

CIVIL EXCLUSION AND REMOVAL

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3.05.001 Declaration of Policy

The Skokomish Tribal Council finds that certain types of conduct by persons within the Reservation endanger the health, safety, and welfare of enrolled tribal members and may threaten the political integrity and the economic security of the Tribe. As a separate sovereign nation, the Skokomish Indian Tribe has the inherent power to exclude persons from the Reservation, limited by certain provisions within the Constitution of the Skokomish Indian Tribe and by various acts of Congress. The purpose of the Civil Exclusion and Removal Ordinance is to protect the integrity and security of the Tribe as a whole, and enrolled tribal members as individuals and as a community.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.05.002 Authority.

This Ordinance is adopted pursuant to Article III, Section 8(c); Article V, Section 1(j) and (l); and Article V, Section 3 of the Constitution of the Skokomish Indian Tribe. Article V, Section 1(j) grants to the Tribal Council authority to enact laws and ordinances governing the conduct of individuals and defining offenses against the Tribe; to maintain order and to protect the safety and welfare of all persons within the Tribe's jurisdiction; and to provide for the enforcement of laws and ordinances of the Tribe. Article V, Section 1(l) grants to the Tribal Council the power to prescribe the conditions under which nonmembers may enter and remain on the Skokomish Reservation and to establish procedures for the exclusion of nonmembers from the Reservation. Article III, Section 8(c) and Article V, Section 3 reserve to the Skokomish General Council the power to establish procedures for the exclusion of enrolled tribal members from the Reservation.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.05.003 Jurisdiction

The provisions of this Ordinance shall apply to all persons and property within the territorial jurisdiction of the Tribe to the fullest extent authorized by federal law.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.05.004 Definitions

Where a term is not defined in this section, it shall be given its ordinary meaning, unless otherwise defined in this Ordinance. Terms used in this section shall have the following meaning, except where the context indicates otherwise:

- (a) "Constitution" means the Constitution of the Skokomish Indian Tribe approved by the Secretary of the Interior March 17, 1980 (revoking and replacing the constitution and by-laws approved by the Secretary of the Interior on May 3, 1938, as amended);
- (b) "Enrolled Tribal Member" means a person who is enrolled as a member of the Tribe;
- (c) "General Council" means the General Council of the Skokomish Indian Tribe comprised of all enrolled tribal members eighteen (18) years old or older and whose powers are described in Article III, Section 8 of the Constitution;
- (d) "Non-member" means a person who is not enrolled as a member of the Tribe;
- (e) "Person" means any individual, firm, corporation, public or private entity;
- (f) "Public Right-of-Way" means any lawful right-of-way within the exterior boundaries of the Reservation that is open to public access as a matter of federal law;
- (g) "Repeated" means a pattern of conduct by a person determined by the Tribal Court or General Council to endanger the health, safety and welfare of enrolled tribal members;
- (h) "Reservation" means the Skokomish Indian Reservation established pursuant to the Treaty of Point No Point of January 26, 1855, 12 Stat. 933 and the Executive Order of February 25, 1874;
- (i) "Tribal Council" means the Skokomish Tribal Council, the duly constituted governing body of the Skokomish Indian Tribe delegated authority by the General Council to conduct and regulate the business of the tribe and act on behalf of the Tribe;
- (j) "Tribal Court" means the Skokomish Tribal Court or any court established by the Tribe to adjudicate and enforce the provisions of this Ordinance or violations of other tribal laws;
- (k) "Tribal Prosecutor" means any attorney authorized by the Tribal Council to

prosecute criminal offenses and/or civil claims on behalf of the Tribe;

- (l) "Tribe" means the Skokomish Indian Tribe, the present day sovereign entity which is the political successor in interest to certain tribes, bands or groups of Indians who were parties to the Treaty of Point No Point.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.05.005 Application.

- (a) Non-members. Pursuant to the provisions of this Ordinance, any non-member may be temporarily or permanently excluded and removed from all or any portion of the Reservation, except property owned in fee by the non-member and public rights-of-way.
- (b) Enrolled Tribal Members. *RESERVED*
- (c) Authority of the Tribal Court. The Tribal Court is hereby authorized to adjudicate exclusion hearings, as provided herein, and to enforce all provisions of this Ordinance. Nothing herein shall be construed to limit the authority of the Tribal Court, upon its own initiative or upon motion by the Tribal Prosecutor, to issue an Order of Exclusion under other existing provisions of tribal law.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.05.006 Grounds for Exclusion of Non-members

Any non-member may be excluded and removed from the Reservation for any of the following reasons:

- (a) Committing an act that violates the criminal or civil laws of the Skokomish Tribe, whether or not the Tribe has jurisdiction to prosecute the person for the act;
- (b) Any act that violates the criminal laws of any other tribal, state, federal or international jurisdiction, whether or not the person may be prosecuted by the governing jurisdiction;
- (c) Repeated violations or repeated conduct which constitute violations of civil traffic regulations, Skokomish Tribal Code, Title 8 - Civil Traffic Ordinance;
- (d) Evading arrest or prosecution for an offense committed in another jurisdiction;
- (e) Removing or attempting to remove any child of a member of the Skokomish Tribe without proper authority;
- (f) Failure to Notify and/or Register as a Sex Offender pursuant to S.T.C. 9.02A, Sex Offender Notification and Registration;
- (g) Any act causing physical loss or damage to property not his own;
- (h) Repeated breaches of the peace including but not limited to those breaches of

the peace committed while under the influence of alcohol or drugs;

- (i) Failing or refusing to pay any taxes, rents, fines or other charges justly due the Tribe or any tribal entity, after reasonable notice and an opportunity to pay;
- (j) Hunting, fishing, and/or otherwise harvesting natural resources, without lawful authority, or in violation of tribal or federal law;
- (k) Dumping of waste materials without lawful authority, or in violation of tribal or federal law;
- (l) Mining, cutting timber or vegetation or other use, abuse or damage to tribal property without lawful authority, or in violation of tribal or federal law;
- (m) Exploring or excavating items, grave sites or locations of historic, religious or scientific significance without the lawful authority, or in violation of tribal or federal law;
- (n) Unauthorized possession of, taking, or injury to natural, cultural or treaty resources within the territorial jurisdiction of the Skokomish Tribe;
- (o) Entry into or upon tribally owned property which is fenced, posted, gated, locked or otherwise made publicly known to be closed to public entry without lawful authority, or in violation of tribal or federal law;
- (p) Interfering with or photographing religious ceremonies, funerals or traditional cultural ceremonies of the Tribe or any enrolled tribal member, without prior permission or authorization;
- (q) Inducing any tribal member or other resident of the Reservation to enter into an unconscionable or grossly unfair contract of any nature;
- (r) Trading or conducting business within the Reservation in violation of tribal or federal law;
- (s) Committing a fraud;
- (t) Interference or threats to interfere with the business activities of the Skokomish Tribe;
- (u) Committing usury against any Tribal member;
- (v) Repeated harassment of members of the Skokomish Tribe, Tribal officials, Tribal employees, or persons who are on contract with the Tribe;
- (w) Failure to comply with any Tribal law, policy, or contractual obligation regarding employment practices;
- (x) Defrauding any tribal member of just compensation for his labor or service of any nature done at the request of the non-member;

- (y) Unauthorized removal or attempt to remove Tribal property or property of Tribal members;
- (z) Failure to comply with any legal process, notice, subpoena, order, or other decree issued by the Tribal Court, Tribal Council, or any Tribal administrative procedure panel;
- (aa) Failure to obtain a Tribal permit or to comply with the terms of such permit when required to do so under the laws or procedures of the Tribe; or
- (bb) Any action by words or deed which threaten the health, safety or welfare of members of the Tribe, the Tribal community, employees of the Tribe or other residents of the Reservation.

Reaffirmed by Resolution No. 17-100 (July 5, 2017); Amended by Resolution No. 18-102 (July 18, 2018)

3.05.007 Procedures for Exclusion of Non-Member.

- (a) Complaint. The Tribal Council, the Director of the Skokomish Department of Public Safety, the Director of the Department of Natural Resources, or any enrolled tribal member, may make a complaint for exclusion of a non-member. Forms for such complaints shall be kept by the Tribal Manager at the Tribal Center.
 - (1) A complaint for exclusion shall provide a brief statement of the grounds for exclusion and shall be signed by the complaining witness and shall be delivered to the Secretary of the Tribal Council.
 - (2) The Secretary of the Tribal Council shall place the complaint on the agenda for the next regularly scheduled Tribal Council meeting, or in the case of an emergency may call a special meeting of the Tribal Council.
 - (3) The complaining party shall attend the regular or special meeting of the Tribal Council and shall provide any necessary information requested by the Tribal Council.
 - (4) When the Tribal Council has reason to believe that cause may exist for exclusion, the Tribal Council may, in its sole discretion, initiate exclusion proceedings by resolution authorizing the Tribal Prosecutor to file the complaint and petition the Tribal Court to serve notice upon the non-member.
- (b) Notice Upon receipt of the complaint, petition and resolution authorizing initiation of exclusion proceedings, the Tribal Court shall then promptly cause notice to be served personally or by registered mail upon the non-member named in the complaint and upon the complaining party:
 - (1) The notice shall state the reason for the proposed exclusion and shall state a time and place at which the non-member shall appear before the Tribal Court to show cause why he should not be excluded from the

Reservation;

- (2) The hearing shall not be scheduled less than ten days after the time of service or mailing; provided that if the Tribal Court shall have reasonable cause to believe that an emergency exists, and the notice so states, the Tribal Court may issue an ex parte Temporary Exclusion Order and shall schedule a hearing as soon as practicable.
- (c) Exclusion Hearing After notice to the non-member named in the complaint, the Tribal Court shall hold a hearing to decide whether the non-member shall be excluded from the Reservation:
- (1) Except as specifically provided herein, the Rules of Civil Procedure of the Tribal Court shall apply to an exclusion hearing;
 - (2) The complaining party shall be given an opportunity to present testimony, including any witnesses or other evidence, in support of the complaint;
 - (3) The non-member shall be given an opportunity to present his defense at the hearing, and may be represented by counsel at his own expense;
 - (4) The Tribal Court may, in its discretion, grant a continuance of the hearing on request by either the complaining party or the non-member, or upon its own motion;
 - (5) After the hearing, or at the time set for the hearing if the non-member does not appear, the Tribal Court, upon a finding of just cause, may order that the non-member be temporarily or permanently excluded from the Reservation, or may permit the non-member to remain upon the Reservation on such conditions as the Tribal Court sees fit to impose. Conditions which the Tribal Court may impose in an Order of Exclusion may include, but shall not be limited to:
 - (A) Payment of taxes, interest, and penalties owed to the Tribe, as determined by the Tribal Court, including reasonable court costs and attorneys' costs and fees; and/or
 - (B) Payment of restitution and/or damages to any enrolled tribal member or to the Tribe; and/or
 - (C) Payment of a civil penalty and/or performance of community service. The civil penalty levied and paid under any Order of Exclusion shall not be a criminal fine and shall be for the purpose of compensating for injury to the Tribe, enrolled tribal members and the tribal community, including defraying the costs of enforcing the provisions of this Ordinance.
- (d) Term of Exclusion Order An Order of Exclusion shall remain in force until revoked by the Tribal Court unless the Order specifically provides otherwise.

- (e) Writ of Exclusion and Removal If any non-member ordered excluded from the Reservation by the Tribal Court does not promptly obey the Order of Exclusion the Tribal Court shall issue a Writ of Exclusion which shall order any tribal law enforcement officer to:
- (1) Remove the non-member and any of his property from the Reservation at the non-member's expense; and
 - (2) Prevent the re-entry of the non-member onto the Reservation.
 - (3) The law enforcement officer executing the Writ shall use only so much force as is necessary to effect the removal or prevent the re-entry.
 - (4) The Tribal Prosecutor or the Tribal Court may also refer the matter to the United States Attorney for prosecution of any federal crime committed.
- (f) Emergency Exclusion and Removal In cases involving immediate danger to the health, safety, welfare, life or property of the Tribe or any enrolled tribal member, and where delay is likely to result in irreparable damage, the Tribal Court may, upon its own initiative or upon request by the Tribal Prosecutor, issue an Emergency Writ of Exclusion which shall order any tribal law enforcement officer to remove the non-member and any of his property from the Reservation:
- (1) The law enforcement officer executing the Emergency Writ of Exclusion shall use only so much force as is necessary to effect the removal;
 - (2) If the service of the notice has not already been made on the non-member, the Tribal Court shall cause the law enforcement officer to serve the notice upon the non-member at the time of removal or as soon after the removal as possible. An Emergency Writ of Exclusion shall remain in force until the hearing provided for subsection (c) has been held.
- (g) Finality of Exclusion Order An Order of Exclusion by the Tribal Court shall be final. Any person excluded by an order of the Tribal Court may apply to the Tribal Court to have the order modified or vacated at such time as the order provides, or if the order makes no such provision, after one year. Final Orders may be appealed to the Skokomish Tribal Court of Appeals pursuant to the Rules of Civil Appellate Procedure, provided an Order of Exclusion shall not be stayed pending appeal.
- (h) Penalties for Violation of an Order of Exclusion Any non-member in violation of an order of exclusion, having been served therewith, or having actual knowledge thereof, in addition to the provisions of sub-section (e) of this section, shall be subject to any other penalty or remedy under tribal, state or federal law.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.05.008 *Grounds for Exclusion of Enrolled Tribal Members. RESERVED*

3.05.009 *Procedures for Exclusion of Enrolled Tribal Members. RESERVED*

S.T.C. 3.05

CIVIL EXCLUSION AND REMOVAL

3.05.010 Severability

If any provision of this Ordinance or its application is held to be invalid, the remainder of the Ordinance, or the application of the provision to other persons, or circumstances, is not affected.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.05.011 Immunity.

A law enforcement officer may not be held criminally or civilly liable in carrying out the provisions of this Ordinance, provided the officer acts reasonably and in good faith.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

3.05.012 Effective Date.

The provisions of this Ordinance relating to exclusion of non-members shall be effective upon the date of resolution approving and adopting the same by the Tribal Council. The provisions of this Ordinance relating to exclusion and removal of enrolled tribal members shall be effective on the date of resolution approving and adopting the same by the General Council.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

Legislative History prior to July 5, 2017

+Adopted by Resolution No. 98-26 (March 19, 1998)
Reaffirmed by Resolution No. 17-100 (July 5, 2017)

+Ordinance and/or amendments not attached to the resolution in the Skokomish Tribal Archives