

Government-to-Government Consultation, Coordination, and Planning Board Policy

PURPOSE

The Centennial Accord and New Millennium Agreement establish a framework to support the development of strong government-to-government relationships between state agencies and federally recognized Indian Tribes. A key element of both the [Centennial Accord](#) and the [New Millennium Agreement](#) is the parties' commitment to develop clear policies to ensure cooperation and consistent communication. The optimal goal of government-to-government consultation is to create a framework under which individual Tribes and Tribal entities and the [Liquor and Cannabis Board](#) (LCB) can actively engage in identifying, consulting, and addressing issues of mutual concern and interest.

The LCB is committed to work cooperatively with Tribes and Tribal entities on licensing, enforcement, regulatory, and taxation issues in a manner that respects the sovereignty of each party. The LCB will make every effort to negotiate in good faith a Liquor Memorandum of Agreement (MOA) and/or Marijuana Compact (Compact) with an interested Tribe, and to consult and resolve in good faith taxation or other issues within the Board's jurisdiction.

This policy is meant to encourage informal information sharing and other communications on topics that encourage intergovernmental relationships. The policy was initially developed in 2009 after the LCB and several Tribes met to discuss issues of interest. The meetings were used to identify core Tribal concerns and build a foundation for how the LCB would work with Tribes on future issues. The policy was revisited and updated in 2019-2020 in a collaborative effort between several Tribes and the LCB. Because the 2009 policy was adopted prior to the legalization of adult use cannabis in Washington, updates were necessary to accurately reflect the full scope of the LCB's work, and how the relationship between Tribal governments and the LCB currently function.

Nothing in this Policy modifies or impacts existing agreements that include different provisions regarding consultation, coordination, or dispute resolution processes. The LCB and its staff shall immediately bring issues or concerns from Tribes to the attention of the LCB Director and the Board. Specific issues are routinely routed to the Tribal Liaison for mediation, coordination, and facilitation as necessary.

DEFINITIONS

Collaboration: To work together, in an intellectual effort.

Consultation: An enhanced form of communication which emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties, which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process which results in effective collaboration and informed decision-making.

CR-101: The filing with the Office of the Code Reviser (CR stands for Code Reviser) used to notify the public of the Board's intent to consider rulemaking. During this phase, LCB staff work with interested parties to collect informal comment and develop rule language.

CR-102: The filing with the Office of the Code Reviser that includes proposed rule language and sets the public hearing date and time. This phase defines the period of time the LCB will accept formal comment, either in writing or at the public hearing. After review of comments and testimony, rules are revised if necessary. If substantive changes are made to the rule, a new comment period and public hearing is required.

CR-103: The filing with the Office of the Code Reviser used to notify the public that final rules have been adopted. Unless delayed, rules are effective 31 days after the filing date.

CR-105: The filing used for expedited rulemaking. An expedited rule is not subject to the same public participation process as in standard rulemaking, but must meet the specific conditions listed under RCW 34.05.353. If a person objects to the expedited rulemaking within 45 days of its filing, the standard rulemaking process (CR-101, CR-102, CR-103) must then be used.

Emergency Rule: A rule adopted without the public notice and participation required of other rulemaking processes because of potential immediate danger to public safety. An emergency rule must meet at least one of the following criteria: the rule must be immediately adopted, amended, or repealed to preserve public health, safety, or general welfare, and observing the notice requirements and opportunity for public participation is contrary to the public interest; or state or federal law, rules, or the deadline for the receipt of federal or state funds requires that the rule be adopted immediately. The emergency rule is effective for 120 days and may be refiled under certain circumstances.

Fee MOA: An agreement entered into with Tribes to pay a set fee for a spirits retailer license in lieu of paying the 17% fee required under [Initiative 1183](#).

Good Faith: Honesty in intention and lawfulness of purpose.

Government-to-Government Relationship: The relationship that exists between federally recognized Tribes and the state government. Implicit in the relationship is a recognition of tribal sovereignty as individual nations within the United States and the United States government's obligation to protect tribal lands.

Indian Country: "Indian Country" has the same meaning given in [18 U.S.C 1151](#) and means: (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including right-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

License Issuance, Renewal, or Non-Renewal: The process by which the LCB issues, renews, or denies a liquor license. The process includes "notice to local authorities including tribal governments," prompting them to comment on, or object to, the issuance or renewal of a liquor license.

Liquor Memorandum of Agreement (MOA): An agreement between a federally recognized Indian Tribe and the LCB that governs Tribe's, or its wholly owned Tribal enterprise's authority, as stipulated under the terms of the MOA, to manufacture, distill, store, distribute, sell and/ or serve liquor in Indian Country.

Marijuana Compact: An agreement between a federally recognized Indian Tribe and the state of Washington concerning transactions between the Tribe and state licensees concerning the commercial production, processing, sale, transportation, and research of marijuana.

Responsible Vendor Program: An LCB administered compliance training program for spirits retail licensees. It is designed to encourage licensees to adopt specific best practices to prevent sales to minors. Licensees who join the program and maintain all of the program's requirements are not subject to the doubling of penalties for a single violation in any period of 12 calendar months.

Sovereignty: The historical and legal status, dominion, rule or power of a sovereign. Tribes have the power to make and enforce laws for their Tribe and within their jurisdiction and to establish courts and other forums for resolution of disputes.

Tribe: Any federally recognized Indian Tribe in Washington State.

BACKGROUND

In 1933, the Steele Act created the Washington State Liquor Control Board to regulate the importation, manufacture, distribution, and sale of alcohol. The 2011 voter-enacted Initiative 1183 privatized the sale and distribution of spirits in the state and Washington transitioned from a control state to an open state where liquor is distributed and sold by the private sector. In 2012, voter-enacted [Initiative 502](#) directed the LCB to implement a legal adult use cannabis market. The agency adopted rules and became the regulator that issues cannabis licenses and enforces the law. In July 2015, with passage of Second Substitute Senate Bill 5052, the agency's name was changed to the Washington State Liquor and Cannabis Board to reflect new oversight of adult use cannabis.

The three-member Board, appointed by the Governor, is charged with promoting public safety and trust through the fair administration and enforcement of liquor, cannabis, tobacco, and vapor laws. The Board conducts its business through public meetings and work sessions with stakeholders, sets agency policy and budget decisions, and adjudicates contested license applications and enforcement actions on agency licensees.

There are 29 federally recognized Indian Tribes within the State of Washington. Each Tribe has inherent sovereign authority as a government and each has interests and responsibilities related to preventing the misuse or underage use of alcohol and marijuana in Indian Country, controlling the use and sales of these products in Indian Country, coordinating regulatory oversight, and ensuring the safety of its tribal citizens and others in Indian Country. Each Tribe has its sovereign authority to adopt tribal laws and regulations, limiting the State's authority to regulate the use and sale of alcohol, cannabis, tobacco, and vapor on tribal lands.

COMMITMENT TO CENTENNIAL ACCORD PRINCIPLES

The LCB is fully committed to the principles of consultation and cooperation memorialized in the 1989 State/Tribal Centennial Accord. The sovereign status of Tribes and the complex nature of jurisdictional issues regarding Indian Country require a sound working relationship between Tribes and the State. The LCB acknowledges that implementation of the Centennial Accord is an ongoing process and pledges to work on a day-to-day basis to foster our government-to-government relationship with individual Tribes.

In order to continue the dialogue created through the Centennial Accord and the New Millennium Agreement on issues of mutual concern, the LCB will work with Tribes through a Tribal/LCB Collaborative Committee (Committee). The Committee will meet at least annually to discuss and work to resolve issues regarding the alcohol, marijuana, tobacco, and vapor product regulation and policy within Washington. The agenda for the Committee meetings will be set by agreement between the co-chairs of the Committee. Committee co-chairs will consist of an LCB Board Member and an elected Tribal leader, as determined by the Tribes. LCB staff will work with the Committee co-chairs to develop agendas, and will welcome input and participation from other tribal representatives and staff. The LCB recognizes that each Tribe is its own sovereign nation, so the LCB's goal is to develop Committee agendas that reflect the priorities of multiple Tribes. Both co-chairs will have independent authority to set agendas and call meetings as issues arise. Once convened, the Committee will develop a charter that will further describe the functions of Committee leadership and other details of the Committee, and describe the vision and set goals for the Committee. In addition to the Collaborative Committee meetings, the LCB remains committed to consulting with Tribes whenever issues implicate the interests of one, some, or all of the Tribes in Washington.

CONSULTATION AND ENGAGEMENT

The LCB is committed to consulting with Tribes on licensing, enforcement, and taxation policy issues within the jurisdiction of the Board that affect our respective governments. The agency's goal is to provide early notification regarding these issues and an open invitation for consultation on all decisions, rulemaking, and policies that may affect tribal rights and interests as determined by the Tribes. It is understood and agreed that LCB actions that authorize new activities by licensees or customers of licensees on Indian Reservation presumptively affect such tribal interests. Consultation with Tribal governments will occur independent of any public participation process but representatives of Tribal governments and tribal members have equal access to the agency's public participation process.

The LCB welcomes the opportunity to engage with a Tribe when an issue of mutual concerns arises that necessitates discussion between the Tribe and the LCB. This engagement can take place through government-to-government consultation, or in a less formal manner. The LCB's Tribal Liaison will coordinate with the interested Tribe to choose a mutually agreed upon location for the meeting or consultation and ensure, in the case of government-to-government consultation, that LCB staff with the authority to make decisions on behalf of the agency will be present.

ENGAGEMENT DURING RULEMAKING AND POLICY DEVELOPMENT AND IMPLEMENTATION

LCB consultation with tribal governments concerning rulemaking and policy development and implementation is different than engagement with stakeholders, licensees, or municipalities or counties. Unlike these entities, tribal governments are sovereign nations and are not subject to the authority of Washington State. Rulemaking processes are governed under [chapter 34.05 RCW](#), the Administrative Procedures Act.

For rulemaking, the LCB will send notification to the Tribal Chairperson of each of the federally recognized Washington Tribes, or his/her designee, when any of the following conditions exist:

1. After filing a CR-101.
2. Before a CR-102 is filed, when:

- i. Consultation has been requested;
 - ii. Drafting rule language, staff have identified an impact on tribal communities.
 - iii. Prior to filing Expedited and Exempt rule making; giving Tribal Leaders the opportunity to provide input, express concerns, or request consultation prior to filing proposed rule language with the Code Reviser's Office.
3. Following a hearing if staff anticipate changes to a proposed rule that any Tribal Leader has shown interest in.
4. Following the filing of a CR-103 if the adopted rules impact tribal communities, or if any Tribe requests additional information or consultation.
5. Following the filing of a CR-105 (expedited rule) or emergency rule if rules impact tribal communities, or if any Tribe requests additional information or consultation. The LCB will use best efforts to notify Tribes prior to filing an expedited rule if it is identified that the expedited rule will have a direct impact on a Tribe or Tribes.

In addition to the circumstances listed above, the LCB will slow down typical rulemaking processes or delay target filing dates if consultation is requested or undertaken. Rulemaking consultation with Tribes will not replace the LCB's commitment to working in a government-to-government capacity on general issues affecting the LCB and Tribes and is separate and apart from consultation on issues other than rulemaking.

During the development of a Board Interim Policy (BIP), and following the adoption of a BIP, the LCB will notify Tribes if such a policy may appear to impact tribal communities. The LCB welcomes consultation or other, more informal discussions with any Tribes that may be impacted by the adoption of a BIP.

In addition to rule and BIP development, tribal leaders will be contacted and invited to participate in discussions involving agency request legislation, the implementation of legislation, and other special projects. The LCB welcomes discussions separate from our standard public engagement process used for these matters if requested by any of the federally recognized Washington Tribes with the understanding that each is separate and unique in their needs and concerns. What works for one Tribe may not work for another, which potentially may result in several separate and unique processes to handle the same issue.

MARIJUANA COMPACT DEVELOPMENT AND IMPLEMENTATION

[House Bill 2000](#) was passed during the 2015 legislative session. This bill authorized the Governor to enter into formal agreements, referred to as Compacts, with federally recognized Tribes located in Washington State concerning commercial marijuana operations, particularly in light of the fact that federal law precludes the state from enforcing its civil regulatory laws in Indian country. Marijuana Compacts authorize state licensees to conduct marijuana business with compacted Tribes and allow Tribal marijuana enterprises to conduct business with marijuana licensees regulated by the LCB. Such cooperative agreements enhance public health and safety, ensuring a lawful and well-regulated marijuana market while encouraging economic development and providing fiscal benefits to both the Tribes and the state. The Governor has delegated the authority to negotiate these Compacts to the LCB. The LCB must consult, when necessary, with the Office of the Governor and Department of Revenue during the course of negotiations. The requirements for these agreements are under [RCW 43.06.490](#).

A typical Compact consists of sections addressing retail sales, producing and processing, laboratory testing, research, notice to local jurisdictions, taxation and record keeping, safety and enforcement, and dispute resolution; among other topics. In addition to these components, the Tribe's adopted Code or Ordinance related to commercial marijuana operations is included as an exhibit to the Compact. Tribes interested in serving the patient community will need to separately negotiate a Memorandum of Agreement (MOA) with the Department of Health, which may be negotiated concurrently with a Compact, signed simultaneously with the Compact, and included as an amendment to the Compact. An MOA is necessary for the Tribe to access and enter information into the Medical Marijuana Authorization Database. Tribes interested in an MOA will be provided contact information for Department of Health staff at the beginning of Compact negotiations.

Several Tribes and the LCB have successfully negotiated compacts, and the LCB invites any Tribe interested in working with state-licensed and state-regulated marijuana producers, processors, retailers, researchers, labs or transporters to contact the LCB Tribal Liaison or the Governor's Office to initiate Compact negotiations.

LIQUOR MEMORANDUM OF AGREEMENT (MOA) DEVELOPMENT AND IMPLEMENTATION

Liquor MOAs are entered into on a government-to-government basis. These agreements govern the Tribe's or its wholly owned Tribal enterprise's authority, as stipulated under the terms of the MOA, to manufacture, distill, store, distribute, sell and/or serve liquor in Indian Country addressing the unique jurisdictional and other matters that arise under federal and tribal law with respect to the application of state law to tribal liquor sales. The LCB acknowledges that no one license type under Title 66 RCW is applicable to Tribes' operations. The terms of an MOA may cover multiple tribally owned locations. A typical MOA contains sections addressing liquor licensing process, location(s) of sales, tribal licensing, fees, enforcement, dispute resolution processes, and taxation; among other topics.

These MOAs reinforce the shared interest in ensuring that liquor sales in Indian country are well regulated to protect public safety and community interest. The LCB invites any Tribe interested in entering an MOA to contact the Tribal Liaison

TOBACCO AND VAPOR PRODUCT REGULATION

The LCB Enforcement and Education Division works with Tribal Governments and their Police Departments to perform joint compliance checks related to tobacco and vapor product sales. The LCB also welcomes the opportunity to provide responsible liquor and tobacco sales training to interested tribal retailers. The Department of Revenue is delegated by the Governor as the state agency responsible to negotiate cigarette and vapor tax contracts with interested Tribes, and law requires that the Department of Revenue consult with the LCB during those negotiations.

EFFECTIVE DATE

This policy is effective as of August 18, 2020

APPROVAL



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