

THE TULALIP TRIBES OF WASHINGTON  
Resolution 2023- 583

Designating Drug Dealing as a Felony Offense

**WHEREAS**, the Board of Directors is the governing body of the Tulalip Tribes under the Constitution and Bylaws of the Tribes approved by the United States Commissioner of Indian Affairs and the Secretary of the Interior on January 24, 1936, pursuant to the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. § 5123);

**WHEREAS**, under the Tulalip Tribes Constitution Article VI, Sections 1 (K) & (L), the Board of Directors has the authority to safeguard and promote the peace, safety, morals, and general welfare of the Tulalip Reservation by regulating the conduct of trade and the use and disposition of property upon the reservation, and to promulgate and enforce ordinances governing the conduct of members of the Tribes providing for the maintenance of law and order and the administration of justice by establishing a tribal court and defining its duties and powers; and

**WHEREAS**, the Board of Directors recognizes drug dealing and fentanyl use is a major issue on the Reservation and across the U.S. and that drug dealers must be held to account;

**NOW THEREFORE BE IT ENACTED**, by the Board of Directors of the Tulalip Tribes: Tulalip Tribal Code Chapter 3.55, Offenses Involving Dangerous Drugs; and Res. 2022-477, and Res. 2017-092 § 1, and Res. 2010-10 (1-8-2010), Ord. 49 § 6.14.6 are hereby amended. All changes are as indicated by the attached "Ordinance Attachment" code documents.

These attached changes to the Tulalip Tribal Code Chapter 3.55 Offenses Involving Dangerous Drugs, shall be in full force and effect upon its approval by the Superintendent of the reservation or ten (10) days following presentation to the Superintendent of the reservation pursuant to the Tulalip Constitution Art. VI, § 2.

**ADOPTED**, by the Board of Directors of the Tulalip Tribes of Washington at a Regular board meeting assembled on the 1 day of December 2023, with a quorum present, by a vote of 6 For, 0 Against, and 0 Abstain.

THE TULALIP TRIBES OF WASHINGTON



Teri Gobin, Chairwoman

ATTEST:



Debra Posey, Secretary

## Redline "Track Changes" Ordinance Attachment

### **3.55.010 Reserved.**

### **3.55.020 Definitions.**

As used in this section:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body.
- (2) "Child" means a person who is less than 18 years old who has not been emancipated by order of a court of competent jurisdiction or by legal marriage.
- (3) "Controlled substance" means a drug or other substance, or immediate precursor, included in the Code of Federal Regulations, Sections 1308.11 through 1308.15 of Title 21, Food and Drugs, as presently constituted or hereafter amended. All amendments, additions, deletions or recodifications of the Code of Federal Regulations, Sections 1308.11 through 1308.15 of Title 21, Food and Drugs, occurring after the enactment of the ordinance codified in this chapter shall be deemed incorporated into this chapter for all purposes unless the Board of Directors by ordinance or resolution specifically provides otherwise.
- (4) "Imitation controlled substance" means any substance other than a controlled substance that a reasonable person would believe to be a controlled substance because of representations made; its similarity in shape, size and color to a controlled substance; its markings, labeling, packaging, or method of distribution; the price for which it is sold or offered for sale; and any other relevant factors.
- (5) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.
- (6) "Dependent adult" means a person who, because of physical or mental disability, or because of advanced age, is unable to protect the person's own interests or is dependent upon another person to provide the basic necessities of life. For the purposes of this chapter, "dependent adult" shall include:
  - (a) A protected party in an elder or vulnerable adult protection order issued pursuant to Article III of Chapter [4.30](#) TTC or any similar Tribal or State law;
  - (b) A person subject to limited or full guardianship pursuant to Article V of Chapter [4.30](#) TTC or any similar Tribal or State law;
  - (c) A vulnerable adult as defined in TTC [4.30.100](#)(20); or
  - (d) A resident of the Tribes' Senior Housing, a nursing home, or an assisted living facility.

(7) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(8) "Drug" means (a) substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement of any of them; (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (c) substances (other than food) intended to affect the structure of any function of the body of man or animals; (d) substances intended for use as a component of any article specified in subsections (5)(a), (b), and (c) of this section. It does not include devices or their components, parts, or accessories.

(9) "Listed chemical" means a chemical designated in the Code of Federal Regulations, Sections 1310.02(a) and 1310.02(b).

(10) "Legend drug" means any drug which is required by Washington State law or regulation of the State Board of Pharmacy to be dispensed on prescription only or is restricted to use by licensed physicians, dentists, pharmacists, veterinarians or other health care professionals.

(11) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by:

(a) A practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(b) A practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(12) "Marijuana" means all parts of the plant of the genus *Cannabis* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(13) "Powdered alcohol" means any powder or crystalline substance containing alcohol that is produced for direct use or reconstitution.

(14) "Practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance or legend drug in the course of professional practice or research.

(15) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(16) "Public place" means any place or area to which the public is invited or upon which the public is permitted, including but not limited to any sidewalk, street or any other right-of-way, park, playground and any other property owned by the Tribe, any commercial area or shopping center, and any school property.

(17) "Tobacco products" means any product made from the tobacco plant for the purpose of smoking, chewing, inhaling or other personal use, including cigars, chewing tobacco, pipe tobacco, snuff and cigarettes in any form.

**3.55.030 Reserved.**

**3.55.040 Reserved.**

**3.55.050 Drug paraphernalia – Definitions.**

(1) "Drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

(a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(d) Testing equipment used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

(g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

- (h) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- (i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
- (j) Containers and other objects used, intended for use, or designed for use in storing and concealing controlled substances;
- (k) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
- (l) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, or hashish oil into the human body, such as:
  - (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
  - (ii) Water pipes;
  - (iii) Carburetion tubes and devices;
  - (iv) Smoking and carburetion masks;
  - (v) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
  - (vi) Miniature cocaine spoons, and cocaine vials;
  - (vii) Chamber pipes;
  - (viii) Carburetor pipes;
  - (ix) Electric pipes;
  - (x) Air-driven pipes;
  - (xi) Chillums;
  - (xii) Bongs; and
  - (xiii) Ice pipes, or chillers.

(2) In determining whether an object is drug paraphernalia under this section, a court or other authority should consider, in addition to all other logically relevant facts, the following:

- (a) Statements by an owner or by anyone in control of the object concerning its use;
- (b) Prior convictions, if any, of an owner, or of anyone in control of the object, under any State, Federal or Tribal law relating to any controlled substance;
- (c) The proximity of the object, in time and space, to a direct violation of this chapter;
- (d) The proximity of the object to controlled substances;
- (e) The existence of any residue of controlled substances on the object;
- (f) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;
- (g) Instructions, oral or written, provided with the object concerning its use;
- (h) Descriptive materials accompanying the object which explain or depict its use;
- (i) National and local advertising concerning its use;
- (j) The manner in which the object is displayed for sale;
- (k) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (l) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
- (m) The existence and scope of legitimate uses for the object in the community; and
- (n) Expert testimony concerning its use.

**3.55.060 Manufacture or delivery of a controlled substance.**

(1) A person commits the crime of manufacture or delivery of a controlled substance by:

- (a) Except as authorized by this chapter, manufacturing, cultivating, delivering, distributing, or dispensing a controlled substance; or
- (b) Except as authorized by this chapter, possessing with the intent to manufacture, deliver, distribute, or dispense a controlled substance; ~~or~~
- (c) Possessing greater than 14 grams of heroin or six grams of methamphetamine; ~~or~~ or

(d) Possessing 50 or more pills where at least one pill contains fentanyl, or six or more grams of powder containing fentanyl.

(2) Manufacture or delivery of a controlled substance is a Class ~~E-F~~ offense. A person must knowingly possess a controlled substance. However, it is not a defense that a person did not know the quantity of a controlled substance that he or she possessed.

(3) Persons arrested for a violation of this section shall be held pending first appearance without bail.

**3.55.070 Prohibited acts (possession) – Penalties.**

(1) Except as authorized by this section, it is unlawful for any person to knowingly possess a controlled substance. Any person who violates this section with respect to any controlled substance other than marijuana is guilty of a Class E offense. Any person who violates this section with respect to possession of more than 40 grams of marijuana is guilty of a Class E offense. A first offense of possession of less than 40 grams of marijuana is a Class C offense. A second and subsequent offense of possession of less than 40 grams of marijuana is a Class D offense. The foregoing marijuana offenses in this subsection shall not impose civil or criminal penalties under Tulalip Tribal law for possession of usable marijuana or marijuana-infused solids or liquids consistent with subsection (2) of this section.

(2) Possession of marijuana (cannabis) in accordance with the following restrictions and prohibitions shall not constitute a violation of this section, this chapter, or any other provision of Tulalip Tribal law:

(a) Any person 21 years of age or older cannot possess more than one ounce of usable marijuana, 16 ounces of marijuana-infused products in solid form, 72 ounces of marijuana-infused products in liquid form, or seven grams of marijuana concentrate. Any marijuana, marijuana-infused solids, or marijuana-infused liquids must be acquired legally. Any person who possesses marijuana or marijuana-infused products or concentrates in excess of the foregoing limits, or any person under the age of 21 years who possesses marijuana or marijuana-infused products or concentrates in any amount, may be prosecuted for marijuana offenses as defined by subsection (1) of this section.

(b) Production, Distribution and Sales Prohibited. It shall be unlawful for any person to grow, produce, process, distribute or sell marijuana or marijuana-infused liquids or solids or concentrate on the Tulalip Reservation, whether or not such person is a qualifying patient or designated provider as defined in Washington State law. A person cannot obtain a Tulalip Tribal business license to be a “marijuana processor” (a person who processes marijuana into usable marijuana products, including packaging, labeling and distributing); “marijuana producer” (person who grows, creates marijuana-infused products or sells marijuana wholesale to marijuana processors); or a “marijuana retailer” (person who sells usable marijuana or marijuana-infused products in a retail outlet). Having a State license for any of the above prohibited activities shall not be a defense to prosecution. Any person who manufactures, cultivates, delivers, or possesses with intent to manufacture or deliver marijuana, marijuana-infused products, or marijuana concentrates may be prosecuted in accordance with this chapter.

(c) A person cannot use marijuana in any public place or possess marijuana within public view on the Tulalip Reservation. Public view includes, but is not limited to, carrying marijuana in an open shirt pocket, an open purse, on the body of a person in a manner that is visible to the public, etc. Public places include, but are not limited to, schools, Tribal parking lots, Tribal government vehicles, Tribal businesses and enterprises, Tribal governmental offices, and Tribal medical clinics. Violation of this subsection shall be a Class B offense.

(d) Subsection (2)(a) of this section shall be construed narrowly to preclude criminal and civil penalties under Tulalip Tribal law only for the possession of the specified amounts of marijuana or marijuana-infused products acquired legally, and shall not preclude arrest or conviction for any other crimes, offenses or infractions. For any charge arising from driving or physical control of a vehicle while under the influence of marijuana, liability may be established by showing that the defendant was under the influence of or affected by marijuana (alone or in combination with other drugs or alcohol) at the time of the offense, or that the defendant had, within two hours after driving or physical control of a vehicle, a THC concentration of 5.00 nanograms per milliliter of whole blood.

(e) A person cannot use marijuana in any vehicle, or keep marijuana in any vehicle unless it is in the trunk of the vehicle or other area of the vehicle not normally occupied or directly accessible by the driver or passengers, or in a package, container, or receptacle that has not been opened or the seal broken or the contents partially removed. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

(f) Nothing in this chapter shall modify or supersede the criminal laws of the United States government pertaining to controlled substances.

### **3.55.078 Possession of an imitation controlled substance.**

(1) A person commits the crime of possession of an imitation controlled substance by knowingly or intentionally:

(a) Creating, manufacturing, delivering, distributing, or dispensing an imitation controlled substance;

(b) Possessing with intent to deliver, distribute, or dispense an imitation controlled substance; or

(c) Possessing an imitation controlled substance.

(2) It is not a defense that the accused believed the imitation controlled substance to be a controlled substance.

(3) Possession of an imitation controlled substance is a Class E offense.

### **3.55.080 Possession of drug paraphernalia.**



(1) Except as authorized by this chapter, it is unlawful for any person to knowingly possess any drug paraphernalia.

(2) A first offense of possession of drug paraphernalia is a Class B offense. A second and subsequent offense of possession of drug paraphernalia is a Class C offense.

**3.55.082 Endangerment with a controlled substance.**

(1) A person commits the crime of endangerment with a controlled substance by knowingly, intentionally, or negligently permitting a child or dependent adult to be exposed to, possess, ingest, inhale, or have contact with a controlled substance.

(2) It is a defense to endangerment with a controlled substance that the child or dependent adult has a valid prescription for the controlled substance or listed chemical to which they were exposed.

(3) Endangerment with a controlled substance is a Class E offense.

**3.55.090 Authorized possession of controlled substances and drug paraphernalia.**

Any person authorized to possess, distribute, manufacture or deliver a controlled substance pursuant to State or Federal law shall be similarly authorized within the boundaries of the Tulalip Reservation. A person authorized to possess, distribute, manufacture or deliver a controlled substance may lawfully possess drug paraphernalia used or intended for lawful use.

**3.55.100 Possession of an alcoholic beverage by a person under 21.**

(1) Any person who, being under the age of 21 years old, knowingly possesses, consumes, obtains, or distributes an alcoholic beverage, or misrepresents his or her age for the purpose of buying or otherwise obtaining an alcoholic beverage, shall be guilty of possession of an alcoholic beverage by a person under 21.

(2) Possession of an alcoholic beverage by a person under 21 is a Class C offense.

**3.55.110 Community space alcohol use.**

(1) A person commits the crime of community space alcohol use by knowingly consuming or possessing an alcoholic beverage on the premises of 6700 Totem Beach Road in Tulalip, Washington.

(2) Community space alcohol use is a Class C offense.

**3.55.120 Reserved.**

**3.55.130 Possession of legend drugs.**

(1) It shall be unlawful for any person to knowingly sell, deliver, or possess any legend drug except upon the order or prescription of a licensed physician, dentist, veterinarian or other health care professional legally authorized to prescribe such legend drug; provided, that the above provision shall not apply to the sale, delivery or possession of a legend drug by drug wholesalers or drug manufacturers or their agents or employees, or to any practitioner acting within the scope

of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment; and provided further, that nothing in this section shall prohibit a family planning clinic from selling, delivering, possessing, and dispensing oral contraceptives prescribed by authorized, licensed health care practitioners.

(2) Possession of legend drugs is a Class E offense.

**3.55.135 Unlawful possession of listed chemicals.**

(1) It shall be unlawful for any person to knowingly or intentionally:

(a) Possess a listed chemical with the intent to unlawfully manufacture a controlled substance; or

(b) Possess or distribute a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to unlawfully manufacture a controlled substance.

(2) Unlawful possession of listed chemicals is a Class E offense.

**3.55.140 Public consumption of alcoholic beverages – Open container.**

(1) No person shall open a package containing an alcoholic beverage or consume an alcoholic beverage in a public place, unless consumption of alcoholic beverages in such public place is specifically permitted or licensed by the Tribes.

(2) Violation of this section is a civil infraction, punishable by a fine of \$100.00.

**3.55.150 Possession of powdered alcohol.**

(1) It is unlawful for a person to use, offer for use, purchase, offer to purchase, sell, offer to sell, or knowingly possess powdered alcohol.

(2) Possession of powdered alcohol is a Class C offense.

**3.55.160 Purchase or use of tobacco products by minors.**

(1) No person under the age of 21 shall purchase or, within or upon any public place or area, use cigarettes or other tobacco products within the exterior boundary of the Tulalip Reservation.

(2) Violation of this section is a civil infraction, punishable by a fine of \$100.00.

**3.55.170 Unlawful use of building for drug purposes.**

(1) It is unlawful for a manager, owner, or person with control over a building, room, space, or enclosure to rent, lease, open or make available for use, with or without compensation, that building, room, space, or enclosure with knowledge that the building, room, space, or enclosure is or will be:

(a) Frequented or occupied by persons unlawfully using controlled substances in that building, room, space, or enclosure; or

(b) Used to unlawfully manufacture, deliver, sell, give, or store a controlled substance or imitation controlled substance.

(2) It is an affirmative defense that a person charged with violating this section must prove by a preponderance of the evidence that, in a timely and good faith effort to stop the activity, they:

(a) Notified law enforcement of the drug activity; or

(b) Began an unlawful detainer action against the tenant(s) or occupant(s) engaged in unlawful drug activity.

(3) A violation of this section is a Class E offense.

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**3.55.010 Reserved.**

**3.55.020 Definitions.**

As used in this section:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body.

(2) "Child" means a person who is less than 18 years old who has not been emancipated by order of a court of competent jurisdiction or by legal marriage.

(3) "Controlled substance" means a drug or other substance, or immediate precursor, included in the Code of Federal Regulations, Sections 1308.11 through 1308.15 of Title 21, Food and Drugs, as presently constituted or hereafter amended. All amendments, additions, deletions or recodifications of the Code of Federal Regulations, Sections 1308.11 through 1308.15 of Title 21, Food and Drugs, occurring after the enactment of the ordinance codified in this chapter shall be deemed incorporated into this chapter for all purposes unless the Board of Directors by ordinance or resolution specifically provides otherwise.

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(5) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(6) "Dependent adult" means a person who, because of physical or mental disability, or because of advanced age, is unable to protect the person's own interests or is dependent upon another person to provide the basic necessities of life. For the purposes of this chapter, "dependent adult" shall include:

(a) A protected party in an elder or vulnerable adult protection order issued pursuant to Article III of Chapter [4.30](#) TTC or any similar Tribal or State law;

(b) A person subject to limited or full guardianship pursuant to Article V of Chapter [4.30](#) TTC or any similar Tribal or State law;

(c) A vulnerable adult as defined in TTC [4.30.100\(20\)](#); or

(d) A resident of the Tribes' Senior Housing, a nursing home, or an assisted living facility.

(7) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(8) "Drug" means (a) substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement of any of them; (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (c) substances (other than food) intended to affect the structure of any function of the body of man or animals; (d) substances intended for use as a component of any article specified in subsections (5)(a), (b), and (c) of this section. It does not include devices or their components, parts, or accessories.

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(a) A practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(b) A practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

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(13) "Powdered alcohol" means any powder or crystalline substance containing alcohol that is produced for direct use or reconstitution.

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(15) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(16) "Public place" means any place or area to which the public is invited or upon which the public is permitted, including but not limited to any sidewalk, street or any other right-of-way, park, playground and any other property owned by the Tribe, any commercial area or shopping center, and any school property.

(17) "Tobacco products" means any product made from the tobacco plant for the purpose of smoking, chewing, inhaling or other personal use, including cigars, chewing tobacco, pipe tobacco, snuff and cigarettes in any form.

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**3.55.050 Drug paraphernalia – Definitions.**

(1) "Drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

(a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(d) Testing equipment used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

(g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

- (h) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- (i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
- (j) Containers and other objects used, intended for use, or designed for use in storing and concealing controlled substances;
- (k) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
- (l) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, or hashish oil into the human body, such as:
  - (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
  - (ii) Water pipes;
  - (iii) Carburetion tubes and devices;
  - (iv) Smoking and carburetion masks;
  - (v) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
  - (vi) Miniature cocaine spoons, and cocaine vials;
  - (vii) Chamber pipes;
  - (viii) Carburetor pipes;
  - (ix) Electric pipes;
  - (x) Air-driven pipes;
  - (xi) Chillums;
  - (xii) Bongs; and
  - (xiii) Ice pipes, or chillers.

(2) In determining whether an object is drug paraphernalia under this section, a court or other authority should consider, in addition to all other logically relevant facts, the following:

- (a) Statements by an owner or by anyone in control of the object concerning its use;
- (b) Prior convictions, if any, of an owner, or of anyone in control of the object, under any State, Federal or Tribal law relating to any controlled substance;
- (c) The proximity of the object, in time and space, to a direct violation of this chapter;
- (d) The proximity of the object to controlled substances;
- (e) The existence of any residue of controlled substances on the object;
- (f) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;
- (g) Instructions, oral or written, provided with the object concerning its use;
- (h) Descriptive materials accompanying the object which explain or depict its use;
- (i) National and local advertising concerning its use;
- (j) The manner in which the object is displayed for sale;
- (k) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (l) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
- (m) The existence and scope of legitimate uses for the object in the community; and
- (n) Expert testimony concerning its use.

**3.55.060 Manufacture or delivery of a controlled substance.**

(1) A person commits the crime of manufacture or delivery of a controlled substance by:

- (a) Except as authorized by this chapter, manufacturing, cultivating, delivering, distributing, or dispensing a controlled substance; or
- (b) Except as authorized by this chapter, possessing with the intent to manufacture, deliver, distribute, or dispense a controlled substance;
- (c) Possessing greater than 14 grams of heroin or six grams of methamphetamine; or



(d) Possessing 50 or more pills where at least one pill contains fentanyl, or six or more grams of powder containing fentanyl.

(2) Manufacture or delivery of a controlled substance is a Class F offense. A person must knowingly possess a controlled substance. However, it is not a defense that a person did not know the quantity of a controlled substance that he or she possessed.

(3) Persons arrested for a violation of this section shall be held pending first appearance without bail.

**3.55.070 Prohibited acts (possession) – Penalties.**

(1) Except as authorized by this section, it is unlawful for any person to knowingly possess a controlled substance. Any person who violates this section with respect to any controlled substance other than marijuana is guilty of a Class E offense. Any person who violates this section with respect to possession of more than 40 grams of marijuana is guilty of a Class E offense. A first offense of possession of less than 40 grams of marijuana is a Class C offense. A second and subsequent offense of possession of less than 40 grams of marijuana is a Class D offense. The foregoing marijuana offenses in this subsection shall not impose civil or criminal penalties under Tulalip Tribal law for possession of usable marijuana or marijuana-infused solids or liquids consistent with subsection (2) of this section.

(2) Possession of marijuana (cannabis) in accordance with the following restrictions and prohibitions shall not constitute a violation of this section, this chapter, or any other provision of Tulalip Tribal law:

(a) Any person 21 years of age or older cannot possess more than one ounce of usable marijuana, 16 ounces of marijuana-infused products in solid form, 72 ounces of marijuana-infused products in liquid form, or seven grams of marijuana concentrate. Any marijuana, marijuana-infused solids, or marijuana-infused liquids must be acquired legally. Any person who possesses marijuana or marijuana-infused products or concentrates in excess of the foregoing limits, or any person under the age of 21 years who possesses marijuana or marijuana-infused products or concentrates in any amount, may be prosecuted for marijuana offenses as defined by subsection (1) of this section.

(b) Production, Distribution and Sales Prohibited. It shall be unlawful for any person to grow, produce, process, distribute or sell marijuana or marijuana-infused liquids or solids or concentrate on the Tulalip Reservation, whether or not such person is a qualifying patient or designated provider as defined in Washington State law. A person cannot obtain a Tulalip Tribal business license to be a “marijuana processor” (a person who processes marijuana into usable marijuana products, including packaging, labeling and distributing); “marijuana producer” (person who grows, creates marijuana-infused products or sells marijuana wholesale to marijuana processors); or a “marijuana retailer” (person who sells usable marijuana or marijuana-infused products in a retail outlet). Having a State license for any of the above prohibited activities shall not be a defense to prosecution. Any person who manufactures, cultivates, delivers, or possesses with intent to manufacture or deliver

marijuana, marijuana-infused products, or marijuana concentrates may be prosecuted in accordance with this chapter.

(c) A person cannot use marijuana in any public place or possess marijuana within public view on the Tulalip Reservation. Public view includes, but is not limited to, carrying marijuana in an open shirt pocket, an open purse, on the body of a person in a manner that is visible to the public, etc. Public places include, but are not limited to, schools, Tribal parking lots, Tribal government vehicles, Tribal businesses and enterprises, Tribal governmental offices, and Tribal medical clinics. Violation of this subsection shall be a Class B offense.

(d) Subsection (2)(a) of this section shall be construed narrowly to preclude criminal and civil penalties under Tulalip Tribal law only for the possession of the specified amounts of marijuana or marijuana-infused products acquired legally, and shall not preclude arrest or conviction for any other crimes, offenses or infractions. For any charge arising from driving or physical control of a vehicle while under the influence of marijuana, liability may be established by showing that the defendant was under the influence of or affected by marijuana (alone or in combination with other drugs or alcohol) at the time of the offense, or that the defendant had, within two hours after driving or physical control of a vehicle, a THC concentration of 5.00 nanograms per milliliter of whole blood.

(e) A person cannot use marijuana in any vehicle, or keep marijuana in any vehicle unless it is in the trunk of the vehicle or other area of the vehicle not normally occupied or directly accessible by the driver or passengers, or in a package, container, or receptacle that has not been opened or the seal broken or the contents partially removed. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

(f) Nothing in this chapter shall modify or supersede the criminal laws of the United States government pertaining to controlled substances.

### **3.55.078 Possession of an imitation controlled substance.**

(1) A person commits the crime of possession of an imitation controlled substance by knowingly or intentionally:

(a) Creating, manufacturing, delivering, distributing, or dispensing an imitation controlled substance;

(b) Possessing with intent to deliver, distribute, or dispense an imitation controlled substance; or

(c) Possessing an imitation controlled substance.

(2) It is not a defense that the accused believed the imitation controlled substance to be a controlled substance.

(3) Possession of an imitation controlled substance is a Class E offense.

**3.55.080 Possession of drug paraphernalia.**

(1) Except as authorized by this chapter, it is unlawful for any person to knowingly possess any drug paraphernalia.

(2) A first offense of possession of drug paraphernalia is a Class B offense. A second and subsequent offense of possession of drug paraphernalia is a Class C offense.

**3.55.082 Endangerment with a controlled substance.**

(1) A person commits the crime of endangerment with a controlled substance by knowingly, intentionally, or negligently permitting a child or dependent adult to be exposed to, possess, ingest, inhale, or have contact with a controlled substance.

(2) It is a defense to endangerment with a controlled substance that the child or dependent adult has a valid prescription for the controlled substance or listed chemical to which they were exposed.

(3) Endangerment with a controlled substance is a Class E offense.

**3.55.090 Authorized possession of controlled substances and drug paraphernalia.**

Any person authorized to possess, distribute, manufacture or deliver a controlled substance pursuant to State or Federal law shall be similarly authorized within the boundaries of the Tulalip Reservation. A person authorized to possess, distribute, manufacture or deliver a controlled substance may lawfully possess drug paraphernalia used or intended for lawful use.

**3.55.100 Possession of an alcoholic beverage by a person under 21.**

(1) Any person who, being under the age of 21 years old, knowingly possesses, consumes, obtains, or distributes an alcoholic beverage, or misrepresents his or her age for the purpose of buying or otherwise obtaining an alcoholic beverage, shall be guilty of possession of an alcoholic beverage by a person under 21.

(2) Possession of an alcoholic beverage by a person under 21 is a Class C offense.

**3.55.110 Community space alcohol use.**

(1) A person commits the crime of community space alcohol use by knowingly consuming or possessing an alcoholic beverage on the premises of 6700 Totem Beach Road in Tulalip, Washington.

(2) Community space alcohol use is a Class C offense.

**3.55.120 Reserved.**

**3.55.130 Possession of legend drugs.**

(1) It shall be unlawful for any person to knowingly sell, deliver, or possess any legend drug except upon the order or prescription of a licensed physician, dentist, veterinarian or other health care professional legally authorized to prescribe such legend drug; provided, that the above provision shall not apply to the sale, delivery or possession of a legend drug by drug wholesalers

or drug manufacturers or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment; and provided further, that nothing in this section shall prohibit a family planning clinic from selling, delivering, possessing, and dispensing oral contraceptives prescribed by authorized, licensed health care practitioners.

(2) Possession of legend drugs is a Class E offense.

**3.55.135 Unlawful possession of listed chemicals.**

(1) It shall be unlawful for any person to knowingly or intentionally:

(a) Possess a listed chemical with the intent to unlawfully manufacture a controlled substance; or

(b) Possess or distribute a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to unlawfully manufacture a controlled substance.

(2) Unlawful possession of listed chemicals is a Class E offense.

**3.55.140 Public consumption of alcoholic beverages – Open container.**

(1) No person shall open a package containing an alcoholic beverage or consume an alcoholic beverage in a public place, unless consumption of alcoholic beverages in such public place is specifically permitted or licensed by the Tribes.

(2) Violation of this section is a civil infraction, punishable by a fine of \$100.00.

**3.55.150 Possession of powdered alcohol.**

(1) It is unlawful for a person to use, offer for use, purchase, offer to purchase, sell, offer to sell, or knowingly possess powdered alcohol.

(2) Possession of powdered alcohol is a Class C offense.

**3.55.160 Purchase or use of tobacco products by minors.**

(1) No person under the age of 21 shall purchase or, within or upon any public place or area, use cigarettes or other tobacco products within the exterior boundary of the Tulalip Reservation.

(2) Violation of this section is a civil infraction, punishable by a fine of \$100.00.

**3.55.170 Unlawful use of building for drug purposes.**

(1) It is unlawful for a manager, owner, or person with control over a building, room, space, or enclosure to rent, lease, open or make available for use, with or without compensation, that building, room, space, or enclosure with knowledge that the building, room, space, or enclosure is or will be:

(a) Frequented or occupied by persons unlawfully using controlled substances in that building, room, space, or enclosure; or

(b) Used to unlawfully manufacture, deliver, sell, give, or store a controlled substance or imitation controlled substance.

(2) It is an affirmative defense that a person charged with violating this section must prove by a preponderance of the evidence that, in a timely and good faith effort to stop the activity, they:

(a) Notified law enforcement of the drug activity; or

(b) Began an unlawful detainer action against the tenant(s) or occupant(s) engaged in unlawful drug activity.

(3) A violation of this section is a Class E offense.

**Ordinance Summary**

Designating Drug Dealing as a Felony

Brief Summary of Ordinance

- Makes Manufacture or Delivery of a Controlled Substance a Class F felony
- Creates per se amounts of fentanyl considered to be drug dealing

**Background.** Fentanyl use has been an epidemic across the Reservation and the U.S. Fentanyl is an extremely dangerous drug, and is commonly pressed into counterfeit prescription pills in various concentrations—meaning users do not know what concentration they will get. Fentanyl is highly addicting and is usually smoked or swallowed. It may be cut with other substances including heroin or methamphetamine. Drug dealers take advantage of this addictive quality to target not only the most vulnerable and at-risk individuals, but also other individuals who may not typically be considered vulnerable or at-risk.

**Summary of Ordinance.** First, this ordinance makes drug dealing a Class F felony offense. Second, this ordinance makes possession of 50 or more fentanyl pills, or six or more grams of fentanyl powder, per se drug dealing.



Tulalip Tribes Office Of The  
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**2023**

**LEGAL REVIEW FORM**

Complete Submittal Received by ORA: 08/21/23 10-Day Business Review End: \_\_\_\_\_, 2023

Title of Submittal: Designating Drug Dealing as a Felony

Document Type: Resolution

Contract Amount: \$ 0

Funding Source: Not Applicable

Submitted By: Markus Surratt/Prosecutor/ORA  
(Name/Title/Department)

Return Submittal To: Markus Surratt/Prosecutor/ORA  
(Name/Title/Department)

- Submittal is **APPROVED**
- Submittal Requires **ADDITIONAL INFORMATION**
- Submittal is **DISAPPROVED**
- Submittal is Approved With the (Following/Attached) Revisions:

Notes/Comments:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reviewed By: 09/22/2023 Megan James  
Date Signed Reservation Attorney Signature

**Notice/Disclaimer:**  
Program or enterprise is responsible for keeping records of Contract and this Legal Review – the Reservation Attorney Office only keeps copies of the Legal Review Cover Sheet for its own records. **Please read: This review is of the contract as a legal binding document only and does not evaluate the advisability of entering into the contract as a business or governmental decision.**

(Please note that if this review sheet is faxed or emailed to you, the originals will be returned via interoffice mail)

**Legal Review Returned By:**  Email  Interoffice Mail  In-Person  Fax

To: \_\_\_\_\_ on \_\_\_\_\_, 2023 by \_\_\_\_\_  
Name of Recipient Month/Date Initials