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Subject: Marijuana

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§7.000 **TITLE.**

This chapter shall be known as the “Hoh Commercial Marijuana Activity Ordinance.”

§ 7.001 **DEFINITIONS.**

As used in this chapter, the following words and phrases shall each have the designated meaning unless a different meaning is expressly provided or context clearly indicated.

A. “Chalaat Development ” means the Hoh Tribe’s economic development. corporation established under Hoh tribal law to conduct the economic development activities of the Tribe.

B. “Commercial Marijuana Activity” means all planting, growing, producing, cultivating, processing, and selling marijuana, marijuana concentrates, marijuana-infused products, and useable marijuana in Indian Country in accordance with Hoh Tribal laws that govern medical and recreational marijuana.

C. “Compact” means an agreement between the Tribe and the State or the LCB regarding marijuana.

D. “Designated Provider” shall have the same meaning as in RCW 69.51A.010.

E. “Essential Government Services” means services provided by the Tribe including, but not limited to, administration, public facilities, fire, police, health, education, elder care,

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social services, sewer, water, environmental and land use, transportation, utility services, community development, and economic development.

F. “Hoh Council” means the Hoh Indian Tribe Business Committee.

G. “Indian Country” means the lands of the Hoh Indian Nation as defined by 18 U.S.C. § 1151 and interpreted by federal and tribal courts, including all lands held in trust or restricted fee status by the United States for the Tribe or its Tribal Members.

H. “LCB” means the Washington State Liquor and Cannabis Board.

I. “Marijuana,” “marijuana concentrates,” “marijuana-infused products,” and “useable marijuana” shall have the same meanings as in RCW 69.50.101 or any amendments thereto. Together, such terms shall be known as “Marijuana Products.”

J. “Medical Marijuana Authorization Database” shall have the same meaning as in RCW 69.51A.010.

K. “Qualifying Patient” shall have the same meaning as in RCW 69.51A.010.

L. “Recognition Card” shall have the same meaning as in RCW 69.51A.010.

M. “State” means the State of Washington.

N. “State Licensee” means any entity licensed by the LCB pursuant to RCW 69.50 or WAC 314-55, as amended.

O. “State Tax” means the marijuana excise tax as stated in RCW 69.50.535 and the State and local sales and use tax on sales of marijuana as stated in RCW 82.08 and RCW 82.12, all as may be amended from time to time.

P. “HTC” means the Hoh Tribal Code.

Q. “Tribal Member” means an enrolled member of the Tribe.

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- R. “Tribal Police” means the Hoh Indian Nation’s Tribal Law Enforcement.
- S. “Tribe” means the Hoh Indian Tribe.

§ 7.002. **FINDINGS.**

A. Historically, the production, possession, delivery, distribution, and sale of marijuana have been illegal across the United States and in Indian Country. In 2012, the voters of Washington State passed Initiative 502 (“I-502”) which sets forth a system allowing for the production, processing, and retail sale of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products for recreational purposes within the State. This Initiative technically has no legal impact on the Tribe, which is not subject to state laws.

B. While the federal Controlled Substances Act continues to designate marijuana as a Schedule I substance, on August 29, 2013, the United States Department of Justice issued a memorandum to all United States Attorneys setting forth guidance regarding marijuana enforcement. In that memo, James M. Cole, Deputy Attorney General, set forth eight enforcement priorities of particular importance to the federal government, including: preventing the distribution of marijuana to minors; preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; preventing the diversion of marijuana from states where it is legal under state law in some form to other states; preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; preventing violence and the use of firearms in the cultivation and distribution of marijuana; preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana

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production on public lands; and preventing marijuana possession or use on federal property. The memo goes on to indicate that the focus of federal law enforcement resources and efforts will be on those persons whose conduct interferes with the stated priorities and that state and local governments should provide sufficiently robust regulatory and enforcement systems to protect against these harms.

C. On October 28, 2014, the United States Department of Justice issued another memorandum to all United States Attorneys providing a policy statement regarding marijuana issues in Indian Country. In that memo, Monty Wilkinson, Director, acknowledged that “[t]he eight priorities in the Cole Memorandum will guide United States Attorneys’ marijuana enforcement efforts in Indian Country, including in the event that sovereign Indian Nations seek to legalize the cultivation or use of marijuana in Indian Country.” That memo effectively treats tribal governments the same as state governments in the decision to legalize marijuana.

D. After serious deliberation, the Tribe has determined that present day circumstances—including the State’s legalization of marijuana—make a complete ban of marijuana within Indian Country ineffective and unrealistic. The Tribe expresses its policy support for the limited decriminalization of marijuana in some circumstances.

E. The Tribe also finds that, particularly considering the commercial marijuana activity occurring throughout the State, raising funds through the sale of marijuana in Indian Country is a useful economic development tool for the Tribe.

F. The Tribe therefore enacts this chapter to strictly regulate and control the production, distribution, sale, and use of marijuana in Indian Country, consistent with the

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Department of Justice's eight priorities and to protect the health, safety, and general welfare of the Tribe and visitors to Indian Country.

§7.003 **ESTABLISHMENT AND DELEGATION.**

The Tribal Council does hereby delegate the sole authority to locate, manage, and operate all Commercial Marijuana Activity on behalf of the Tribe to Hoh Economic Development Authority aka Chalaat Development ("Chalaat"), subject to oversight by the Tribal Council as stated herein and in the charter for Chalaat.

§ 7.004 **NEGOTIATIONS WITH THE STATE.**

The Hoh Council, through a designated negotiation team, negotiated a Compact with the State for all Commercial Marijuana Activity within Indian Country.

§ 7.005 **TRIBAL MARIJUANA TAX.**

A. There shall be a Tribal marijuana tax equal to 100 percent of the State Tax then in effect levied on all Commercial Marijuana Activity. The Tribal marijuana tax shall be adjusted on a yearly basis to match any adjustments that may have been made to the State tax in the previous calendar year.

B. The Tribal marijuana tax shall be remitted by Chalaat to the Tribe on a quarterly basis.

C. The Tribe will use the proceeds of such tax for Essential Government Services.

D. No other tax besides the Tribal marijuana tax may be imposed on Commercial Marijuana Activity.

E. The Tribe may allow an exemption from the Tribal marijuana tax in the

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following circumstances:

- (i) for sales to Tribal members on marijuana grown, produced, or processed within Indian Country;
- (ii) for sales to the Tribe, Chalaat or Tribal members that occur in Indian Country;
- (iii) for activities that would otherwise be exempt under state or federal law; and
- (iv) for medical marijuana products used in the course of medical treatments by a clinic, hospital, or similar facility owned and operated by the Tribe within its Indian Country.

§ 7.006 **PRODUCING AND PROCESSING OF MARIJUANA PRODUCTS.**

- A. **Buffers.** No producing or processing of Marijuana Products may occur within 1,000 feet of a school or playground.
- B. **Minors.** No persons under 21 years of age may enter or be employed at a producing or processing facility.
- C. **Producing.** Production facilities may be located indoors or outdoors, provided they are fully secure, have physical barriers, and meet safety and security protocols as outlined more specifically by policy.
- D. **Processing.** All processing facilities must meet the standards as would be required for food handling under Indian Health Services requirements.

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E. Testing. Before sale to any retailer, Marijuana Products must be tested by a Tribally or State-licensed lab that follows quality assurance testing protocols at least as restrictive as state law.

F. Packaging and labeling. All Marijuana Products must be packaged and labeled in accordance with Chalaat policy. Packaging and labeling designed to be especially appealing to children are prohibited. All marijuana-infused products meant to be eaten, swallowed, or inhaled must be packaged in child proof packaging.

G. Sales to State Licensees. All Marijuana Products sold by Chalaat to a State Licensee must meet the testing, packaging, and labeling requirements otherwise required under state law. Such sales shall be input into the State's traceability system.

H. Conditions of sale. Chalaat shall develop policies and procedures governing records to be maintained, security requirements, maximum quantities on premises, transport and delivery, and other matters related to the production and processing of Marijuana Products. Chalaat shall provide such policies and procedures to Tribal Council upon request and at least annually.

§ 7.007 **PURCHASE AND SALE OF MARIJUANA PRODUCTS.**

A. Chalaat may purchase Marijuana Products only from (1) other tribes with sufficiently robust regulatory schemes sufficient to meet the Department of Justice's eight priorities or (2) State Licensees.

B. All Marijuana Products purchased from State Licensees will be inputted into the State's tracking system within 24 hours of delivery.

§ 7.008 **Retail Sales of Marijuana Products.**

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- A. Buffers. No retail locations may be located within 1,000 feet of a school or playground.
- B. Minors. No persons under 21 years of age may enter or be employed at a retail facility.
- (i) Acceptable identification for proof of age includes: Driver's license, ID card, or Instruction Permit issued by the United States or any U.S. state or Canadian province; Washington temporary driver's license; Tribal enrollment card; passport from any nation; U.S. Military ID; or Merchant Marine card issued by U.S. Coast Guard.
 - (ii) The Tribe may conduct its own compliance checks in Indian Country using minors ages 18, 19, or 20 through the Tribal Police or other agency authorized by the Tribe in accordance with Tribal regulations and policies. No criminal action may be taken against any minor who purchases marijuana as part of such a compliance check.
- C. Advertising. Any advertising located outside of Indian Country must comply with RCW 69.50 and WAC 314-55.
- D. Maximum sales.
- (i) No retail location may sell more than one ounce of useable marijuana, 16 ounces of marijuana-infused product in solid form, 72 ounces of marijuana-infused product in liquid form, or seven grams of marijuana concentrate in a single transaction.

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- (ii) No retail location may sell more than three ounces of useable marijuana, 48 ounces of marijuana-infused product in solid form, 216 ounces of marijuana-infused product in liquid form, or 21 grams of marijuana concentrate to a Qualifying Patient or Designated Provider who has been entered into the Medical Marijuana Authorization Database and has been provided a Recognition Card pursuant to and in compliance with state law, and who is twenty-one years of age or older.

E. Conditions of sale. Chalaat shall develop policies and procedures governing records to be maintained, security requirements, advertising, maximum quantities on premises, transport and delivery, and other matters related to retail sales. Chalaat shall provide such policies and procedures to Hoh Council upon request and at least annually.

§7.009 **Licensing , Security, & Background Investigations.**

A. The Hoh Council may revoke Chalaat’s authority to conduct commercial activity under this Ordinance if it fails to meet its obligations under this chapter or under any Compact.

B. Tribal Member Businesses. No such licenses for any purpose will be issued at this time.

C. Employees of Chalaat. Only the manager, as that term is defined in the charter, who will “exercise control” over Chalaat, will be required to undergo a background investigation before he or she is employed by Chalaat. The board of directors of Chalaat will be responsible for ensuring that a background investigation on the manager’s suitability is done. No such manager may have been convicted of, or entered a plea of guilty or no contest to, any of the following criminal offenses:

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- (i) Any felony in the proceeding 10 years; and,
- (ii) Any crime involving dishonesty within the preceding ten (10) years, including, not exclusively: fraud; forgery; possession of a forgery device; theft; counterfeiting; embezzlement; making a false representation; obstruction of justice;
- (iii) intent to defraud; bribery; mail fraud; perjury; willful tax evasion; attempt, aiding and abetting, being an accessory, and/or conspiracy.

D. All entities operated by Chalaat must employ reasonable and effective security procedures and systems which safeguard the marijuana from theft and diversion. On an annual basis or in the event, an entity relocates during the year, the security plan must be submitted to the Tribal Police for review.

§ 7.010 **ENFORCEMENT**

A. The Tribal Police is authorized to conduct compliance checks of entities licensed under this Ordinance and may issue citations to entities found to be in violation of this Ordinance.

- (i) The fines for a citation under this provision are as follows:
 - a. First citation: \$750 fine
 - b. Second citation: \$1,000 fine
- (ii) Any entity cited by the Tribal Police more than 2 times within one year period may have its license revoked by the Hoh Business Committee.
 - a. Prior to revocation, the Tribal Police will submit a written request to revoke the license the Hoh Business Committee which explains the

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reasons why the license should be revoked and the citation history of the entity. A copy of the request must be sent to the entity at least 10 days prior to the Council meeting at which the revocation will be considered.

- b. The entity subject to the request to revoke will be afforded an opportunity to respond to the request and appear at the Business Committee meeting at which said request is being considered. Any written response by the entity must be submitted to the Business Committee at least 4 business days prior to the meeting.

B. The Tribal Police are authorized to issue criminal charges pursuant to the provisions of the Hoh Tribe's Law and Order Code as well as refer cases to other jurisdictions as appropriate.

§ 7.011 **INDEMNITY.**

A. The Tribe shall indemnify any Hoh Council member, board member, manager, or employee of the Tribe, or Chalaat made party to a proceeding because of their role in Commercial Marijuana Activity against personal liability incurred in a proceeding if:

- (i) The individual acted in his or her official capacity;
- (ii) The individual acted in good faith;
- (iii) The individual believed his or her conduct was in the best interests of the Tribe; and
- (iv) The individual acted in accordance with the laws, regulations, and policies of the Tribe.

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B. “Proceeding” means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal related to the production, processing, or sale of marijuana.

C. “Liability” means the obligation to pay a judgment, settlement, penalty, or fine, or reasonable expenses incurred with respect to a proceeding.

§ 7.012 **MEDICAL MARIJUANA.** [Reserved.]