

## TITLE 11. COMMERCE

### Chapter 11.4

#### PORT MADISON ENTERPRISES CHARTER

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**11.4.1. Title.** The title of this chapter shall be “Port Madison Enterprises Charter.”  
(Passed Nov. 16, 1987)

**11.4.2. Findings.** (a) As stated in the Preamble of the Constitution and Bylaws of the Suquamish Tribe, the people of the Suquamish Indian Tribe established a tribal government, among other reasons, in order to develop their community resources and promote their economic and social welfare.

(b) The tribal government organized in 1965 has been and remains almost entirely dependent for its operation on funding provided by agencies of the United

States Government. Nearly all the health, social, educational, and other services available to members of the Suquamish Tribe are funded by the federal and state governments rather than by the tribal government. This dependence on outside funding imposes substantial limits on self-government and frustrates efforts to improve the economic and social welfare of the members of the Tribe.

(c) The economic and social conditions of the Suquamish people remain significantly worse than those of the general population of Washington State. An unacceptable proportion of the members of the Tribe are unemployed, underemployed, or living in poverty.

(d) Among the community resources which could be developed for the benefit of all members of the Suquamish Tribe are: land; the labor power, skills, ingenuity, and determination of the Suquamish people; the location of the Port Madison Indian Reservation in an area with a growing population; and the power of self-government. The Suquamish Tribal Council seeks to develop these community resources in a way which both generates new tribal resources and provides opportunities for tribal members to improve their standard of living. The Council finds that these goals can best be met by the establishment of a branch or agency of the tribal government which has the power and responsibility to generate income and create jobs by engaging in commercial activities.

(e) The Suquamish Tribal Council has authority to enact this chapter pursuant to the Constitution and Bylaws of the Suquamish Tribe, Article III, Section 1 (a), (b), (c), (f), and (i). (Passed Nov. 16, 1987)

**11.4.3. Purpose.** This chapter establishes an agency of the Suquamish tribal government, separate from other branches of the tribal government but accountable to the Tribe's governing body, with the power and duty to engage in commercial activities, such as the sale of goods and services to the public. The Tribe adopts the chapter in order to achieve the following goals:

(a) To generate revenue for the tribal government, thereby simultaneously reducing the tribal government's dependence on outside funding sources and providing needed services to members of the tribal community;

(b) To make possible the use and development of Suquamish community resources in a way which both ensures their preservation and promotes their use to generate additional community resources; and

(c) To increase employment, training, and other economic opportunities for members of the Suquamish tribal community. (Passed Nov. 16, 1987)

**11.4.4. Definitions.** When used in this chapter, the following words have the following meanings:

(a) “Board” or “board of directors” refers to the board of directors of Port Madison Enterprises.

(b) “Commercial activity” means activity involving the purchase and sale of goods or services in the regular course of a business whose purpose is primarily to produce profit.

(c) “Port Madison Enterprises” or “Enterprises” means the branch of the Suquamish Tribe created by this charter, including all subsidiaries and subdivisions governed by the board of directors.

(d) “Tribe” or “tribal” refers to the Suquamish Indian Tribe. (Passed Nov. 16, 1987; amended and renumbered by Res. 2008-192 (part), passed Dec. 1, 2008)

**11.4.5. Creation of Port Madison Enterprises.** There shall be a branch of the Suquamish Tribe known as Port Madison Enterprises, which shall have responsibility for all commercial activities undertaken by the tribal government, except as specific activities may be committed to other entities by ordinance. (Passed Nov. 16, 1987)

**11.4.6. Place of Business.** The headquarters and principal place of business of Port Madison Enterprises shall be on the Port Madison Indian Reservation, and its business address shall be 15347 Suquamish Way NE, Suquamish, Washington 98392 or at such other location within the Port Madison Indian Reservation as the board shall determine. (Passed Nov. 16, 1987; amended by Res. 2008-192 (part), passed Dec. 1, 2008)

**11.4.7. Powers of Port Madison Enterprises.** Subject to the limitations and conditions set out in following sections of this chapter, Port Madison Enterprises shall have the power in its own name:

(a) To acquire, lease, manage, encumber, and dispose of property;

(b) To hire and discharge employees and to contract for personal or professional services;

(c) To sue and be sued;

(d) To borrow and lend money and other personal property;

(e) To enter into contracts;

(f) To operate the Suquamish Tribal Liquor Enterprises;

(g) To operate the Suquamish Clearwater Casino Resort and all other gaming enterprises;

(h) To establish new commercial ventures governed by the board of directors;  
and

(i) To engage in activities and take actions necessary for carrying out these powers and any other powers conferred on it by the Suquamish Tribal Council. (Passed Nov. 16, 1987; amended and renumbered by Res. 2008-192 (part), passed Dec. 1, 2008)

**11.4.8. Board of Directors.** (a) The operations of Port Madison Enterprises shall be directed by a board which shall be composed of seven (7) persons appointed by the Tribal Council as regular board members and one (1) person appointed by the Tribal Council as an alternate board member.

(b) After the first directors' terms have expired, each member of the board shall serve for three (3) years beginning on the first day of January. In order to stagger the board members' terms, two (2) members of the first board shall be appointed to four-year terms, one (1) member shall be appointed to a three-year term, one (1) member shall be appointed to a two-year term, and one (1) member shall be appointed to a one-year term. The terms of the first board members shall be deemed to begin on October 1, 1987. If the size of the board is expanded by Council action, the Council shall designate the length of term to be served by any additional members in a manner which ensures that the terms of all board members are staggered.

(c) At least one (1) seat on the board shall at all times be held by a member of the Tribal Council; that seat shall be designated as the Tribal Council liaison seat. The Tribal Council liaison seat may be reassigned to another member of the Tribal Council at any time at the Tribal Council's sole and absolute discretion regardless of whether the seat is up for reappointment or not. At least three (3) of the remaining board members shall be members of the Suquamish Tribe eligible to vote in tribal elections. The Tribal Council shall appoint people to the board who have an interest and/or experience in commercial activities and the education, judgment, integrity, and commitment to manage a business.

(d) The Tribal Council may appoint one (1) alternate board member to serve a one-year term. Such alternate shall have the same qualifications as regular board members. Any person may be appointed by the Tribal Council to serve as an alternate board member for successive one-year terms. (Passed Nov. 16, 1987; amended by Res. 91-108, passed Nov. 25, 1991; amended by Res. 97-123 (part), passed Dec. 8, 1997; amended by Res. 2008-192 (part), passed Dec. 1, 2008)

**11.4.9. Removal of Directors.** A member of the board of directors may be removed for good cause by a majority of all Tribal Council members. Good cause includes but is not

limited to repeated failure to attend board meetings, neglect of duty, abusing the powers or privileges of the office, conflict of interest, or engaging in criminal acts. Before voting to remove a board member, the Tribal Council shall give that member reasonable written notice of the reasons for the proposed removal and an opportunity to respond to such notice at a regular meeting of the Tribal Council. (Passed Nov. 16, 1987)

**11.4.10. Officers.** At its annual meeting, the board of directors shall elect from among its members a president, vice-president, and secretary-treasurer, who shall serve one-year terms. (Passed Nov. 16, 1987)

**11.4.11. Board Meetings.** (a) At its first regular meeting of each year, the board of directors shall elect officers. Regular meetings of the board shall be held at least quarterly and may be held more frequently if provided for by a majority vote of the board members. Special meetings may be called by the president or by any four (4) members of the board.

(b) Meeting Attendance by Alternate Board Member. The alternate board member shall not be required to attend any meetings of the board unless attendance is necessary to establish a quorum, and then, in such instances, the alternate shall participate as a voting member of the board. The alternate board member shall receive all copies of meeting minutes, and the board shall keep the alternate board member apprised of all activities, decisions, and actions of the board. (Passed Nov. 16, 1987; amended by Res. 91-108, passed Nov. 25, 1991; amended by Res. 97-123 (part), passed Dec. 8, 1997)

**11.4.12. Board Procedures.** A quorum of the board shall be four (4) members; provided that at least two (2) members present must be members of the Suquamish Tribe. Within ninety (90) days after the first board of directors is appointed, the board shall establish written bylaws governing its procedures. (Passed Nov. 16, 1987; amended by Res. 91-108, passed Nov. 25, 1991)

**11.4.13. Powers and Duties of the Board of Directors.** The directors of Port Madison Enterprises shall have the following powers and responsibilities:

(a) To employ a manager under a written contract.

(b) To establish policies governing the employment, supervision, compensation, disciplining, and discharge of personnel of Port Madison Enterprises; provided that the personnel policies shall provide for Indian preference in hiring and promotion.

(c) To establish bylaws governing its own procedures.

(d) To reimburse, at direct cost, expenses incurred by board members and the alternate to attend meetings for and on behalf of the Enterprise and, in addition, to pay each board member and the alternate a stipend to attend meetings, with the per

meeting amount and conditions for and limitations upon receiving such payment to be determined and set on an annual basis by the Tribal Council as part of its review and approval of the Port Madison Enterprises' annual plan.

(e) To authorize any one (1) or more members of the board of directors to perform work on a paid basis, for and on behalf of the board related to any one (1) or more identified projects, at an hourly rate to be set on an annual basis in the annual plan of PME approved by the Tribal Council, with an identified maximum hours of work to be performed for each project which, with prior written approval, can be increased by the board if needed, provided all authorizations under this section are made by decision of the majority of the board excluding the member(s) of the board of directors to be assigned such work and are memorialized in the board's minutes. Any work performed by a member of the board of directors under this subsection without prior written authorization of the board of directors shall be deemed to be hours worked voluntarily and without expectation of compensation by that member of the board.

(f) To recommend to the Tribal Council an annual plan of operation for Port Madison Enterprises, as provided in §11.4.16 of this charter.

(g) To advise the Tribal Council on issues of economic development.

(h) To execute contracts consistent with the annual plan approved by the Tribal Council.

(i) To acquire, lease, manage, and dispose of personal property for use in the operation of Port Madison Enterprises or the board's activities pursuant to this charter; provided that, to the extent necessary with respect to government contracts, the board shall adopt procurement policies which are consistent with the requirements of United States government agencies that fund or contract with tribal enterprises and which include a "buy Indian" policy.

(j) To borrow money and to secure such loans or the payment of any obligation by assigning or mortgaging property of Port Madison Enterprises; provided that the board shall not assign or mortgage any property of the Suquamish Tribe which has been leased or assigned to Port Madison Enterprises unless it first obtains the approval of the Tribal Council.

(k) Consistent with the annual plan of operation, to change the nature, volume, and scope of the commercial activities conducted by Port Madison Enterprises, including without limitation the establishment of divisions of Port Madison Enterprises, as necessary to maximize revenues, minimize losses, expand employment opportunities for members of the tribal community, provide services to the public, and achieve the purposes of this charter.

(l) To file suit in any court of competent jurisdiction and to consent to suit in the Suquamish Tribal Court; provided that the board shall not consent to any court's jurisdiction over property of the Suquamish Tribe without the approval of the Tribal Council.

(m) To communicate and negotiate with representatives of other governments and private businesses.

(n) With the approval of the Tribal Council, to establish subsidiaries of Port Madison Enterprises to be operated as separate legal entities. Any such subsidiary shall be governed by the board of directors of the Enterprises and shall have the rights granted and/or limited by its charter to carry on its business either within or without the lands of the Tribe and in whatever form it deems appropriate for the purpose of segregating the accounts, assets, and liabilities of discrete business enterprises regardless of common directorship; provided that no form of business organization may be used which does not preserve and protect the immunities and assets of Port Madison Enterprises or the Tribe. (Passed Nov. 16, 1987; amended by Res. 2002-034, passed Apr. 1, 2002; amended by Res. 02-095 (part), passed Sept. 23, 2002; amended by Res. 2008-192 (part), passed Dec. 1, 2008)

**11.4.14. Powers Reserved to Tribal Council.** The following powers relating to the management and operation of Port Madison Enterprises shall be reserved to the Tribal Council:

(a) To set general economic development policies and strategies for the Suquamish Tribe;

(b) To request that the United States take land intended for use by Port Madison Enterprises into trust for the Suquamish Tribe;

(c) To consent to the lease, pledge, encumbrance, or disposition of any property owned by or held in trust for the Suquamish Tribe;

(d) To appropriate property or funds of the Suquamish Tribe for use by or in Port Madison Enterprises;

(e) To appoint and remove members of the board of directors;

(f) To approve an annual plan of operation for Port Madison Enterprises prepared and recommended by the board of directors;

(g) To determine the use and disposition of all distributions from net proceeds of the Enterprises' operations, as provided in §11.4.23;

(h) To change the charter establishing the powers and structure of Port Madison Enterprises and to dissolve the Enterprises and provide for the distribution of the Enterprises' assets;

(i) To waive the immunity of the Enterprises to suit in courts of other jurisdictions and to consent to any court's jurisdiction over property or assets held by or for the Suquamish Tribe; and

(j) To approve the charter of each subsidiary of Port Madison Enterprises. (Passed Nov. 16, 1987; amended by Res. 2008-192 (part), passed Dec. 1, 2008)

**11.4.15. Manager.** The board of directors shall employ a manager for Port Madison Enterprises. The manager shall have the following responsibilities:

(a) To conduct and oversee the daily operations of the Enterprises' commercial activities.

(b) To hire, train, supervise, and discharge employees of the Enterprises, consistent with personnel policies adopted by the board.

(c) Consistent with the annual plan adopted by the board, to determine what goods and services the Enterprises will sell and the prices to be charged for such goods and services.

(d) To maintain a complete and accurate accounting of all funds and property acquired, held, used, and disposed of by the Enterprises.

(e) To formulate for the board's consideration plans for the Enterprises' annual operations, for changes in the nature and scope of those operations, and for reinvestment of proceeds of the Enterprises' activities.

(f) To carry out the plans and policies adopted by the board and to perform all responsibilities delegated to the manager by the board. The manager may not serve as a voting member of the board of directors. (Passed Nov. 16, 1987)

**11.4.16. Annual Plan.** On or before its last regular meeting of the fiscal year, the board of directors shall adopt for submission to the Tribal Council an annual plan of operation for Port Madison Enterprises. The plan shall include at least the following information:

(a) An unaudited report of the year's operations to that date, including expenditures, income, profits, and performance relative to the goals set in the annual plan;

(b) A projection of the final report for the year;



- (c) Any planned changes in the nature of the commercial activities to be conducted by the Enterprises;
- (d) Any planned expansion or reduction in the inventory, assets, facilities, or personnel of the Enterprises;
- (e) Any construction, major repairs, major equipment purchases, or other capital expenditures planned;
- (f) Plans or proposals for any joint ventures, partnerships, subcontracts, or new enterprises which will be employed to carry out the Enterprises' functions;
- (g) Funds required from the economic development fund for continuation or expansion of the operations;
- (h) Any new loans or grants which the Enterprises expect to apply for or receive or propose that the Tribal Council apply for on behalf of the Enterprises; and
- (i) A projected profit and loss statement, balance sheet, and cash flow analysis for the coming year. (Passed Nov. 16, 1987)

**11.4.17. Quarterly Reports.** In addition to the annual plan, the board of directors shall submit to the Tribal Council within forty-five (45) days after the end of each quarter a report of the operations and financial status of the Enterprises for that quarter and for the fiscal year to that date. The Tribal Council may require more frequent reports but shall not require reports more frequently than once each month. Within one hundred and twenty (120) days after the end of the fiscal year, the board shall also prepare a summary annual report for public release. (Passed Nov. 16, 1987; amended by Res. 2008-192 (part), passed Dec. 1, 2008)

**11.4.18. Fiscal Year.** The fiscal year of Port Madison Enterprises shall be the calendar year. (Passed Nov. 16, 1987; amended by Res. 91-108, passed Nov. 25, 1991)

**11.4.19. Bonding.** The board members, manager, and all employees of Port Madison Enterprises who handle money shall be bonded. In lieu of bonding, the board may maintain such other insurance as it deems appropriate. (Passed Nov. 16, 1987; amended by Res. 2008-192 (part), passed Dec. 1, 2008)

**11.4.20. Audits.** The board of directors shall cause an annual audit of Port Madison Enterprises accounts to be conducted by a qualified person who is not an employee of the Enterprises or of the Tribe, and such audit shall be submitted to the Tribal Council within one hundred and fifty (150) days after the end of the Enterprises' fiscal year. Port Madison Enterprises shall provide its monthly financial reports to the Tribe's financial director. At any time during the year, the Tribe's financial director may request in writing that Port Madison Enterprises deliver to the tribal finance office, within a reasonable

time, a record of Enterprises' accounts, or portions thereof, identified in the written request. At any time during the year, the Tribal Council shall have the right to cause its own audit of the Enterprises' accounts to be conducted at no expense to the Enterprises. (Passed Nov. 16, 1987; amended by Res. 02-095, passed Sept. 24, 2002; amended by Res. 02-108, passed Oct. 21, 2002)

**11.4.21. Liquor Enterprise.** The Suquamish Tribal Liquor Enterprise established in Chapter 2 of this title shall be a component of Port Madison Enterprises. (Passed Nov. 16, 1987)

**11.4.22. Public Disclosure.** The following records of Port Madison Enterprises shall be public information available for inspection by any interested person during regular business hours at Enterprises' headquarters:

- (a) A summary of the annual plan of operation;
- (b) Bylaws of the board of directors;
- (c) Personnel policies of Port Madison Enterprises; and
- (d) The summary annual report.

When necessary to prevent another commercial enterprise from acquiring a competitive advantage over Port Madison Enterprises, the board may delete portions of the annual plan and report before permitting their inspection pursuant to this section. (Passed Nov. 16, 1987)

**11.4.23. Distribution of Net Proceeds.** The board of directors shall distribute the net proceeds of Port Madison Enterprises each quarter according to the formula set out in this section or as otherwise approved in the annual plan. For purposes of this section, "net proceeds" means all earnings in excess of the cost of sales, operating expenses, other expenses, capital expenditures, and the principal portion of payments on loans for capital expenditures. The distribution formula shall be as follows: A specified percentage of the net proceeds — the percentage to be determined each year by the Tribal Council — shall be paid to the tribal economic development fund. The development fund shall be appropriated by the Tribal Council, as it deems advisable, for the following tribal government purposes: operation and development of Port Madison Enterprises, operation and development of new tribal commercial ventures, and technical assistance for tribal enterprises. The remaining net proceeds shall be paid to the Tribe's general fund. (Passed Nov. 16, 1987; amended by Res. 2008-192 (part), passed Dec. 1, 2008)

**11.4.24. Limited Liability.** (a) No lawful act of the Tribal Council, the board of directors, or any members of the Council or board shall result in personal liability on the part of any such members for the debts, acts, or omissions of Port Madison Enterprises.

(b) No lawful act of the manager or any other employee of Port Madison Enterprises shall result in personal liability on the part of any such employee for the debts, acts, or omissions of Port Madison Enterprises.

(c) The personal liability of a member of the board of directors to the Tribe or to Port Madison Enterprises, for acts taken as a director, shall not exceed the amount of any applicable insurance maintained by Port Madison Enterprises or by the Tribe for the protection of said directors from such liability, provided that the director's liability does not arise from the director:

(1) Knowingly permitting Port Madison Enterprises to enter into a business transaction with him- or herself or a member of his or her immediate family or with any organization in which the director or such family member has a substantial interest or holds a management position without having previously disclosed such interest to the persons approving the transaction;

(2) Taking actions as a director for the purpose of conferring personal benefit upon the director or his or her immediate family;

(3) Taking actions as a director which are criminal; or

(4) Taking actions in any capacity which are in willful disregard of his or her obligations as a director.

(d) Subsection (c) of this section shall not be construed to expand or limit the liability of a director to the Tribe or to Port Madison Enterprises for acts described in subsections (c)(1) through (c)(4).

(e) Port Madison Enterprises shall indemnify and hold each director harmless against the actual and reasonable expenses incurred by the director in connection with any claim or proceeding against him or her arising from his or her actions as a director, provided the director has been successful on the merits or otherwise in defense of such claim.

(f) Any indemnification under §11.4.24(e), unless ordered by the Court, shall be made only:

(1) Upon a majority vote of a quorum consisting of directors not parties to such claim or proceeding; or

(2) If a quorum cannot be obtained under §11.4.24(f)(1), by majority vote of a committee designated by the board, in which designation directors who are or were parties may participate, consisting solely of one or more directors who are not at that time parties to the proceeding; or

(3) By special legal counsel appointed in the manner prescribed by §11.4.24(f)(1) or §11.4.24(f)(2); or

(4) If a decision cannot be made by any of the methods prescribed above, then by the Suquamish Tribal Council.

(g) As used in this section, the following terms shall have the following meanings:

(1) "Immediate family" means the director's spouse, parent, sibling, child, grandchild, grandparent, aunt, uncle, or first cousin, and any person having the same home as the director.

(2) "Management position" means a position having significant actual or potential legal influence over the management of such organization, including a position as a director, general partner, principal, or officer.

(3) "Substantial interest" means a financial interest of such significance that it would reasonably be expected to exert an influence on the judgment of the person having such interest, including ownership of in excess of the lesser of ten percent (10%) or one thousand dollars (\$1,000) of the assets or capital stock of such organization. (Passed Nov. 16, 1987; amended by Res. 92-097, passed Dec. 14, 1992)

**11.4.25. Sovereign Immunity.** As a branch of the Suquamish Tribe, Port Madison Enterprises and each of its divisions shall be entitled to all the protections and immunities afforded by the laws of the United States to Indian tribal governments, and nothing in this chapter shall be construed as a general waiver of the Suquamish Tribe's or Port Madison Enterprises' sovereign immunity. However, the board of directors, subject to the powers reserved in this chapter by the Tribal Council, may enter into agreements which waive the right of the agency to raise the defense of sovereign immunity to suit with regard to specified assets of the Enterprises and in specified courts with jurisdiction over such assets. The provisions of this section shall apply to each subsidiary of Port Madison Enterprises unless the charter of such subsidiary specifically provides otherwise. (Passed Nov. 16, 1987; amended by Res. 2008-192 (part), passed Dec. 1, 2008)

**11.4.26. Insurance.** The board shall maintain a policy of liability insurance covering all operations of Port Madison Enterprises and its subsidiaries, with policy limits and types of coverage specified by the board. Such policy shall require that the insurer waive any right it may otherwise have to raise the sovereign immunity of Port Madison Enterprises or its subsidiaries as a defense to claims against the policy. The waiver of the right to raise sovereign immunity applies only to the insurer and shall not be construed, in any manner or form, as a general or limited waiver of Port Madison Enterprises, its subsidiaries, or the Tribe which immunity is specifically reserved in §11.4.25 and still

may be asserted by any one of them at any time. (Passed Nov. 16, 1987; amended by Res. 2001-006, passed Jan. 8, 2001; amended by Res. 2008-192 (part), passed Dec. 1, 2008)

**11.4.27. Transition Period.** (a) The Tribal Council shall appoint the first board of directors as soon as practicable but no later than forty (40) days after the enactment of this chapter. The board shall meet no later than ten (10) days after its appointment. Until the first board meets, the Tribal Council shall act as an interim board.

(b) The interim board of directors shall appoint an interim Enterprises' manager. As of October 1, 1987, the manager and all employees of the Suquamish Liquor Enterprises shall be employees of Port Madison Enterprises. Until the permanent board adopts personnel policies, the personnel policies of the tribal government shall govern the employment conditions of the persons employed by Port Madison Enterprises. Persons who are employed by the Liquor Enterprise as of October 1, 1987, and who are subsequently retained as employees of Port Madison Enterprises shall not lose seniority rights or other benefits accrued during their employment by the Tribe.

(c) All assets leased, loaned, or assigned by the Tribe to the Suquamish Liquor Enterprise at the time this chapter is enacted and all liabilities incurred on behalf of the Liquor Enterprise before the date this chapter is enacted shall be and are hereby transferred to Port Madison Enterprises. The land on which the liquor outlet is located is and shall remain property of the United States held in trust for the Suquamish Tribe. (Passed Nov. 16, 1987)

Note: The following subsections renumbered for consistency.

- 11.4.3(1)-(3) changed to 11.4.3(a)-(c)
- 11.4.4(1)-(4) changed to 11.4.4(a)-(d)
- 11.4.7(1)-(9) changed to 11.4.7(a)-(i)
- 11.4.13(1)-(14) changed to 11.4.13(a)-(n)
- 11.4.14(1)-(10) changed to 11.4.14(a)-(j)
- 11.4.15(1)-(6) changed to 11.4.15(a)-(f)
- 11.4.16(1)-(9) changed to 11.4.16(a)-(i)
- 11.4.22(1)-(4) changed to 11.4.22(a)-(d)