enrolled or relinquished members; and
- (9) otherwise implement this Title as directed by the Senate pursuant to its delegated authority.

(B) **Advisory Authority.** The Enrollment Committee shall:

- (1) advise the Senate as to the factors to be considered in making a recommendation on applications for Provisional membership by adoption to the Community; and
- (2) advise the Senate as to whether a Provisionally Adopted member should be added to the membership roll as a Member by Adoption.

[History] Ord. 293 (7/7/11); Ord. 288 (5/10/11).

6-01.070 Enrollment Officer - Generally.

The Senate shall employ an Enrollment Officer suitably skilled and capable of working with the Senate, the Enrollment Committee, the Election Officer, the Election Board, tribal members, and potential members.

[History] Ord. 288 (5/10/11).

6-01.080 Enrollment Officer: Duties and Responsibilities.

- (A) The Enrollment Officer shall issue Tribal Identification Cards and maintain the membership roll as directed by the Enrollment Committee and the Senate.
- (B) The Enrollment Officer shall review all applications for membership and supporting documents required by this Chapter.

- (C) The Enrollment Officer shall investigate and review an applicant's eligibility for membership, pursuant to the terms of this Title, including but not limited to:
 - (1) blood quantum;
 - (2) biological genealogical information;
 - (3) membership in other federally recognized tribes;
 - (4) conviction records; and
 - (5) other information relevant to an applicant's eligibility for membership.
- (D) The Enrollment Officer shall assist individuals applying for automatic membership or provisional membership by adoption in the Tribe.
- (E) The Enrollment Officer shall develop all application forms, notices and other forms and documents required by this Title.
- (F) When requested to do so, the Enrollment Officer shall provide information to tribal prosecutors, law enforcement personnel, the Enrollment Committee, Election Board, and the Senate to implement and enforce this Title, any rules or regulations issued hereunder, STC Chapter 2-01 – Election Code, or STC Title 4 – Criminal Code, and shall act as the Tribe's witness when needed to prosecute violations of such chapters and title.
- (G) The Enrollment Officer shall promptly comply with any valid Senate resolution or court order requiring him or her to revoke the Tribal Identification card of a member pursuant to this Title or any rule or regulation promulgated thereunder or to remove an individual from the membership roll.
- (H) The Enrollment Officer shall issue all notices and lists as provided by STC Chapter 2-01, and otherwise implement that Chapter as directed by the Senate or the Election Board pursuant to its delegated authority.
- (I) The Enrollment Officer shall act as the custodian of the Swinomish Roll Book;
- (J) The Enrollment Officer shall perform all other duties delegated or assigned to him or her by this Title, the Senate, or the Enrollment Committee, and otherwise implement this Title as directed by the Senate or the Enrollment Committee, pursuant to his delegated authority.

[History] Ord. 349 (8/11/15); Ord. 288 (5/10/11).

6-01.090 Senate Reserved Power.

The Senate reserves the right to review and reverse any action of, or order any action by, the

Enrollment Committee or the Enrollment Officer.

[History] Ord. 288 (5/10/11).

Subchapter III - Membership

6-01.100 Automatic Membership.

(A) **Who is Eligible?** The following persons shall be eligible for automatic membership in the Swinomish Indian Tribal Community pursuant to Article II, Section 1 of the Swinomish Constitution:

- (1) All persons of Indian blood lawfully enrolled upon the Swinomish Indian Reservation and residing there on June 1, 1935; and
- (2) All children born to any member of the Community who is a resident of the Reservation at the time of birth of said children,

Provided, that the person, as an adult, has not previously relinquished his or her membership in the Swinomish Indian Tribal Community, and Provided further that for those members of the Community who are members by adoption, whether provisional or otherwise, before a child born to such member can be eligible for automatic membership, the child must be shown to have descended from one of the following bands of Indians: the aboriginal Swinomish, aboriginal Samish, Kikiallus or the Lower Skagit band of Indians.

(B) **Application Procedure.**

- (1) Any person wishing to apply for automatic membership pursuant to this Section shall submit to the Enrollment Committee a completed application upon a form developed by the Enrollment Officer at the direction of the Committee. The application shall be signed and attested as true and correct by the applicant, or if the applicant is a minor, by the minor's custodial parent, guardian or a Swinomish Family Services representative. The application shall include, at a minimum the following information concerning the applicant:
 - (a) name, including prior names, aliases and nicknames;
 - (b) address;
 - (c) sex;
 - (d) date and place of birth;
 - (e) Social Security Number;

- (f) education;
 - (g) whether the applicant is legally adopted;
 - (h) whether the applicant is enrolled in another federally recognized Indian tribe;
 - (i) the name of any federally recognized tribe(s) in which each parent is enrolled, if any, and enrollment number;
 - (j) whether the applicant's parent is a member of the Tribe, including proof of such membership;
 - (k) whether the applicant's member parent(s) resided on the Swinomish Reservation at the time of the applicant's birth, Provided, however, that where the member parent(s) was/were absent from the Reservation, the applicant shall provide documentation of the absence, including the reason for the absence and the dates of the absence;
 - (l) biological genealogical information, including blood quantum of individuals identified on the family tree; and
 - (m) a statement that the applicant has not previously relinquished his or her membership in the Tribe.
 - (o) where the applicant's parent is a member by adoption, proof that the applicant is descended from one (1) of the following bands of Indians; the aboriginal Swinomish, aboriginal Samish, Kikiallus, or the Lower Skagit Band of Indians.
- (2) The completed application shall be delivered to the Enrollment Office, together with:
- (a) a certified copy of the applicant's birth certificate;
 - (b) a copy of the applicant's Social Security card;
 - (c) a current photograph of the applicant;
 - (d) if enrolled in another federally recognized tribe, a signed and notarized written request to relinquish from that tribe and a written response from that tribe pursuant to Section 6-01.150(C)(4);
 - (e) a signed release of information designed to permit the Enrollment Officer to obtain information from another federally recognized tribe as to enrollment in, or receipt of benefits by the applicant from, the other tribe;

- (f) any other evidence which the applicant believes may assist the Enrollment Committee in determining whether the applicant meets the qualifications set forth in Article II, Section 1 of the Swinomish Constitution and this Title.
- (3) In the event that the biological genealogical information is incomplete, the Enrollment Committee may request additional information demonstrating that the applicant meets the qualifications set forth in Article II, Section 1 of the Swinomish Constitution and this Title.
- (4) Upon receipt of the application, the Enrollment Officer shall indicate the date of receipt and provide the original application file and all supporting documents to the Enrollment Committee at the next meeting of the Committee. The Committee shall review the application for completeness and take one of the following actions:
 - (a) If the application is not complete, the Enrollment Committee shall direct the Enrollment Officer to send to the applicant within ten (10) business days of the meeting written notice of the incompleteness of the application and a description of the information or documents required to complete the application;
 - (b) If the application is complete and supported by the required documentation the Committee finds that the applicant is eligible for membership pursuant to Article II, Section 1 of the Swinomish Constitution and this Title, the Committee shall recommend to the Senate that the applicant be approved for automatic membership;
 - (c) If the application is complete, but the Committee determines that the applicant is not eligible for membership pursuant to Article II, Section 1 of the Swinomish Constitution and this Title, the Committee shall recommend to the Senate that the applicant not be approved for automatic membership; or
 - (d) If the application is complete and the Committee finds that the applicant is not eligible for automatic membership, but is eligible for membership by adoption, the Committee shall treat the application as one for Provisional membership by adoption.

The Enrollment Committee may give such weight that it believes is appropriate to the evidence relevant to the application provided by the applicant or obtained by the Enrollment Committee or the Enrollment Officer. At the conclusion of its review, the Enrollment Committee shall give its recommendation to approve or deny the application to the Senate in writing.

- (5) Upon a receipt of a recommendation from the Enrollment Committee to approve the application for automatic membership, the Senate shall review the recommendation and either approve or deny the application for automatic membership.
- (6) The Secretary to the Senate shall notify promptly the Enrollment Officer of the Senate's action. If the Senate approves the application, the Senate shall direct the Enrollment Officer to promptly add the applicant to the tribal membership roll and notify the applicant of the Senate's decision in writing.

*Previously Codified as STC 6-01.040

[History] Ord. 349 (8/11/15); Ord. 326 (7/9/13); Ord. 293 (7/7/11); Ord. 288 (5/10/11); Ord. 247 (3/21/06); Ord. 183 (9/30/03); Ord. 165 (4/1/03); Ord. 162 (9/10/02); Ord. 120 (8/19/96); Ord. 42 (4/2/85); Ord. 42 (revised) (5/23/80).

6-01.110 Provisional Membership By Adoption - Application Process.

The following procedure and requirements shall apply to all applicants for membership in the Swinomish Indian Tribal Community who do not meet the eligibility requirements for automatic membership pursuant to Article II, Section 1 of the Swinomish Constitution and this Title.

- (A) **Who is Eligible?** No person has an absolute right or entitlement to membership in the Swinomish Indian Tribal Community pursuant to this Section, regardless of whether the applicant meets the requirements and considerations set forth below. Membership pursuant to this Section is at the absolute and exclusive discretion of the Senate. At a minimum, an applicant must satisfy each of the following requirements in order to be eligible for membership pursuant to this Section:
 - (1) The applicant has one-fourth (1/4) or more Indian blood;
 - (2) The applicant is the spouse or child, whether by birth or legal adoption, of a descendent, as defined in this Chapter;
 - (3) The applicant is a citizen of the United States of America;
 - (4) The applicant has resided on or near the Swinomish Indian Reservation and participated in Swinomish Indian Tribal Community activities for a substantial amount of time; Provided, however, that a child who is in the legal custody of a governmental agency shall, solely for purposes of determining whether that child is "eligible for membership" in the Tribe for purposes of the Federal or a State Indian Child Welfare Act, be deemed to be a resident of Skagit County.
 - (5) The applicant is not enrolled in another federally recognized tribe; and

- (6) The applicant has not previously relinquished his or her membership in the Swinomish Indian Tribal Community, except as provided by this Chapter.

(B) Application Procedure.

- (1) Any person wishing to apply for Provisional membership by adoption shall submit to the Enrollment Office a completed application upon a form developed by the Enrollment Officer at the direction of the Committee. The application shall include the same information as is required by Section 6-01.100(B)(1) as well as information demonstrating compliance with this Section 6-01.110. If the applicant is a minor, the minor's custodial parent, guardian, or a Swinomish Family Services representative may submit an application on the minor's behalf.
- (2) The completed application shall be accompanied by the following information:
 - (a) a certified copy of the applicant's birth certificate;
 - (b) a copy of the applicant's social security card;
 - (c) a current photograph of the applicant;
 - (d) biological genealogical information, including the blood quantum of individuals identified on the family tree;
 - (e) if enrolled in another federally recognized tribe, a signed and notarized relinquishment request presented to that tribe and a written response from that tribe pursuant to Section 6-01.150(C)(4)(b); and
 - (f) a signed release of information designed to permit the Enrollment Officer to obtain information from another federally recognized tribe as to enrollment in, or receipt of benefits by, the applicant from another tribe;
 - (g) a letter demonstrating that the applicant would be a beneficial member of the Swinomish Community;
 - (h) proof that the applicant has resided on or near the Reservation for a substantial period of time;
 - (i) proof that the applicant has participated in Swinomish Indian Tribal Community activities for a substantial amount of time; and
 - (j) any other evidence, which the applicant believes may assist the Enrollment Committee in determining whether the applicant meets the qualifications set forth in Section 6-01.110(C).

- (3) For applicants thirteen (13) years and older, the applicant shall submit to a criminal background check to be conducted by the Swinomish Tribal Police, who shall provide the results of the background check to the Enrollment Officer, who shall in turn provide the results to the Enrollment Committee at the next meeting of the Committee.
- (4) Upon receipt of the application, the Enrollment Officer shall indicate the date of receipt on the face of the application and provide the original application file and all supporting documents to the Enrollment Committee at the next meeting of the Committee. The Committee shall review the application for completeness and take one of the following actions:
 - (a) If the application is not complete, the Enrollment Committee shall direct the Enrollment Officer to send to the applicant within ten (10) business days of the meeting written notice of the incompleteness of the application and a description of the information or documents required to complete the application; or
 - (b) If the application is complete and supported by the required documentation, the Enrollment Committee shall determine whether to recommend the applicant to the Senate for Provisional membership by adoption. When making this determination, the Committee shall
 - (i) review the application and all supporting documents submitted by the applicant along with any other documentation obtained by the Enrollment Officer or Committee to determine if the applicant has met the requirements of this Section;
 - (ii) consider the criteria set forth in Section 6-01.110 (C);
 - (iii) determine whether to request that the applicant appear before the Enrollment Committee at a date and time selected by the Committee; and
 - (iv) give such weight as it believes is appropriate to the evidence provided by the applicant or obtained by the Enrollment Officer or Committee.
- (5) At the conclusion of its review, the Enrollment Committee shall either:
 - (a) recommend in writing that the Senate approve the application for Provisional membership by adoption and provide the basis for its recommendation to the Senate; or

- (b) notify the applicant in writing that his or her application for Provisional membership by adoption has been denied and the basis for the denial.
 - (6) Upon receipt of a recommendation from the Enrollment Committee to approve an applicant for Provisional membership by adoption, the Senate, after reviewing the application and supporting documents to satisfy itself that the applicant has met the requirements of this Chapter and after considering the factors set forth in Section 6-01.110(C), shall forward or refuse to forward the Committee's recommendation to General Council for a vote pursuant to Section 6-01.120(A).
 - (7) In order for an individual's application to be considered by the Eligible Voters at the time of the General Election, the individual must have submitted a complete application demonstrating eligibility for membership by the second Monday of November of the year preceding the year in which the election is to take place. If the application is not submitted by the second Monday in November deadline, the individual will not be included in the list of applicants for the following year.
- (C) **Considerations.** The Senate, with the advice and counsel of the Enrollment Committee, shall consider the following factors prior to making a favorable recommendation to General Council:
- (1) **Benefit to the Community.** The applicant has been or will likely be a benefit to the Swinomish Indian Tribal Community by virtue of his or her deeds, actions or status.
 - (2) **Moral Character.** The applicant is of good moral character. The Senate shall consider such things as:
 - (a) the applicant's reputation in the Community;
 - (b) whether the applicant has been convicted of a felony offense, a sex offense, or an offense involving dishonesty, under state, federal or tribal law in any court of competent jurisdiction;
 - (c) whether the applicant has been dishonorably discharged from the United States Armed Forces; and
 - (d) any other factor relevant to the applicant's moral character.
 - (3) **Intent.** There exists the likelihood that the applicant will be an active participant in the affairs of the Swinomish Indian Tribal Community for the duration of his or her membership.

*Previously Codified as 6-01.050

[History] Ord. 349 (8/11/15); Ord. 326 (7/9/13); Ord. 293 (7/7/11); Ord. 288 (5/10/11); Ord. 247 (3/21/06); Ord. 183 (9/30/03); Ord. 165 (4/1/03); Ord. 162 (9/10/02); Ord. 120 (8/19/96); Ord. 10 (3/3/42).

6-01.120 Provisional Membership by Adoption – Recommendation, Duties & Responsibilities.

(A) If the Senate determines that the requirements and considerations set out in Section 6-01.110 are satisfied, and approves the application for Provisional membership by adoption, the following procedures shall be followed before the applicant is added to the membership roll as a Provisionally Adopted member:

(1) **Senate Recommendation.** The Senate shall recommend to General Council that the applicant be enrolled as a Provisional member by adoption.

(2) **Vote.**

(a) The Senate shall place, or cause to be placed, the applicant's name on a ballot to be approved or rejected by those members deemed to be Eligible Voters pursuant to STC 2-01.150. The election shall take place at the same time as the General Election for Senators. Voting shall be by official ballot in secret.

(b) The Community's Eligible Voters shall vote whether to accept or reject the application. The applicant's Provisional membership must be approved by 60% of the votes cast for that applicant. For a vote to be counted as cast, it must be either for or against the applicant's membership regardless of whether the ballot contains more than one applicant. An abstention shall not count as a cast vote.

(3) **Oath.**

(a) If the applicant's membership as a Provisional member by adoption is approved by the Eligible Voters during the General Election, the Applicant shall subscribe to the following oath administered by the Tribal Chairman or his or her designee following announcement of the vote results during General Council:

“I, _____, do hereby solemnly swear (or affirm) that I shall preserve, support, and protect the Constitution of the United States and the Constitution and Bylaws of the Swinomish Indians; that I pledge to actively participate and work toward the betterment of Indian people and the Swinomish Indian Tribal Community, so help me God.”

(b) In those rare circumstances where an applicant was unable to subscribe to the oath at the meeting of the General Council, the applicant shall subscribe to the oath at or before the next regularly scheduled Senate meeting after the General Council meeting. If the applicant fails to take the oath by that meeting, the applicant shall be denied the opportunity to become a Provisional member by adoption at that time and will be required to reapply for membership.

(B) **Provisional Membership by Adoption.** After taking the oath, the applicant shall be added to the membership roll as a Provisional Member by adoption. Provisionally adopted members shall be entitled to all of the rights and privileges of members of the Swinomish Indian Tribal Community during the five year period following the taking of the oath (“the provisionary period”) except:

- (1) the privilege of conferring upon non-descendant children born to the Provisional member a right to automatic membership in the Community pursuant to Art. II § 1 of the Swinomish Constitution and Section 6-01.100(A); and
- (2) those rights and privileges as are otherwise limited by this Chapter.

(C) **Duties and Responsibilities.** A Provisional Member by adoption shall:

- (1) provide at all times a current address and telephone number to the Enrollment Officer;
- (2) advise the Enrollment Officer immediately upon enrolling in another federally recognized tribe;
- (3) advise the Enrollment Officer immediately upon being convicted of an offense by any court of competent jurisdiction;
- (4) advise promptly the Enrollment Officer upon being dishonorably discharged from the United States Armed Forces; and
- (5) cooperate with the Enrollment Officer and/or Enrollment Committee in providing the information required by this Chapter.

*Previously Codified as 6-01.060

[History] Ord. 349 (8/11/15); Ord. 326 (7/9/13); Ord. 293 (7/7/11); Ord. 288 (5/10/11); Ord. 247 (3/21/06); Ord. 183 (9/30/03); Ord. 165 (4/1/03); Ord. 162 (9/10/02); Ord. 120 (8/19/96); Ord. 42 (4/2/85).

6-01.130 Petition for Membership by Adoption by Provisional Member.

- (A) **Who is Eligible?** If, after a period of five (5) years from the date that the Provisional member by adoption has taken the oath pursuant to Section 6-01.120(A), no action has been taken by the Senate pursuant to STC 6-01.140 to remove the Provisionally adopted member from the membership roll and terminate the Provisionally adopted member's rights and privileges of membership as set forth in Section 6-01.120(B), the Provisionally adopted member may petition the Senate to remove the provisional status and to become a member of the Swinomish Indian Tribal Community by adoption, provided, however, that until the Provisionally adopted member files a petition under this Section or a petition is filed on behalf of a child or ward, the Provisionally adopted member's status shall remain provisional and the Provisionally adopted member shall remain subject to removal from the membership rolls of the Tribe pursuant to STC 6-01.140.
- (B) **Petition.** The petition shall be in writing and shall be delivered to the Secretary of the Senate. A parent or legal guardian may submit a petition on behalf of his or her child or ward under the age of twenty-one (21). Within thirty (30) calendar days of receipt of the petition, the Senate shall schedule a hearing on the petition and provide written notice to the Provisionally adopted member of the date and time of the hearing. The Provisional member by adoption may continue to exercise all the rights and privileges of such members of the Swinomish Indian Tribal Community unless and until such time as the Senate denies the petition.
- (C) **Required Evidence and Burden of Proof.** Pursuant to the provisions of Section 6-01.110 and in furtherance of the compelling Tribal interest in adding to its membership only those persons of high moral character who are willing to uphold their oath of admission to tribal membership, and who have a strong commitment to participate in the affairs and improvement of the Swinomish Indian Tribal Community, a Provisional member by adoption making a petition under this Section shall demonstrate by clear and convincing evidence each of the following:
- (1) that he or she has abided by the oath taken pursuant to Section 6-01.120(A);
 - (2) that he or she has submitted to a criminal background check and the background check shows that the Provisionally adopted member not been convicted of a felony offense, sex offense, or an offense involving dishonesty under state, federal or tribal law in a court of competent jurisdiction in the period from the date of the oath to the date of the hearing;
 - (3) that he or she is in compliance with all court orders;
 - (4) that he or she is a United States citizen;
 - (5) that, absent extenuating circumstances, he or she, if eligible, has exercised his or her right to vote in Swinomish General Council elections and attended General Council meetings;

- (6) that, where applicable, he or she has not received a dishonorable discharge from the United States Armed Forces; and
 - (7) that he or she has not enrolled, or applied for membership, in another federally recognized tribe, in the period from the date of the application to the date of the hearing; and
 - (8) that he or she is an active participant in the affairs of the Swinomish Indian Tribal Community. Evidence that the person has not resided on or near the Reservation for a period of twenty-four (24) consecutive months during the five-year provisional period shall create a rebuttable presumption that the Provisional member by adoption is not an active participating member of the Community.
- (D) **Senate Action.** The Senate, with the advice and counsel of the Enrollment Committee, shall take one of the following actions:
- (1) If the Senate finds that the Provisional member by adoption has not made the showing required under Section 6-01.130(C), it shall deny the petition and direct the Enrollment Officer to remove the Provisionally adopted member's name from the membership roll; or
 - (2) If the Senate finds that the Provisional member by adoption has made the showing required under Section 6-01.130(C), it shall grant the petition and direct the Enrollment Officer to change the petitioner's membership status from a Provisionally adopted member to a member by adoption.
- (E) **Membership.** Individuals added to the membership roll as a Member by Adoption under this Section shall be entitled to all of the rights and privileges of members of the Swinomish Indian Tribal Community, except the privilege of conferring upon non-descendant children born to the adopted member a right to automatic membership in the Community pursuant to Art. II § 1 of the Swinomish Constitution and STC 6-01.100.

[History] Ord. 349 (8/11/15); Ord. 326 (7/9/13); Ord. 293 (7/7/11); Ord. 288 (5/10/11).

6-01.140 Removal of Provisional Membership by Adoption during Provisionary Period.

- (A) **Authority to Remove.** Pursuant to the provisions of this Section and in furtherance of the compelling Tribal interest in adding to its membership only those persons of high moral character who are willing to uphold their oath of admission to tribal membership, and who have a strong commitment to participate in the affairs and improvement of the Swinomish Indian Tribal Community, persons added to the membership roll as Provisional members by adoption under this Chapter may be removed from the membership roll by the Senate at any time prior to the filing of a

petition pursuant to Section 6-01.130 and thereby forfeit all rights and privileges of Provisional membership by adoption in the Swinomish Indian Tribal Community.

- (B) **Recommendation by Committee.** If the Enrollment Officer or a member of the Enrollment Committee has reason to believe that a Provisionally adopted member should be removed from the membership roll, the Enrollment Officer or the Committee member shall promptly raise this issue and shall provide each Committee member with all documentation in his or her possession which supports, or tends to contradict, his or her belief that the Provisionally adopted member's name should be removed from the membership roll. After review of the documentation and a full discussion of the Provisionally adopted member's suitability for membership by adoption, the Committee shall determine whether to recommend that the Senate remove the Provisionally Adopted member's name from the membership roll. A recommendation for removal shall be in writing and shall set forth the grounds for removal.
- (C) **Notice and Hearing.** The Senate may remove a Provisional member by adoption from the membership roll only after such person is given:
- (1) an opportunity to be heard and present evidence of why such membership should not be terminated at a hearing before the Senate; and
 - (2) written notice of the date and time of the hearing as well as the basis of the proposed termination of such membership at least forty-five (45) calendar days prior to the Senate hearing.
- (D) **Grounds for Removal.** Following the hearing specified in subsection (C) of this Section, the Senate, with the advice and counsel of the Enrollment Committee, shall direct the Enrollment Officer to remove the Provisional member by adoption from the membership roll if the Senate makes any one of the following determinations:
- (1) that the Provisionally adopted member has failed to abide by the oath taken pursuant to Section 6-01.120(A);
 - (2) that a material misrepresentation was made by the Provisionally adopted member in his or her application for membership filed pursuant to Section 6-01.110(B);
 - (3) that the Provisionally adopted member has been convicted of a felony offense, a sex offense, or an offense involving dishonesty under state, federal or tribal law in a court of competent jurisdiction in the period from the date of the application to the date of the hearing;
 - (4) that the Provisionally adopted member is no longer a United States citizen;
 - (5) that, absent extenuating circumstances, the Provisionally adopted member has not exercised his or her right to vote in General Council elections or attended

General Council meetings;

- (6) that the Provisionally adopted member has received a dishonorable discharge from the United States Armed Forces;
- (7) that the Provisionally adopted member is not an active participant in the affairs of the Swinomish Indian Tribal Community. Evidence that the person has not resided on or near the Reservation for a period of twenty-four (24) consecutive months during the five-year provisional period shall create a rebuttable presumption that the Provisionally adopted member is not an active participating member of the Community; or
- (8) that the Provisionally adopted member has enrolled in another federally recognized tribe.

*Previously Codified as 6-01.070

[History] Ord. 349 (8/11/15); Ord. 326 (7/9/13); Ord. 288 (5/10/11); Ord. 183 (9/30/03); Ord. 165 (4/1/03); Ord. 162 (9/10/02); Ord. 120 (8/19/96); Ord. 42 (4/2/85); Ord. 42 (revised) (5/23/80).

6-01.150 Dual Enrollment.

(A) Dual Enrollment Prohibited.

(1) Members.

(a) Any Swinomish tribal member who becomes a member in another federally recognized Indian tribe; or

(b) Any Swinomish tribal member who applied for Swinomish membership on or after May 23, 1980 and who

(i) became a member in another Indian tribe after May 23, 1980;

or

(ii) if already a member of another tribe, failed to relinquish his or her membership in such tribe upon becoming a member in the Swinomish Indian Tribal Community;

shall be deemed to have abandoned his or her membership in the Swinomish Indian Tribal Community, shall be dis-enrolled by resolution of the Senate pursuant to Section 6-01.160 and, upon disenrollment, shall be removed from the membership roll of the Swinomish Indian Tribal Community.

(2) Applicants.

(a) **Membership in Another Federally Recognized Tribe.** No applicant for membership in the Swinomish Indian Tribal Community shall be enrolled in any other Indian federally recognized tribe. Applications for membership

shall be rejected unless the applicant relinquishes his or her membership in such other tribe, Provided that relinquishment from the other tribe may be conditioned upon acceptance for membership in the Swinomish Indian Tribal Community.

(3) **Children.** Any child of a Swinomish member who is found to be dually enrolled by virtue of his or her membership in another federally recognized tribe shall not be disenrolled during the age of minority. However, upon reaching the age of twenty-one (21), the child shall have thirty (30) days in which to notify in writing the other tribe of his or her relinquishment in the other tribe. If he or she does not relinquish his or her membership in the other tribe, he or she shall be deemed to have abandoned his or her membership in the Swinomish Indian Tribal Community, shall be dis-enrolled by resolution of the Senate pursuant to Section 6-01.160 and, upon disenrollment, shall be removed from the membership roll of the Swinomish Indian Tribal Community.

(B) **Proof of Dual Enrollment.**

(1) **Burden of Proof.**

- (a) The burden of proof of dual enrollment of members, other than provisional members by adoption, shall be on the Tribe.
- (b) The burden of proof of dual enrollment, or lack thereof, of applicants for membership or Provisional members by adoption shall be on the applicant or Provisional member by adoption.
- (c) In either case, the burden of proof shall be by a preponderance of the evidence.

(2) **Evidence.** Dual enrollment shall be established by:

- (a) written records or documentation from another federally recognized tribe confirming the enrollment of the person in said tribe;
- (b) written acknowledgement of dual enrollment by the person believed to be dually enrolled;
- (c) documentary proof of the receipt of membership benefits from another federally recognized tribe by the person believed to be dually enrolled; and/or
- (d) any other record or document that has equivalent circumstantial guarantees of trustworthiness.

- (3) **Failure to Provide Release of Information—Deemed Dually Enrolled.** Any member who is reasonably suspected of being dually enrolled and who fails to provide a release of information upon request of the Enrollment Officer to enable the Enrollment Officer to obtain information on the member's suspected dual enrollment shall be deemed to be dually enrolled and no further proof shall be required, provided that the Enrollment Officer has advised the member that a failure to provide the release will result in disenrollment from the Tribe.

(C) **Procedure.**

(1) **Discovery of Suspected Dual Enrollment.**

- (a) **Duty of Enrollment Officer.** Upon reasonably suspecting that a member or applicant for membership may be enrolled in another federally recognized tribe, the Enrollment Officer shall notify the Enrollment Committee and provide the Committee with copies of all documents pertinent to the individual's membership or application for membership in the Swinomish Indian Tribal Community and enrollment in the other tribe at the meeting following the date on which dual enrollment is discovered,
 - (b) **Duty of Committee and Election Board Members.** Upon reasonably suspecting that a member or applicant for membership may be enrolled in another federally recognized tribe, the Enrollment Committee or Election Board member shall promptly notify the Enrollment Officer and provide the Enrollment Officer with copies of any documents pertinent to the individual member or applicant's suspected enrollment in another federally recognized tribe. The Enrollment Officer shall notify remaining members of the Enrollment Committee and provide them with copies of the documents pertinent to the individual's membership or application for enrollment in the Swinomish Indian Tribal Community and membership in the other federally recognized tribe at the meeting following the date on which dual enrollment is discovered.
- (2) **Determination of Dual Enrollment.** The Enrollment Committee shall review all information and documents pertinent to the individual's membership or application for membership in the Swinomish Indian Tribal Community and membership in another federally recognized tribe and determine if the member is dually enrolled or if the applicant for enrollment would be dually enrolled upon acceptance into the Swinomish Indian Tribal Community. In making its determination, the Committee shall be guided by the factors set forth in Section 6-01.150(B).

- (3) **Notice after Determination.** If the Committee finds that a member is dually enrolled or that an applicant for membership would be dually enrolled upon acceptance in the Swinomish Indian Tribal Community, the Committee shall direct the Enrollment Officer to send notice to the member or applicant,
- (a) advising him or her of the Committee's finding;
 - (b) advising him or her of the evidentiary or documentary basis for the finding; and
 - (c) requesting the member or applicant to relinquish his or her membership in the other federally recognized tribe and to provide proof of relinquishment to the Enrollment Officer within thirty (30) calendar days from the date on which the letter was sent, unless extended for good cause by the Committee, provided, however, that for an applicant, relinquishment of membership in the other tribe may be conditioned upon acceptance for membership in the Swinomish Indian Tribal Community.
- (4) **Proof of Relinquishment from Other Federally Recognized Tribe.** Relinquishment from another tribe shall be demonstrated by:
- (a) a notarized written relinquishment request signed by the member or applicant for membership; and
 - (b) either
 - (i) a signed document on the letterhead of the other federally recognized tribe stating that membership in the other tribe has been relinquished and the date on which the relinquishment was or will become effective; or
 - (ii) a signed resolution stating that membership in the other federally recognized tribe has been relinquished and the date on which the relinquishment was or will become effective, if such resolution is adopted as a matter of course by the council of the other tribe.
- (5) **Transmission.** Proof of relinquishment may be delivered by facsimile or electronic transmission to the Enrollment Office.
- (6) **Committee Recommendation to Senate.** If notice of the Enrollment Committee's finding is sent pursuant to subsection 3 of this Section and proof of relinquishment of membership in another federally recognized tribe is not received in accordance with subsection 4 of this Section, the Enrollment Officer shall advise the Enrollment Committee at the next meeting following

the date by which the time for submitting proof of relinquishment has expired. The Enrollment Committee shall then take the following actions:

- (a) **Applicants:**
 - (i) deny the application for membership if the dual enrollment is based upon membership in another federally recognized tribe; or
 - (b) **Members:** recommend to the Senate in writing that the member be dis-enrolled and removed from the membership roll. The recommendation shall include the basis for the recommendation.
- (7) **Notice to Members After Recommendation.** If the person believed to be dually enrolled is a member, the Enrollment Committee shall advise the member that
- (a) he or she has the right to a hearing before the Senate on the issue of dual enrollment;
 - (b) at the hearing, he or she will be given an opportunity to be heard and present evidence of why he or she should not be dis-enrolled; and
 - (c) the date and time of the hearing, which the Enrollment Officer shall have obtained from the Senate, which date shall be no sooner than forty-five (45) days from the date of the notice.

*Previously Codified as 6-01.080

[History] Ord. 349 (8/11/15); Ord. 326 (7/9/13); Ord. 293 (7/7/11); Ord. 289 (5/26/11); Ord. 288 (5/10/11); Ord. 247 (3/21/06); Ord. 183 (9/30/03); Ord. 165 (4/1/03); Ord. 162 (9/10/02); Ord. 120 (8/19/96); Ord. 42 (4/2/85); Ord. 42 (revised) (5/23/80).

6-01.160 Disenrollment of Members.

- (A) **Disenrollment.** Disenrollment shall be taken by the Senate only after the procedures set forth in STC 6-01.150 are followed and after such member is given notice of his or her right to a hearing before the Senate on the issue of dual enrollment.
- (B) **Senate Hearing.** The hearing before the Senate shall take place no sooner than forty-five (45) calendar days from the date of the notice sent pursuant to STC 6-01.150(C)(7).
- (C) **Senate Action.**

- (1) If after a hearing pursuant to this Section, the Senate finds that the member suspected of being duly enrolled is in fact dually enrolled, the Senate shall adopt a resolution, as follows:
 - (a) dis-enrolling the member ; and
 - (b) directing the Enrollment Officer to
 - (i) remove the person’s name from the membership roll;
 - (ii) revoke the person’s Tribal Identification Card;
 - (iii) notify the Bureau of Indian Affairs and the tribal staff that the person is no longer a member of the Tribe; and
 - (iv) notify the person in writing of the Senate’s decision;
 - (c) directing the Fisheries and Game Managers to revoke any cards and permits issued under STC Title 18 – Natural Resources then in effect for the person; and
 - (d) directing the individual to surrender his/her tribal identification card, and any cards and permits issued under STC Title 18 – Natural Resources to the Secretary of the Senate at the time of the appearance.
- (2) If the individual suspected of being dually enrolled fails to appear at the hearing without good cause and the Senate has reviewed the Committee’s recommendation (including the basis for the recommendation), the Senate may adopt a resolution dis-enrolling the member.

(D) **Effective Date of Disenrollment.** The disenrollment shall be final and effective on the date the resolution is adopted by the Senate.

*Previously Codified as 6-01.085

[History] Ord. 349 (8/11/15); Ord. 326 (7/9/13); Ord. 288 (5/10/11); Ord. 247 (3/7/06).

6-01.170 Relinquishment of Swinomish Membership.

- (A) **Adult Members.** Any member twenty-one (21) years of age or older who wishes to relinquish his or her membership in the Tribe may do so through the following steps:
 - (1) **Application.** The member shall complete an application for relinquishment, which may be obtained from the Enrollment Office, and shall provide the Enrollment Office with current contact information. If the member is relinquishing his or her membership to join another federally recognized tribe and he or she desires such relinquishment to be conditional upon acceptance

into the other tribe, the member shall request on the relinquishment application that his or her relinquishment be conditional upon acceptance into such other tribe, and such request shall be honored by the Tribe.

(2) **Duty of Enrollment Officer.** The Enrollment Officer shall provide a copy of the completed relinquishment application to the Senate at the next regularly scheduled meeting following the date of the application and shall send notice to the member seeking to relinquish pursuant to Section 6-01.170(A)(4).

(3) **Appearance before the Senate.**

(a) **Notice.** Upon receipt of a completed relinquishment application, the Enrollment Officer shall send a written notice to the member advising him or her that in order for the relinquishment to go forward the member must

(i) schedule an appearance before the Senate;

(ii) surrender his/her tribal identification card and any cards and permits issued under STC Title 18—Natural Resources to the Secretary of the Senate at the time of the appearance;

(iii) pay all of his or her outstanding obligations owed to the Tribe, unless waived, in whole or in part, by the Senate; and

(iv) have fully complied with (or be in compliance with) all tribal court orders.

(b) **Hearing.** At the hearing,

(i) the member must:

a. explain the reasons for seeking relinquishment and if the member is indebted to the Tribe and unable to pay his or her obligations, the reasons why the Senate should approve the application in the absence of full payment of the obligations;

b. hear the Senate's explanation of the consequences of relinquishment under Swinomish and federal law in existence at the time of the hearing, including but not limited to the loss of benefits under those laws and the permanent nature of the relinquishment; the Senate shall specifically advise the member that upon relinquishment he or she will lose the privilege of being buried at Swinomish;

- c. at the conclusion of the appearance, inform the Senate whether he or she wishes to go forward with relinquishment and whether the relinquishment should be made final at that time or conditional upon the member being accepted into another federally recognized tribe; and
 - d. if the member wishes to go forward with the relinquishment, surrender his/her tribal identification card and any cards and permits issued under STC Title 18—Natural Resources to the Secretary of the Senate at the time of the appearance and pay any outstanding obligations owed to the Tribe, unless waived, in whole or in part, by the Senate.
- (ii) In determining whether to waive, in whole or in part, the member's outstanding tribal obligations, the Senate shall consider:
 - a. the total amount owed;
 - b. the type of obligation(s) owed;
 - c. whether the member is employed;
 - d. whether the member is willing to voluntarily sign a consent to garnishment;
 - e. whether the member is willing to sign over to the Tribe any portion of the annual fish withholding owed under STC Chapter 18-03;
 - f. whether the member is willing and able to perform community service in lieu of payment of any portion of the obligation(s) owed; and
 - g. any other relevant factors.
- (c) **Senate Action.** If the member still desires to relinquish his or her Swinomish membership at the conclusion of the appearance, the Senate shall adopt a resolution
 - (i) relinquishing the person's membership, conditioned upon the member surrendering his/her tribal identification card and any cards and permits issued under STC Title 18—Natural Resources and paying any outstanding obligations to the Tribe, unless waived, in whole or in part, by the Senate;

- (ii) directing the Enrollment Officer to remove the person's name from the membership roll, notify the Bureau of Indian Affairs and tribal staff that the person is no longer a member of the Tribe, and provide a copy of the resolution to the person relinquishing membership in the Tribe;
- (iii) directing the Fisheries and Game Managers to revoke any cards and permits issued under STC Title 18—Natural Resources then in effect for the member; and
- (iv) directing the individual to surrender his/her tribal identification card and any cards and permits issued under STC Title 18 – Natural Resources to the Secretary of the Senate.

(B) **Relinquishment of a Child.** The custodial parent(s) of an enrolled member under the age of twenty-one (21) may apply for relinquishment of such child's membership. Such application shall include a showing that the child is eligible for enrollment in another federally recognized tribe, and that the parent(s) of the child have applied to enroll the child in such other tribe. When the parent(s) have made the required showing, the application shall be conditionally granted, pending the child's acceptance into the other federally recognized tribe, provided that any child whose membership in the Tribe was relinquished pursuant to this section shall not be precluded from reapplying for membership in the Tribe upon reaching the age of twenty-one (21) pursuant to STC 6-01.180 and further provided that the parent(s) and child hear the Senate's explanation of the consequences of relinquishment under Swinomish and federal law in existence at the time of the hearing, including but not limited to the loss of benefits under those laws.

(C) **Effective Date of Relinquishment.** The relinquishment will be final and effective on the date

- (1) the resolution is adopted by the Senate unless the member or the custodial parent(s) of a member has requested that relinquishment be conditional upon his or her acceptance into another federally recognized tribe in which case the relinquishment will be final and effective on the date that the person is accepted into the other tribe; or
- (2) the member satisfies his outstanding obligations to the Tribe as set forth in the resolution, surrenders his/her Tribal Identification card and any cards and permits issued under STC Title 18 – Natural Resources to the Secretary of the Senate, and complies with all outstanding Tribal court orders.

[History] Ord. 349 (8/11/15); Ord. 326 (7/9/13); Ord. 293 (7/7/11); Ord. 288 (5/10/11); Ord. 247 (3/7/06); Ord. 162 (9/10/02).

6-01.180 Former Members whose Memberships Were Terminated as Children.

Any former member whose membership in the Swinomish Indian Tribal Community was terminated as a child shall be entitled, within eighteen (18) months of reaching the age of twenty-one, to reapply for membership under the membership provisions that existed at the time that he or she initially enrolled. If there is a dispute as to when the former member was initially enrolled or what membership provisions were in place at that time, the former member shall have the burden of proof as to these issues. If that burden is not met by the former member, then the ordinance in place on the date the application is made shall apply. After the eighteen-month period expires, the former member shall be entitled to apply under the membership provisions in place on the date the application is made, and his or her prior termination as a member shall not pose any handicap to such membership application.

*Previously Codified as 6-01.055

[History] Ord. 293 (7/7/11); Ord. 288 (5/10/11); Ord. 247 (3/7/2006). .

6-01.190 Tribal Identification Cards.

- (A) **Identification Cards Authorized.** At the direction of the Enrollment Committee, the Enrollment Officer is authorized to issue Tribal Identification Cards to members, including Provisional members by adoption, of the Swinomish Indian Tribal Community. Such a card shall remain the property of the Swinomish Indian Tribal Community and shall be proof, for all purposes, that the person to whom the card is issued is a duly enrolled tribal member entitled to exercise all rights and privileges of membership in the Swinomish Indian Tribal Community, including those reserved by the Treaty of Point Elliott, 12 Stat. 927, except as limited by this Chapter.
- (B) **Off-Reservation Treaty Fishing Cards.** The Tribal Identification Card shall serve as the tribally issued Off-Reservation Treaty Fishing Card provided for in 25 CFR 249.3.
- (C) **Content of Identification Card.**
 - (1) **Front.** On the front of each Tribal Identification Card shall appear the card's expiration date and the member's:
 - (a) photograph;
 - (b) enrollment number;
 - (c) permanent address;
 - (d) date of birth;
 - (e) Off-Reservation Treaty Fishing Card number, if any;

- (f) sex;
- (g) eye color;
- (h) hair color;
- (i) weight;
- (j) height; and
- (k) signature of member unless the member is less than eight (8) years of age.

The Tribal Identification Card may include such other information as the Tribe determines necessary.

- (2) **Back.** The following language shall appear on the back of all cards issued after the effective date of this Chapter:

Property of the Swinomish Indian Tribal Community
11404 Moorage Way, LaConner WA 98257

This is to certify that the official records of the Swinomish Indian Tribal Community confirm that the person whose signature and photograph appear on the front of this card is an enrolled member of the Swinomish Indian Tribal Community, as provided by Article II of its Constitution, and is entitled to all of the rights and privileges pertaining thereto, inc. those reserved by the Treaty of Point Elliott, 12 Stat. 927, unless such rights and privileges have been suspended, revoked or limited under Swinomish law.

Tribal Enrollment Officer

Issued pursuant to STC 6-01.190 and 25 CFR 249.3. Civil or criminal penalties for alteration or unauthorized use or possession. STC 6-01.240 and STC 18-03.040.

- (D) **Expiration Date.** All Tribal Identification Cards shall expire five (5) years from issuance on the month and day of birth of the member to whom the card is issued.
- (E) **Surrender of All Tribal Identification.** Upon relinquishment or disenrollment, the departing member shall surrender his or her Tribal Identification Card to the Secretary of the Senate pursuant to Sections 6-01.160 and .170.

- (F) **Revocation of Tribal Identification Card.** Upon relinquishment or disenrollment, the Senate shall direct the Enrollment Officer to revoke the Tribal Identification Card.
- (G) **Reporting Lost or Stolen Identification Cards; Replacement.** If a member's Tribal Identification Card is lost or stolen, the member shall immediately report the loss or theft to the Tribe's Enrollment Officer and the Swinomish Tribal Police. The Enrollment Officer shall issue a replacement card, provided that a member whose Tribal Identification Card has been lost shall be required to pay a fee of ten dollars (\$10.00) for a replacement card.
- (H) **Change of Circumstances: Replacement.** If a member changes his or her address or name, the member shall immediately report the change to the Enrollment Officer. A member who has reported the change of address or name to the Enrollment Officer shall be issued a replacement card at no charge, Provided that the original card is returned to the Enrollment Officer.
- (I) **Identification Cards for Minors.** For a child member, a tribal identification card shall be issued by the Enrollment Officer to the parent(s) free of charge.

* Previously codified as STC 6-01.090

[History] Ord. 326 (7/9/13); Ord. 288 (5/10/11); Ord. 214 (1/6/04); Ord. 197 (11/5/03); Ord. 183 (9/30/03); Ord. 162 (9/10/02).

6-01.200 Abolition of Associate Membership.

The status of “Associate Membership” created in prior tribal law is hereby abolished; provided that any person granted the status of Associate Member pursuant to Ordinance 33 or amendments thereto enacted by the Senate shall retain all rights, duties, privileges and restrictions established by Ordinance 33 or amendments thereto subject to all terms and conditions expressed in these Ordinances.

* Previously codified as STC 6-01.100

[History] Ord. 183 (9/30/03).

6-01.210 Benefits of Tribal Membership

Unless otherwise forfeited or limited by Swinomish or federal law, a member of the Swinomish Indian Tribal Community is entitled to all benefits available under tribal and federal law including, but not limited to,

- (A) those benefits attributable to the Tribe’s treaty fishing, hunting, and gathering rights; and

- (B) burial benefits, cemetery plot, health benefits, education benefits, child care benefits and senior benefits, provided funding is available.

[History] Ord. 288 (5/10/11).

Subchapter IV - Appeals

6-01.220 Appeals to Senate.

A person aggrieved by a decision of the Enrollment Officer or Enrollment Committee concerning the person's membership or application for membership may appeal the decision to the Senate within forty-five (45) calendar days from the date of the decision. An appellant may only appeal the decision once, and such appeal is the sole and exclusive means of challenging the decision. The appeal shall be in writing and shall specify the grounds on which the challenge is based. Such appellant shall be granted a hearing, with at least thirty (30) calendar days notice, at which he or she may explain the basis of the challenge and present evidence to support the challenge. After the hearing, the Senate shall render a decision and notify the appellant of the decision and the basis therefore, including the provisions of the Swinomish Tribal Code on which the decision is based.

[History] Ord. 288 (5/10/11).

6-01.230 No Appeal from Senate Decision.

In furtherance of the compelling Tribal interest in regulating its own membership, increasing the health, welfare, economic security, and political integrity of the Community, and maintaining the Community's existence as an independent political community, all decisions of the Senate under this Chapter are final and no person has the right to appeal such decisions to the Tribal Court or any other court.

[History] Ord. 288 (5/10/11).

Subchapter V – Criminal Offenses

6-01.240 Misuse of Tribal Identification Cards.

- (A) It shall be a violation of this Chapter:
 - (1) for any tribal member to transfer to another person (other than a parent or guardian) or to allow another person (other than a parent or guardian) to possess or use the tribal member's Tribal Identification Card;
 - (2) for any tribal member (other than a parent or guardian) to possess, use or transfer to a third person another member's Tribal Identification Card;

- (3) for any non-member to possess, use or transfer to another person any Tribal Identification Card; or
 - (4) to alter a Tribal Identification Card or to possess an altered Tribal Identification Card.
- (B) **Penalties for Misuse.** In accordance with 25 CFR 249.6(b), the misuse of the Tribal Identification Card shall be subject to the terms and provisions of this Chapter and Chapter 18-03 rather than the penalties provided for by 25 CFR 249.6.
- (1) **Criminal Penalties for Misuse.** Any person subject to the criminal jurisdiction of the Tribe who violates this Section shall be guilty of a **Class C offense** for the first violation, and a **Class B offense** for the second and subsequent violations, and shall be fined and/or sentenced to jail or community service as provided in STC Title 4 -- Criminal Code for those level of offenses.
 - (2) **Civil Penalties for Misuse.** Any person not subject to the criminal jurisdiction of the Tribe who violates this Section shall be subject to a civil penalty of not more than five hundred dollars (\$500.00) for the first violation and not more than two thousand five hundred dollars (\$2,500.00) for the second and subsequent violations.
- (C) **Additional Penalties contained in Natural Resources Code.** In addition to the penalties established in this Chapter, any member who violates this Section during the exercise of treaty rights shall be subject to the loss of fishing, hunting or gathering privileges under Title 18, the Natural Resources Code.

[History] Ord. 288 (5/10/11); Ord. 214 (1/6/04); Ord. 197 (11/5/03); Ord. 183 (9/30/03); Ord. 162 (9/10/02).

6-01.245 Failure to Surrender Tribal Identification Cards.

- (A) It shall be a violation of this Chapter for any member who has either been disenrolled or whose membership has been relinquished to fail to surrender his or her Tribal Identification Card and any permits issued pursuant to his or her membership status.
- (B) **Penalties for Misuse.**
- (1) **Criminal Penalties for Misuse.** Any person subject to the criminal jurisdiction of the Tribe who violates this Section shall be guilty of a **Class C offense** for the first violation, and a **Class B offense** for the second and subsequent violations, and shall be fined and/or sentenced to jail or community service as provided in STC Title 4 -- Criminal Code for those level of offenses.

- (2) **Civil Penalties for Misuse.** Any person not subject to the criminal jurisdiction of the Tribe who violates this Section shall be subject to a civil penalty of not more than five hundred dollars (\$500.00) for the first violation and not more than two thousand five hundred dollars (\$2,500.00) for the second and subsequent violations.

[History] Ord. 349 (8/11/15).

6-01.250 Violations by Tribal Officials.

If any tribal official, employee, agent or representative:

- (A) Willfully neglects or refuses to perform such duty in the manner required by this Chapter; or
- (B) Enters, or causes or permits to be entered, on the membership roll the name of any person in a manner or at a time other than as prescribed by this Chapter, or enters, or causes or permits to be entered, on or fails to remove from, such roll the name of any person not entitled to be a member; or
- (C) Destroys, mutilates, conceals, changes, or alters any application, documentation in support of any application, documentation refuting any statement in an application, or any other document pertinent to membership in the Tribe, except as authorized by this Chapter, or
- (D) Issues a tribal identification card to a person who is not a member of the Tribe,

he or she is guilty of a Class C Offense punishable to the same extent as a Class C Offense punishable under STC 4-12.020(C).

[History] Ord. 288 (5/10/11).

Subchapter VI – Repealer, Severability and Effective Date

6-01.260 Repealer.

This Chapter repeals and supersedes Ordinance 247, except as provided below in STC 6-01.280.

[History] Ord. 288 (5/10/11); Ord. 247 (3/21/06); Ord. 183 (9/30/03); Ord. 165 (4/1/03); Ord. 162 (9/10/02); Ord. 120 (8/19/96); Ord. 42 (4/2/85).

6-01.270 Severability.

If any provision of this Chapter or its application to any person or circumstances is held invalid, the remainder of the Chapter, or the application of the provision to other persons or

circumstances is not affected and to this end the provisions of this Title are declared to be severable.

[History] Ord. 183 (9/30/03).

6-01.280 Effective Date.

This Chapter, as amended, shall become effective immediately upon approval by the Senate. However, notwithstanding STC 6-01.260, the amendments to Ordinances 247 and 183 adopted in Ordinance 288 relating to provisional membership, namely those provisions set forth in Section 6-01.130, shall not apply to any person who has been placed on the membership roll as a Provisional or a member by adoption prior to the effective date of Ordinance 288.

[History] Ord. 349 (8/11/15); Ord. 326 (7/9/13); Ord. 288 (5/10/11).

[Ed. Note. The following are the relevant provisions of Ordinance 33 regarding the rights, duties, privileges and restrictions of Associate members as established in Ordinance 33.]

I REQUIREMENTS

1. No person shall possess any rights, privileges, or duties of Associate membership in the Swinomish Indian Tribal Community, except as provided herein.
2. The applicant must submit an application in writing to the Swinomish Indian Senate.
3. The applicant shall demonstrate that he or she has a minimum of one-quarter Indian blood of one or more of the four (4) aboriginal tribes: Swinomish, Kikiallus, Lower Skagit, or Samish.
 - a. Or, the applicant must be able to demonstrate that he or she has been domiciled on the Swinomish Indian Reservation for a period of at least five (5) consecutive years and has a minimum of 1/4 Indian blood of an American Indian tribe or tribes. Domicile is defined as that place where a person has his true, fixed and permanent home and principal establishment, and to which whenever he or she is absent he or she has the intention of returning.
4. In either case, 3 or 3.a., the applicant must be a citizen of the United States and must demonstrate his or her eligibility, pursuant to 3. or 3.a. herein, by obtaining proof of blood degree quantum and descendency from the Bureau of Indian Affairs.
5. The applicant shall not be an enrolled member of any other recognized Indian Nation, tribe, band, or group or hold any permit to fish with or possess any fishing rights with any other Indian entity.
6. The applicant must not be married to a person holding a permit to fish with or possessing any fishing rights with any other Indian entity.

If an Indian is found to have met all the above requirements by the Swinomish Indian Senate, or lawful designee thereof, the following procedure shall be followed to place the applicant on the Associate Membership rolls.

II. PROCEDURE

1. The applicant shall pay a \$5.00 fee to obtain a Swinomish Indian Tribal Community Associate Membership card. Said membership and card shall be renewed annually by the payment of the same fee, subject to change by the Swinomish Indian Senate. The card shall contain a photograph of the Associate member.

An Associate Member of the Swinomish Indian Tribal Community shall enjoy and be subject to the following rights, duties, privileges and restrictions:

III. RIGHTS, DUTIES, PRIVILEGES, AND RESTRICTIONS:

1. An Associate Member shall have no rights, duties, privileges or restriction in the Swinomish Indian Tribal Community, except as provided herein.
2. The Associate Member shall enjoy the privilege of fishing with the Swinomish Indian Tribal Community subject to the following restrictions.
3. No Associate Member shall fish under the authority of the Swinomish Indian Tribal Community without personal possession of an Associate Membership fishing permit and Associate Membership card. Personal possession shall mean that the Associate Member shall have possession of said permit and card on his or her person at all times he or she is fishing pursuant to this ordinance.
4. The permit entitles the holder to fish only in those areas designated on the face of the permit. In no other case shall a permit allow an Associate Member to fish within the waters of the Swinomish Indian Reservation, in the restricted primary exclusive areas of the Swinomish Indian Tribal Community, on in Skagit River or Skagit Bay.
5. Permittees fish pursuant to Ordinance No. 31 of the Swinomish Indian Tribal Community, insofar as it is applicable. Any violation of this ordinance or Ordinance No. 31 is deemed an offense and is punishable in the Court of the Swinomish Indian Tribal Community, as provided in the penalty sections of Ordinance No. 31 of the Swinomish Indian Tribal Community, except as otherwise provided herein.
6. All fish caught by a permittee and sold commercially shall be sold to the Fish Plant of the Swinomish Indian Tribal Community. Failure to do so, without good reason, is grounds for immediate perpetual revocation of permittee's Associate Membership status, by the Swinomish Indian Senate. Upon due notice and a fair hearing, the decision of the Senate shall be final.
7. Associate members shall pay the same fish tax to the Swinomish Indian Tribal Community required of all Swinomish Indian Tribal Community fishermen and fisherwomen. Failures to do so shall result in the suspension of all fishing privileges until said tax is paid in full. Failure to pay back taxes within three months from due date shall result in the revocation of Associate Membership status.
8. Associate Members are not entitled to share in any other right or benefit of the Swinomish Indian Tribal Community.
9. An Associate Member shall not be an enrolled member of any other recognized Indian Nation, tribe, band, or group or hold any permit to fish with or possess any fishing rights with any other Indian entity.

[History] Ord. 33 (7/13/76).