



SPOKANE TRIBE OF INDIANS

REVISED LAW AND ORDER CODE OF THE SPOKANE TRIBE OF INDIANS

LAST REVISED 05/14/2013

By Resolution 2006-524, enacted 08/01/06, the Spokane Tribal Business Council approved an electronic Revised Law and Order Code ("RSLOC") for the Spokane Tribe.

The RSLOC is amended, from time-to-time, as the Spokane Tribal Business Council enacts Resolutions revising the Code, and as the duties of the Office of the Spokane Tribal Attorney permit time to incorporate those revisions into the RSLOC.

Enacted Resolutions that amend the RSLOC are posted publicly, as required by the RSLOC § 1-12.10(b), and pursuant to the RSLOC 1-12.02(a), become law as soon as enacted or posted, whether or not those enactments are timely incorporated into the electronic version of the RSLOC.

The task of keeping the RSLOC updated with current and pertinent versions of Tribal Council enactments is an ongoing task of the Office of the Spokane Tribal Attorney. Please contact the Office of the Spokane Tribal Attorney at (509) 458-6543 should you have any questions regarding the current version of the RSLOC that you are working with, or should you have any comments or note any corrections that should be made to this Code.

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REVISED SPOKANE LAW & ORDER CODE
SPOKANE TRIBE OF INDIANS

WELLPINIT, WASHINGTON

**CONSTITUTION
OF
THE SPOKANE TRIBE-SPOKANE RESERVATION**

Wellpinit, Washington

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PREAMBLE

We, the Indians of the Spokane Tribe, initially organized under a constitution and bylaws effective on June 27, 1951, in order to improve our recognized Tribal organization for management of our Tribal affairs, do hereby establish this Constitution.

ARTICLE I - PURPOSE

Our purpose shall be to promote and protect the sovereignty, rights, and interests of the Spokane Tribe of Indians.

ARTICLE II - TERRITORY AND JURISDICTION

The jurisdiction of the Spokane Tribe, acting through its government as hereby established, shall extend to and include all lands and water areas within the exterior boundaries of the Spokane Reservation established by Executive Order, January 18, 1881, and any extensions thereof, and all Spokane Tribal and allotted Indian lands outside the exterior boundaries of the Spokane Indian Reservation.¹

ARTICLE III – MEMBERSHIP

Section 1. The membership of the Spokane Tribe shall consist of:

- (a) All persons of Spokane Indian blood whose names appear on the official census of the Spokane Tribe as of January 1, 1951, provided that corrections may be made in said census by the Business Council subject to the approval of the Secretary of the Interior, as long as such approval is required by law.
- (b) All children of ¼ or more degree of Indian blood born subsequent to January 1, 1951, but prior to midnight, September 1, 1963, to any parent who is an enrolled member of the Spokane Tribe and:
- (c) All children of ¼ or more degree of Indian blood born after midnight, September 1, 1963, to any enrolled member of the Spokane Tribe.¹⁹
- (d) All persons whose names appear on the official enrollment records of the Spokane Tribe as of midnight December 31, 2010 shall serve as the official census of the Spokane Tribe.¹²

Section 2. Transfer of Enrollment: The requirements for transfer of enrollment from another Tribe into the Spokane Tribe shall be the same as listed in Section 1 of this Article.^{2, 11}

ARTICLE IV - RIGHTS OF MEMBERS

Section 1. Every Tribal member shall have an equal opportunity to participate in the economic resources and activities of the Spokane Indian Tribe and the right to exercise traditional rights and privileges of members of the Tribe where not in conflict with other provisions of this Constitution, Tribal laws and Ordinances, or the laws of the United States.

Section 2. This Constitution and the Tribal Government it establishes shall not encroach upon or limit any person's right to enjoy freedom of worship, conscience, speech, press, assembly, and association, and other rights established by Federal Law.

Section 3. To protect the tribal membership's ancient rights to practice their culture, tradition, and religion freedoms. Whereas, the use of medicinal plants was, and still is a part of our culture, traditions, and rights. Whereas, it has been a cultural tradition in the Spokane Tribe to use plants to treat and cure ailments, illnesses and diseases. Therefore, it shall be acknowledged that any plant that was historically used by our Spokane Tribal ancestors shall be allowed to be used today. To include, but not limited to, natural remedies and medicinal plants prescribed by a medicine man or modern physician. Therefore, all members shall have the right to practice their Spokane cultures and traditions. Therefore, no Spokane Tribal law shall ever encroach on, impede, or limit member's rights to practice their aboriginal customs.¹⁰

ARTICLE V - GOVERNING BODY

Section 1. The governing body of the Spokane Tribe shall be Business Council of 5 members, consisting of a Chairman, Vice Chairman, Secretary, and 2 Members.

Section 2. No person shall be a candidate for membership on the Business Council or for any other elective office unless he or she is a member of the Spokane Tribe, shall have actually lived within the exterior boundaries of the aboriginal territory of the Spokane Reservation for 2 years next preceding the election and shall be at least 25 years of age.¹³

Section 3. No person shall be eligible to be a candidate for membership on the Business Council or any other elective office or to remain as an incumbent in any such office if convicted of a felony or of a misdemeanor involving dishonesty. Such ineligibility shall continue for a period of 5 years after conviction or 5 years after completion of actual incarceration, whichever comes later.

Section 4. Business Council members shall be elected for 3-year staggered terms. Council positions shall be numbered 1, 2, 3, 4 and 5, which numbers shall permanently identify each Council position. Position 3 shall be filled by the election held in June, 1981; Position 4 and 5 shall be filled by the election held in June, 1982; Positions 1 and 2 shall be filled by the election held in June 1983. The first order of business of the new council after each election shall be the election of officers for the ensuing year. A candidate for the Business Council shall identify the number of the position for which he is running. The term of an incumbent Council member shall continue until his successor is duly elected and installed.

Section 5. The General Council shall be composed of all the qualified voters of the Spokane Tribe who attend a General Council or Tribal meeting properly called in accordance with this Constitution and shall be authorized to exercise such powers as may be delegated to that body by the terms of this Constitution.

ARTICLE VI - NOMINATION AND ELECTIONS

Section 1. Elections of Business Council members and of other Tribal elective officers shall be held annually during the month of June and shall be called by the Business Council and conducted by the Election

Committee according to an election Code provided by the Election Committee and approved by the Business Council. All elections shall be by secret ballot. The election ordinance shall include provisions for resolving election disputes, procedures for submitting any petitions provided for in this Constitution and a procedure for determining their validity.

Section 2. All elections shall be conducted by an Election Committee composed of 3 qualified Tribal voters. One alternate shall be available to serve in the absence of a regular member of the Election Committee. Such committee shall conduct elections in conformity with the election ordinance and this Constitution, and certify the results of the election to the Tribal Council on the Monday following the election. The Tribal Council shall immediately consider the certified results of the election and, unless some invalidity, illegality, tie vote or a failure of the leading candidate for an office to receive a 50% or greater majority (as provided in Section 3 of this Article) requiring another election, officially accept the certified results. A Spokane Tribal Judge shall administer the oath to the elected members. Elected officers shall assume responsibility 10 working days after said certification.

Section 3. If the top 2 candidates for an elective office are tied or no candidate for an office has received 50% or more of the total vote cast for that office, a run-off election shall be called for and held the second Saturday after the Annual Election. Such election shall be between said tied candidates or between the 2 candidates for the particular office who received the most votes.³

Section 4. A qualified voter is any member of the Spokane Tribe, 18 years of age or over. He shall exercise his right of vote in person at a prescribed voting place. The voter will be required to show proper identification at the polling location.¹⁶

ARTICLE VII - VACANCIES AND RECALL

Section 1. Any vacancy in the Business Council shall be filled by the Business Council. Such appointee shall qualify pursuant to Article V and hold office until the next regular election when it shall be filled by election for the balance, if any, of the unexpired term. No vacancies that occur within 3 months of the next regular election shall be filled except that the remainder of the Tribal Council shall fill any vacancies in excess of 2 so that the Tribal Council may maintain a quorum.

Section 2. Recall: Upon receipt of a written petition signed by 250 qualified voters of the Spokane Tribe calling for the recall of any Tribal elected official, it shall be the duty of the Business Council to call a special General Council meeting to conduct a hearing for the member involved within 10 days of receipt of said petition. Any enrolled member of the Tribe may attend said hearing. If at the conclusion of the hearing, a majority of voting members of the Spokane Tribe attending the hearing vote to hold a recall election, an election shall be called for that purpose. The challenged incumbent shall automatically be a candidate in said election, unless he withdraws. Other candidates may have their names placed on the ballot and said election shall be conducted within 30 days in the same manner as a regular general election.

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ARTICLE VIII - POWERS AND DUTIES OF THE SPOKANE TRIBAL COUNCIL

The powers and duties set forth in this Article shall be exercised by the Business Council to the full extent permitted by Federal Law. All the powers and legal authority, express, implied or inherent, vested by existing law in the Spokane Indian Tribe as a sovereign political entity, which powers and legal authority shall include but not be limited to the following specific powers and duties:

- (a) To legislate and enforce a comprehensive law and order code and Tribal Court System extending Tribal civil and criminal jurisdiction, to the extent said code provides, over all persons residing on or coming upon the reservation and over all land and water areas over which the Tribe has jurisdiction as provided in Article II above.
- (b) To administer the affairs and assets of the Tribe including Tribal lands, funds, minerals, timber,

water rights and other resources under appropriate contracts, leases, permits, loans or sale agreements. In the sale or other transfer of Tribal lands, the Tribe and Business Council shall take every precaution in appropriate cases so that the land does not go out of trust.

- (c) To provide for taxes, assessments, permits, and license fees upon members and nonmembers of all lands within the jurisdiction of the Spokane Tribe of Indians.⁴
- (d) To employ legal counsel to assist in the protection and advancement of the Tribe. The choice of counsel and the fixing of fees to be subject to the approval of the Secretary of the Interior or his authorized representative as long as such approval is required by law.
- (e) To negotiate with and represent the Tribe before Federal, State, and local governments and their departments and agencies.
- (f) To appoint necessary committees.
- (g) To have and exercise such other powers and authority necessary to fulfill its obligations, responsibilities, objectives, and purposes as the governing body of the Tribe.
- (h) To foster, encourage and retain the arts, crafts, culture and traditions of the Tribe.

ARTICLE IX - BILL OF RESERVED POWERS

The Business Council and other Agencies of the Tribe are required to obtain the advice and consent of the General Council prior to taking any action with regard to the following powers. The advice and consent of the General Council shall be final when ratified by a majority vote of the membership of the Spokane Tribe at the next general election.⁵

- (a) The relinquishment of any Spokane Tribal criminal or civil jurisdiction to any agency, public or private; provided, however, that this provision shall not prevent the Business Council from commissioning non-Spokane or non-Bureau of Indian Affairs peace officers to enforce Spokane Tribal law and order regulations.
- (b) The termination or partial termination of the Spokane Indian Reservation.
- (c) The sale of Tribal hunting, fishing or water rights.
- (d) The Business Council may prescribe such compensation of members of the Business Council as it deems advisable from funds as may be available, subject to the approval of the General Council. Unless contrary action is taken by a General Council, yearly salary increase will be made, based on the "National Consumer Price Index," published by the U.S. Department of Labor. The amount of increase will be based on the percent of increase in cost of living from the previous year.

ARTICLE X - INITIATIVE AND REFERENDUM

Section 1. The Spokane Tribe's voting membership is empowered to exercise the legislative powers and duties enumerated in Article VIII through either an initiative or referendum action.

Section 2. Initiative: An initiative shall be in the form of a petition, signed by at least 250 qualified voters of the Spokane Tribe, setting out in clear language the legislative action to be taken. Such petition shall comply with the petitioning procedures provided by Section 1, Article VI of this Constitution.¹⁷

Section 3. Referendum: A referendum is an action by the Business Council referring a legislative matter to the Tribal members for enactment or rejection.

Section 4. Elections on Initiatives or Referendums. Whenever an initiative petition with the required signatures is filed at the Tribal office or a resolution for a referendum is adopted by the Tribal Council, an election thereon shall be conducted within 45 days, unless there is a regular election to be held within 90 days. An election on a referendum or initiative must have a minimum voter turnout of 51% of the average voter turnout at the regular Tribal elections held during the previous 5 years.

ARTICLE XI - DUTIES OF OFFICERS

Section 1. Chairman. The Chairman of the Business Council shall preside over meetings of the Tribe and the Business Council. He shall perform all duties of the Chairman and exercise any authority delegated to him by the Business Council.

Section 2. Vice Chairman. The Vice Chairman shall act as Chairman and perform the duties of Chairman in the Chairman's absence.

Section 3. Secretary. The Secretary shall be responsible for Tribal correspondence and reports and shall keep a complete record of minutes of all business conducted at Business Council meetings and Tribal or General Council meetings. The Business Council may delegate an assistant or recording secretary to assist the Secretary in the performance of his duties.

Section 4. Executive Director. The Business Council may employ an Executive Director to assist the Business Council in the performance of the administrative duties. The Executive Director shall be the manager and ranking officer, subject to supervision by the Business Council, in charge of the Tribe Office and its staff. His duties and responsibilities shall be more specifically detailed and outlined in his employment contract.

Section 5. Appointive Officers. The duties of all committees and officers appointed by the Business Council shall be clearly defined in an ordinance passed by the Business Council. Such committee members and officers shall make reports to the Business Council as required.

ARTICLE XII - CODE OF CONDUCT FOR COUNCILMEN AND OTHER EXECUTIVE OFFICERS

Section 1. Hours of duty for Business Councilmen and other elective officers shall be determined as necessary to fulfill their obligations, responsibilities, objectives, and purpose as the governing body of the Spokane Tribe.

Section 2. Notice of absence shall be in advance to an authorized representative designated by the Tribal Council. In case of an emergency, notification should be given at the earliest time possible.

ARTICLE XIII - TIME AND PLACE OF MEETINGS

Section 1. Meetings of Business Council. The Business Council shall hold at least 1 regular meeting a week at the Tribal headquarters at Wellpinit, Washington, or at other times and places required to satisfactorily fulfill its duties and responsibilities as outlined in this Constitution. Special meetings may be called at any time by the Chairman, by any 3 Council Members, or by a written request signed by at least 25 qualified voters of the Spokane Tribe.

Section 2. Tribal and General Council Meetings. There shall be at least 2 General Council meetings a year. One in the month of April and another in the month of November. Additional General Council meetings may be called by the Chairman, by a majority of the Business Council or by a petition signed by at least 125 qualified voters of the Spokane Tribe.¹⁵

Section 3. Quorum. A quorum of the Business Council shall consist of 3 members. A quorum of the General Council shall consist of 125 qualified voters of the Spokane Tribe. If a confirmed quorum is present at the time of any General Council vote on a matter, the matter voted upon shall be binding upon the Business

Council, unless the Business Council acts pursuant to Section 4 of this Article. If the General Council quorum is not confirmed at the time of a General Council vote, the matter shall be advisory to the Business Council.^{7,15}

Section 4. Binding power of the General Council Vote. A vote of a quorum of the General Council on any and all matters shall be final and binding on the Tribal Business Council unless the Tribal Business Council resolves to require a referendum vote of the membership on the matter.^{6, 7}

ARTICLE XIV – AMENDMENTS

The Constitution may be amended by a majority vote of the qualified voters of the Spokane Tribe voting in an election in accordance with Article X, Section 4, called for that purpose, by the Business Council.⁸ It shall be the duty of the Tribal Council to call an election on a proposed amendment upon receipt of a petition therefore signed by at least 250 qualified voters of the Spokane Tribe. Such petition shall comply with the petitioning procedures provided by Section 1, Article VI.¹⁸

ARTICLE XV – ADOPTION

This Constitution shall become effective when adopted by a majority of the qualified voters of the Spokane Tribe voting at an election called for that purpose by the Tribal Council.⁹

A M E N D M E N T S

1. Article II: Amendment Approved by Commissioner of Indian Affairs on December 19, 1983.
2. Article III, Sec. 2: Amendment Approved by Northwest Regional Director on February 2, 2005.
3. Article VI, Sec. 3: Amendment Approved by Area Director on May 2, 1986 (memo May 2, 1986).
4. Article VIII(c): Amendment Approved by Commissioner of Indian Affairs on December 19, 1983.
5. Article IX: Amendment Approved by Area Director on December 3, 1986.
6. Article XIII, Sec. 4: Amendment Approved by Area Director on December 3, 1986.
7. Article XIII, Secs. 3-4: Amendment Approved by Area Director on January 27, 2009.
8. Article XIV: Amendment Approved by Northwest Regional Director on June 4, 2010.
9. Article XV: Amendment Approved by the Northwest Regional Director on June 4, 2010.
10. Article IV, Sec. 3: Amendment approved by the General Membership on June 5, 2010 by a vote of 490 yes and 268 no and approved by Resolution 2010-303 on June 7, 2010.
11. Article III Sec. 3: Amendment approved by the General Membership on February 12, 2011, by a vote of 412 yes and 301 no and approved by Resolution 2011-149 on February 14, 2011.
12. Article III, Sec. 1: Amendment approved by the General Membership on February 12, 2011, by a vote of 417 yes and 301 no and approved by Resolution 2011-149 on February 14, 2011.
13. Article V, Sec. 2: Initiative approved by the General Membership on June 4, 2011, by a vote of 389 yes and 187 no and approved by Resolution 2011-249 on June 6, 2011.
14. Article VII, Sec. 2: Referendum approved by the General Membership on June 4, 2011 by a vote of 361 yes and 209 no and approved by Resolution 2011-249 on June 6, 2011.

15. Article XIII, Sec 2 and Sec 3: Referendum approved by the General Membership on June 4, 2011 by a vote of 387 yes and 182 no and approved by Resolution 2011-249 on June 6, 2011.
16. Article VI, Sec 4: Referendum approved by the General Membership on June 4, 2011 by a vote of 422 yes and 150 no and approved by Resolution 2011-249 on June 6, 2011.
17. Article X, Sec 2: Referendum approved by the General Membership on June 2, 2012 by a vote of 522 yes and 235 no and approved by Resolution 2012-234.
18. Article XIV, Referendum approved by the General Membership on June 2, 2012 by a vote of 523 yes and 224 no and approved by Resolution 2012-234.
19. Article III, Sec. 1(c), Referendum approved by the General Membership on June 2, 2012 by a vote of 491 yes and 258 no and approved by Resolution 2012-234.

REVISED LAW AND ORDER CODE OF THE SPOKANE TRIBE OF INDIANS

PREAMBLE

For the purpose of exercising self-government, providing the law enforcement machinery, and protecting the health, safety and welfare of the residents of the Spokane Reservation, the Tribe hereby adopts this Law and Order Code.

CHAPTER 1 - SPOKANE TRIBAL COURT

Section 1-1	Name
Section 1-2	Jurisdiction
Section 1-3	Judges
Section 1-4	Court Procedure
Section 1-5	Juries
Section 1-6	Witnesses
Section 1-7	Appellate Procedure
Section 1-8	Contempt of Court
Section 1-9	Spokesperson or Professional Attorney
Section 1-10	Clerks
Section 1-11	Records
Section 1-12	Copies of Law-Legal Revisor
Section 1-13	Sovereign Immunity
Section 1-14	Habeas Corpus
Section 1-15	Priority of Laws
Section 1-16	Severability

Section 1-1 Name

1-1.01 Name. The Spokane Tribe hereby establishes a Tribal Court to be known as the Spokane Tribal Court.

Section 1-2 Jurisdiction

1-2.01 Jurisdiction.

- (a) The Spokane Tribal Court shall be the court of general jurisdiction of the Spokane Tribe, and shall have jurisdiction over all matters now or hereafter described in this Code.
 - (1) The Court may also exercise its inherent authority as a court of general jurisdiction.
 - (2) Any reference to Spokane Tribal jurisdiction in this code shall also mean Tribal Court jurisdiction.
 - (3) The jurisdiction of the Tribal Court, and the effective area of the Law and Order Code, shall include all territory within the Reservation boundaries, the lands outside the boundaries of the Reservation held in trust by the United States for Tribal members or the Tribe, and any other land considered to be within the jurisdiction of the Spokane Tribe by law.
 - (4) Any reference in this Code to the "Reservation" includes the foregoing lands.
- (b) Entrance by any person onto any lands or property of the Spokane Indian Reservation or any other land or property under the jurisdiction of the Spokane Tribe of Indians shall be deemed equivalent to and construed to be consent to the jurisdiction of the Tribe.
 - (1) Such consent shall be to both civil and criminal jurisdiction, in accordance to all applicable law, and shall be consent to all provisions of the Spokane Tribal Law and Order Code.
- (c) In addition, any person who utilizes any process of the Spokane Tribal Court, in any manner, shall have consented to the civil and criminal jurisdiction of the Spokane Tribe for any cause of action arising under the same operative set of facts.
 - (1) Such use of Tribal Court process shall act as waiver of any jurisdictional defense.

- (d) All criminal complaints filed by persons other than law enforcement agents, Tribal Court personnel, or the authorized Tribal Prosecutor shall contain an express waiver in accordance with this section or they will be dismissed for lack of jurisdiction.

1-2.02 [Reserved]

1-2.03 Indian Service Employees. All persons employed in the Indian service of the Spokane Reservation shall be subject to the jurisdiction of the Spokane Tribal Court.

1-2.04 Means to Make Jurisdiction Effective. When jurisdiction is vested in the Court, the Court presumptively has the means necessary to the effective exercise of the Court's jurisdiction.

- (a) If the course of proceeding is not specifically provided for in this Code, any suitable process or mode of proceeding may be adopted that appears most comfortable within the spirit of Tribal law.
- (b) By way of example and not limitation, the Court may order the seizure and, following a hearing, the civil forfeiture of personal property used to violate a Court order.

Section 1-3 Judges

1-3.01 Number and Compensation of Judges.

- (a) The Spokane Tribal Court shall consist of a Chief Judge whose duties shall be regular and permanent and up to 3 Associate judges, who shall be called to service when the occasion requires.
- (b) The judges shall be compensated from Tribal or other available funds, at rates to be set by the Spokane Tribal Council.

1-3.02 Qualifications of Judges.

- (a) An individual shall be qualified to serve as Chief Judge of the Spokane Tribal Court only as follows:
- (1) Has at least 5 years of experience as a Judge, with extensive experience in:
 - A. Criminal Prosecution;
 - B. Juvenile Delinquency and Protection;
 - C. Family Law and Support;
 - D. Civil Issues, including complex litigation under the Federal Rules of Evidence;
 - E. Probate and Guardianship; and
 - (2) Is knowledgeable in the following areas:
 - A. Current and historical federal Indian law issues;
 - B. Tribal customs and traditions;
 - C. Code reading and writing; and
 - (3) Is at least 25 years of age; and
 - (4) Has never been convicted or pleaded guilty to any felony, or a misdemeanor involving dishonesty within the past year.

1-3.03 Appointment of Judges.

- (a) Each Judge shall be appointed by Resolution of the Spokane Tribal Council at a regular or special meeting called for that purpose and shall hold office for a period of 3 years unless sooner removed for cause or by reason of abolition of office, resignation, death, or inability to serve.
- (b) Judges shall be eligible for reappointment.

1-3.04 Designation of Alternate Judge. In the event a Tribal Judge is unable, or for any reason unwilling, to complete the Judge's term of office, the Spokane Tribal Council shall appoint a successor to fill the unexpired term.

1-3.05 Disqualification of Judge.

- (a) *Recusal.*
- (1) No judge shall be qualified to act in any proceeding wherein:
 - A. the Judge is a party to the proceeding;
 - B. the Judge has direct interest in the subject matter in controversy; or
 - C. a relative by marriage or blood in the 1st degree:

- ii. is a party;
 - iii. is acting as a lawyer or spokesperson in the proceeding;
 - iv. is known by the Judge to have a direct interest that could be affected substantially by the outcome of the proceeding;
 - v. to the judge's knowledge is likely to be a material witness to the proceeding.
- (2) A judge shall not be disqualified to act in any proceeding because they are a member of the Spokane Tribe of Indians and the Tribe is a party to the proceeding.
- (3) The Judge shall enter an Order of disqualification, and the Court shall enter an order transferring and removing the cause to another Judge.
- (b) *Definitions.* For the purposes of this section, the following words or phrases shall have the meanings indicated:
- (1) "Proceeding" includes pretrial, trial, appellate review, or other stages of litigation;
 - (2) "Direct interest" means a direct, absolute interest and does not include any per capita, fractional, proprietary, or equitable interest arising from a person's membership in an Indian tribe;
 - (3) "Timely" means before the Judge makes a discretionary ruling in a matter, and before trial is commenced, unless a motion and affidavit alleges a particular incident, conversation, or utterance by the Judge that was not known to the party before a discretionary ruling is issued or trial commenced.
 - (4) "Tribe" means the Spokane Tribe of Indians.
- (c) *Affidavit of Prejudice.* When a party believes that the Judge assigned to the proceeding would be disqualified under grounds set forth in this section that party, in good faith, may request the Judge to withdraw.
- (1) The party seeking the disqualification shall file with the Judge a timely petition for disqualification and a supporting affidavit setting out in detail the facts alleged to constitute the grounds for disqualification.
 - (2) At the discretion of the Court, an opposing party may be permitted to respond to the allegations in the affidavit.
 - (3) The Judge shall issue a written ruling on the matter.
 - (4) Only 1 such motion and affidavit shall be filed on behalf of the same party in a case, and the motion and affidavit shall be made as to only 1 of the Judges of the Court.
 - (5) If a Judge rules against disqualification, the Judge shall place all matters relating to such claims of disqualification into the record.
 - (6) A party who believes that they are aggrieved by a disqualification decision of the trial court Judge may not seek interlocutory review, but may raise the issue on appeal upon conclusion of the case.
- (d) The provisions of disqualification and affidavit of prejudice shall not be applicable to the Spokane Tribal Appellate Court.

Legislative History-Amended 06/30/97, Resolu. 97-359; revised 07/27/06, Resolu. 2006-512; Readopted 08/01/06, Resolu. 2006-524; Amended 12/18/06, Resolu. 2007-105

1-3.06 Visiting Judges. In the event that a Judge or Judges are disqualified, and the Court does not have a trial judge or a sufficient number of Judges to hear a case on appeal, the Chief Judge of the Spokane Tribe shall appoint a visiting Judge or Judges.

- (a) The Chief Judge shall choose such Judge or Judges by contacting the Judges listed on the visiting Judge list.
- (b) This list shall be compiled by the Chief Judge, in consultation with the Tribal Council, and updated annually.
- (c) The list shall contain the names of those qualified to sit on the bench of the Spokane Tribal Court, and shall consist of those that are Judges for other Tribes and those attorneys from the private sector that are qualified to act as judges pro tem.
- (d) The Tribal Council, in consultation with the Chief Judge, shall annually set the amount of compensation payable to the visiting Judges.

1-3.07 Suspension or Removal of Judge. Any Judge of the Spokane Tribal Court may be suspended or removed for cause by the Spokane Tribal Council following a hearing before the Tribal Council.

- (a) At the hearing, the accused judge shall be given an adequate opportunity to answer all charges against him.
- (b) Causes sufficient for removal shall include, by way of example and not limitation, excessive use of intoxicants, immoral behavior, conviction of any offense other than a minor misdemeanor, use of official position for personal gain, desertion of office or failure to perform duties.
- (c) Causes may be further defined by contract with the judge.

1-3.08 Authority. The duly appointed Chief Judge and Associate Judges shall be empowered to hear and decide all matters properly brought before the Spokane Tribal Court.

1-3.09 Legal Training of Judges. The Tribal Council may establish educational and in-service training requirements for Tribal Judges and set up programs therefore.

Section 1-4 Court Procedure

1-4.01 Presiding Judge. Sessions of the Tribal Court for the trial of cases shall be held by the Chief Judge, or in case of his disability, absence, disqualification, or unavailability, by an Associate Judge, provided, however, that an Associate Judge may be called in to hear cases at anytime for any reasonable cause by the Chief Judge.

1-4.02 Designation of Alternate Chief Judge. The Chief Judge of the Tribal Court shall designate, in writing, one Associate Judge to act as Chief Judge whenever the Chief Judge is absent from the Reservation, is on vacation, ill or otherwise unable to perform the duties of his office.

- (a) The acting Chief Judge may exercise all of the powers of the Chief Judge.
- (b) The Chief Judge may at any time change his designation of the Judge empowered to act as Chief Judge.
- (c) In the event that the Chief Judge fails to designate a Judge to act in his absence, the Tribal Council shall designate an Associate Judge as acting Chief Judge.

1-4.03 Rules of Court.

- (a) The time and place of court sessions, and all other details of judicial procedure not prescribed in this Code, shall be set out in Rules of Court approved by the Spokane Tribal Council.
- (b) It shall be the duty of the Judges of the Spokane Tribal Court to make recommendations to the Spokane Tribal Council for the enactment or amendment of such rules of Court.

Section 1-5 Juries

1-5.01 Number of Jurors. A jury shall consist of 6 jurors.

1-5.02 Request for Jury Required. All cases both civil and criminal shall be heard by the Court unless a jury trial is requested.

- (a) The defendant in a criminal case may request a jury trial orally at the time of his arraignment or by written application to the Court within 3 days thereafter.
- (b) At the time of defendant's first appearance before the Court, the Court shall advise him of his right to request a jury trial.
- (c) In all non-criminal cases a request for jury trial must be submitted to the Court in writing no later than 10 days after the date of trial has been set.

1-5.03 Jury List.

- (a) Each year the Clerk of the Tribal Court shall prepare a list of eligible jurors.
- (b) Any enrolled member of the Spokane Tribe at least 18 years of age and residing on the Spokane Reservation shall be eligible to be a juror.
- (c) A person may be excused from jury duty for good cause shown to the trial judge.

1-5.04 Jury Roster. A roster of 24 names shall be drawn by the Court Clerk or the Judge from the current jury list in preparation for a jury trial.

- (a) The Judge may dismiss any prospective juror for reasonable cause.
- (b) In addition to any dismissed for cause, any party to the case may strike not more than 3 names from those named remaining on the 24-name list.
- (c) The first 6 of the remaining names shall be called for seating on the jury.

1-5.05 Jury Instructions.

- (a) The Judge shall instruct the jury in the law governing the case.
- (b) In a civil action, the jury shall bring a verdict for the complainant (or plaintiff) or the defendant.
- (c) A less than unanimous verdict or judgment may be rendered in all civil actions provided at least 4 jurors agree.
- (d) In a criminal action, the jury shall bring a verdict of guilty or not guilty and a verdict of guilty shall be by unanimous accord of the jury.
- (e) The Judge shall render judgment in accordance with the verdict and existing law.

1-5.06 Discharge of Jury.

- (a) The jury may be discharged by the Court on account of sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing.
- (b) Where this happens, the action may thereafter be set for a new trial.

1-5.07 Compensation of Jurors. Each juror who serves upon a jury shall be entitled to compensation and expenses as provided in the rules of Court.

Section 1-6 Witnesses

1-6.01 Subpoenas.

- (a) The Judges of the Spokane Tribal Court shall have the power to issue subpoenas for the attendance of witnesses either on their own motion, on the request of the Chief of Police, or of any of the parties to the case.
- (b) Each subpoena shall bear the signature of the Judge issuing it.

1-6.02 Compensation of Witnesses.

- (a) Each witness answering a subpoena shall be entitled to a fee and expenses in accord with the Rules of Court.
- (b) Witnesses who testify voluntarily shall be paid by the party calling them.

Section 1-7 Appellate Procedure

1-7.01 Court of Appeals. The Spokane Tribe hereby establishes an appellate court, to be known as The Spokane Tribal Court of Appeals.

1-7.02 Location. The Court of Appeals shall sit, hold hearings, and keep offices and records on the Spokane Indian Reservation or at another location as established by Resolution of the Spokane Tribal Council.

1-7.03 Appellate Justices.

- (a) The Court of Appeals shall be composed of 3 Justices: a Chief Justice and 2 Associate Justices.
- (b) The appellate justices shall be selected by lot at the time of filing a Notice of Appeal by the Clerk of the Court of Appeals from among the Chief Judge and Associate Judges of the Tribal Court, or such other qualified judges from a pool as selected by the Tribal Council in consultation with the Chief Judge, excepting Judges who heard or decided the case which is the subject of the appeal.

1-7.04 Qualifications.

- (a) An Appellate Justice shall be an enrolled member of a federally recognized Tribe, at least 25 years old, informed respecting Tribal and Federal Indian law, and neither found guilty of a felony nor found guilty of a misdemeanor concerning dishonesty.
- (b) The Spokane Tribal Council shall have sole and final discretion to pass on the qualifications of the persons to serve on the pool of appellate justices.

1-7.05 Administration. The Chief Judge shall administer the Court of Appeals, select a clerk and, if the budgets allow, a solicitor, present budgets and personnel policies to the Tribal Council for its approval and advance the orderly evolution of Tribal law by semi-annual reports to the Tribal Council.

1-7.06 Compensation. The compensation of the Appellate Justices shall be set by the Spokane Tribal Council and shall not be diminished while they are in office.

1-7.07 Appeals – Jurisdiction. Parties to Tribal Court suits have a right to appeal judgments and orders of the Tribal Court to the Court of Appeals; the Tribal Council reserves the right to bar appeals respecting specified subject matter, but neither retroactively applicable to suits pending in the Court of Appeals nor specific to a party.

Resolu. 2005: By Resolution 2006-95, adopted 11/22/05, by a vote of 3-0-0-2, the Spokane Tribal Council determined that all disputes arising from occurrences covered by the Tribe's or Tribal enterprises' liability insurance policy(ies) shall be adjudicated in the Spokane Tribal Court; and that no court, other than the Spokane Tribe Court of Appeals, shall have jurisdiction to review, vacate, set aside, reverse, revise, correct, amend, or annul any decision of the Spokane Tribal Court.

1-7.08 Interlocutory Appeals. Appeals from interlocutory Tribal Court orders - orders entered before final judgment of the Tribal Court - shall not be permitted except in the instance of a writ of habeas corpus, injunctive relief, or on the certification of the Tribal Court in its sound discretion.

1-7.09 Notice of Appeal. Permissible appeals shall be taken by filing a written notice of appeal with the Clerk of the Spokane Tribal Court; a notice of appeal shall specify the parties taking the appeal and the judgment or order from which the appeal is taken; a notice of appeal shall concisely specify the grounds for the appeal; Appellate Form no. 1, appended hereto, shall be completed by appellants; the Clerk of the trial court shall mail photocopies of the notice of appeal to respondents.

1-7.10 Filing Fee for Appeal. The filing fee for an appeal shall be \$75, or as otherwise established by rules of Court with the approval of the Spokane Tribal Council; appellants may seek an in forma pauperis order if they cannot afford the filing fee; the Spokane Tribe and its agents, subdivisions and chartered entities shall not be required to submit a filing fee.

1-7.11 Assembly of Record on Appeal. The Clerk of the Spokane Tribal Court shall assemble the record on appeal, inclusive of all papers filed or lodged with the Spokane Tribal Court, minutes, exhibits, orders and, upon the request of appellant or respondent, and at their cost, the transcript of all hearings, proceedings and the trial of the matter; the request for transcript shall accompany the notice of appeal; the record shall be submitted to the Court of Appeal no later than 7 days following filing of a notice of appeal from an interlocutory Tribal Court order, and no later than 45 days following filing of the notice of appeal from a final Tribal Court order.

1-7.12 Time of Appeal.

(a) Notices of appeal shall be filed no later than 45 calendar days following issuance of the final Tribal Court order; late appeals shall be dismissed.

(b) Notices of appeal from interlocutory Tribal Court orders shall be filed no later than 5 days following issuance of the order.

1-7.13 Briefs. Written briefs are mandatory and shall be completed no later than 70 days subsequent to submission of the record to the Court of Appeals by the Clerk of the Tribal Court.

(a) The Chief Justice shall issue a briefing schedule to the parties, allowing 20 days for submission of Opening Brief by Appellant, 20 days for submission of a Responding Brief by Respondent, and 10 days for submission of a Reply Brief by Appellant; the time for briefing can be shortened or extended upon application by a party and for good cause.

(b) Appeals shall not be dismissed for failing to submit briefs.

1-7.14 Oral Argument.

(a) Oral argument shall be scheduled by the Chief Justice no later than 20 days following the time for submission of the last brief.

(b) Oral argument can be waived by agreement of the parties.

1-7.15 Motions. Motion practice in the Court of Appeals shall follow Spokane Tribal Court procedures.

1-7.16 Stays. A stay of execution on appeal shall not be issued by the Spokane Tribal Court except upon a showing of substantial and irrevocable harm and the submission of a bond or security in an amount sufficient to pay for respondent's costs of appeal and the amount of the underlying judgment; a stay of execution or denial thereof shall be an appealable order.

1-7.17 Bonds.

- (a) Bonds or other security shall be posted upon order of the Spokane Tribal Court, in its sound discretion, subsequent to filing a notice of appeal; appellants may seek an order to proceed in forma pauperis; provided that nothing herein is intended to be inconsistent with the application of 1-7.16.
- (b) The Spokane Tribe and its agents, subdivisions and chartered entities shall not be required to post a bond pending appeal.

Standard Appeals Form No. 1

Appellant Name _____
Address _____
Telephone No. _____

SPOKANE TRIBAL COURT
SPOKANE INDIAN RESERVATION, WASHINGTON

_____,) No. _____
_____,)
Appellant[s],)
v.) NOTICE OF APPEAL
_____,)
_____,)
Respondent[s].)
_____)

Comes _____, Appellant herein, to notice an appeal from the order or judgment of the Spokane Tribal Court issued on _____, _____, an accurate and complete photocopy of which is affixed hereto.

Legal grounds for this Appeal are that the order or judgment is contrary to law; specifically [list laws to which Order is Contrary]:

_____.

Factual grounds for this Appeal are that the order or judgment is not supported by substantial evidence on the record; specifically [list facts not supported by substantial evidence on the record]:

_____.

Further statement:

_____.

- Appellant [check box, as appropriate]
 seeks a stay of execution
 shall submit a bond or undertaking as security for the appeal.

Dated: _____

Appellant

Section 1-8 Contempt of Court

1-8.01 Contempt of Court. Contempt of Court is defined generally as any act which is calculated to embarrass, hinder, or obstruct court in its administration of justice, or is calculated to lessen its authority or dignity.

- (a) Criminal contempt is an act performed in the presence of the Court.
- (b) Civil contempt is a failure to perform an act as ordered by the Court.

1-8.02 Criminal Contempt of Court. Any person who, after warning of the Court, fails to maintain the respect due the Court or engages in offensive conduct in the courtroom shall be deemed guilty of contempt of court and subject to immediate sentencing by the Tribal Court judge to imprisonment for a period not to exceed 90 days or a fine not to exceed \$300 or both.

- (a) Offensive conduct includes:
 - (1) Disorderly, contemptuous, or insolent behavior committed in immediate view and presence of the court and directly tending to interrupt its proceedings or to impair the respect due to its authority; or
 - (2) Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of the court.

1-8.03 Civil Contempt of Court. Any person may be charged in civil contempt of court for any of the following reasons:

- (a) Willful disobedience of any process or order lawfully issued by the court;
- (b) Resistance willfully offered by any person to the lawful order or process of the court;
- (c) The unlawful refusal of any person to be sworn or affirmed, or unlawful refusal to answer any material questions, except where refusal is based on legally-recognized grounds;
- (d) The publication of a false or grossly inaccurate report of the proceedings of any court;
- (e) Failure to appear on the date jury trial is scheduled after making a request for a jury trial; or
- (f) Willful failure to appear at a judicial proceeding in response to any duly issued subpoena, summons, citation, notice from the clerk of the court, or court order, commanding such appearance.

1-8.04 Criminal Contempt Proceedings.

- (a) In a criminal contempt proceeding the contemnor is entitled to notice and an opportunity to be heard. Notice of criminal contempt shall be by formal written complaint and will include:
 - (1) mailing by the clerk to the contemnor, a copy of the notice, the charge, a statement that the proceeding is a criminal contempt proceeding, and a statement of the defendant's rights;
 - (2) a statement that the defendant has an opportunity to have a hearing before the Court without a jury to explain the circumstances surrounding the contempt. Any such testimony given by defendant under this section cannot be used in a separate criminal proceeding;
 - (3) the right to a jury trial if the informal hearing described in (2) above does not resolve the issue to the satisfaction of the contemnor and/or the Tribe seeks to impose a jail term; and
 - (4) the right to the services of the Tribe's criminal defender, if such services are provided.
- (b) Guilt must be established beyond a reasonable doubt and the case will be prosecuted by the Spokane Tribal Prosecutor. The contemnor is not entitled to a jury trial if the Tribe does not seek the imposition of a jail penalty.
- (c) The defendant shall have the right to an appeal before the Spokane Tribal Court of Appeals if there is a finding of contempt.

1-8.05 Civil Contempt.

- (a) Civil contempt is coercive in nature and is imposed to coerce the contemnor to do what the Court made it his/her duty to do by order of the Court.
- (b) There is no right to a jury trial in a civil contempt proceeding.

1-8.06 Civil Contempt Hearing.

- (a) The contemnor is entitled to notice and a hearing in civil contempt matters. The notice of civil contempt must include:
 - (1) Mailing by the clerk to the contemnor, a copy of the notice of hearing, the act(s) alleged to support the charge of civil contempt, a statement that the proceeding is a civil contempt proceeding, and a statement of the defendant's rights; and
 - (2) a statement that defendant has an opportunity to have a hearing before the court without a jury and without the services of the criminal defender, if any, to explain the circumstances surrounding the contempt.
- (b) The contemnor shall have the right to an appeal before the Spokane Tribal Court of Appeals if there is a finding of contempt.
- (c) Guilt for civil contempt must be established by clear and convincing evidence. The case will be prosecuted by the Spokane Tribal Prosecutor. The court can impose any of the following upon a finding of guilt:
 - (1) Imprisonment until the contemnor does the act or purges him/herself of the contemptuous conduct; or
 - (2) Payment of a compensatory fine to the other party; or
 - (3) Payment of a fine to the court unless s/he performs the act required by the Court's order, i.e., a "conditional fine."

1-8.07 Default on Fine. When a defendant defaults in the payment of a fine or any installment thereof, the court on its own motion shall order the defendant to show cause why defendant should not be held in contempt and may issue a summons or an arrest warrant for the defendant's appearance.

- (a) If good faith is shown, the court may allow additional time for payment or revoke all or part of the unpaid fine; otherwise, the court may order the imprisonment of the defendant until the fine is paid.
- (b) The court may order the seizure and sale of any personal property of the defendant found within the jurisdiction of the Spokane Tribe.

1-8.08 Disposition of Property Confiscated by the Court.

- (a) Any property, including equipment, which may have been confiscated by lawful order of the court under the provisions of this code shall be sold at a public auction and the proceeds thereof deposited by the clerk of the court into the general Tribal treasury.
- (b) The funds shall be recorded upon the accounts of the Tribe and shall be available for expenditure upon order of the judge and for such other purposes as the Spokane Tribal Council may direct.

Section 1-9 Spokesperson or Professional Attorney

1-9.01 Spokesperson. Any person appearing in Tribal Court, at their own expense, shall have the right to a spokesperson, which shall include the right to be represented by a professional attorney.

- (a) Such spokesperson may appear at any proceedings before the Tribal Court to assist the individual in presenting his/her case, provided that such spokesperson shall have first been approved to so act by the Tribal Court.
- (b) The Court shall adopt such standards for approval of spokespersons as the Court may deem necessary, with the advice and consent of the Tribal Council.

1-9.02 Prosecution. The Tribe in a criminal case or a civil case, in which the Tribe is a party, may make use of either a Tribal official or a professional attorney, who shall have first been approved to so act by the Tribal Court to represent the Tribe as prosecutor or attorney.

Section 1-10 Clerks

1-10.01 Clerks. The Spokane Tribal Court shall hire a Clerk of the Spokane Tribal Court at a rate of pay to be determined by the Tribal Council and subject to availability of funds.

- (a) The Clerk may render assistance to the Court, to the police force of the Reservation, and to individual members of the Tribe in the drafting of complaints, subpoenas, warrants, commitments, and any other documents incidental to the lawful functions of the Court.

- (b) It shall be the further duty of said Clerk to attend and keep a written record of all proceedings of the Court, to administer oaths to witnesses, collect all fines paid to payees authorized in this Code, and to make an accounting thereof to the disbursing agent of the Tribe and to the Tribal Council.
- (c) Before beginning duties, the Clerk shall be bondable in an amount determined by the Tribal Council.

Section 1-11 Records

1-11.01 Records. The Spokane Trial Court shall keep, for inspection by duly qualified officials, a record of all proceedings of the Court.

- (a) These records shall reflect the title of each case, the names of the parties, and their attorneys or spokesperson, the name of the Judge, the substance of the complaint, the names and addresses of all witnesses, the date of the hearing or trial, the findings of the Court or jury, and its verdict or judgment, together with any other facts or circumstances deemed of importance to the case.
- (b) This obligation to keep such records may be extended, elaborated, and clarified by the rules of the Court.
- (c) A record of all proceedings shall be kept at the Agency as required by 25 U.S.C. 200.

1-11.02 Dismissal of Cases on Clerk's Motion.

- (a) *Notice.* In all civil cases wherein there has been no action of record during the 12 months just past, the clerk of the Tribal Court shall mail notice to the parties that such case will be dismissed by the court for want of prosecution, unless within 30 days following said mailing, action of record is made, or an application in writing is made to the court, and good cause shown why it should be continued as a pending case. If such application is not made, or good cause is not shown, the court shall dismiss each such case without prejudice. The cost of filing such order of dismissal with the Clerk shall not be assessed against either party.
- (b) *Mailing Notice.* The notice shall be mailed in every eligible case not later than 30 days before June 15th and December 15th of each year, and all such cases shall be presented to the court by the clerk for action thereon on or before June 30th and December 31st of each year. These deadlines shall not be interpreted as a prohibition against mailing of notice and dismissal thereon as cases may become eligible for dismissal under this rule.
- (c) *Applicable Date.* This dismissal procedure is mandatory as to all cases filed after January 1, 1987, and permissive as to all cases filed before that date. This rule is not a limitation upon any other power that the court may have to dismiss any action upon motion or otherwise.

Section 1-12 Copies of Law-Legal Revisor

1-12.01 Legal Revisor. The Spokane Tribal Council shall appoint a person who shall be known as the Legal Revisor of the Spokane Tribe of Indians.

1-12.02 Definitions.

- (a) "Law" as used in this section means any and all provisions of the Spokane Revised Law and Order Code, as passed by any Tribal Resolution.
 - (1) Law also includes all other Resolutions, for example, Resolutions of policy, adopted or enacted by the Spokane Tribe of Indians Tribal Council.
 - (2) Law also includes any regulations authorized or be adopted or implemented under some enabling statutory authority of a Tribal Council Resolution or this Tribal Code.
- (b) "Official version" as used in this section means the version of law or regulations which is in effect at the time of adoption the Resolution authorizing this section.
- (c) "Regulation" as used in this section mean any rule or regulation adopted by any commission, committee, or authority which is chartered or authorized by the Spokane Tribe of Indians.

1-12.03 Duties of the Legal Revisor. The Legal Revisor shall:

- (a) Maintain 2 matching, complete and current copies of all Tribal law.

- (1) These copies shall be considered the official version of the law of the Spokane Tribe of Indians.
- (b) Maintain 2 matching, complete and current copies of all Regulations.
 - (1) These copies shall be considered the official version of regulations of the Spokane Tribe of Indians.
- (c) Distribute official versions of all law and regulations to any interested party.
 - (1) The Legal Revisor shall use the Revisor's discretion for the need for distribution and the need for applicable monetary charges for distribution.
- (d) Distribute and update the official version of the Revised Law and Order Code of the Spokane Tribe of Indians to the Spokane Tribal Court.
- (e) Publish a listing of any change to the official version of any law or regulation semi-annually and in accordance with Section 1-12.02(b).
- (f) Act under the direction of the Spokane Tribal Council, in good faith, to ensure properly the satisfaction of the provisions of section 1-12.

1-12.04 New Law and Regulations.

- (a) At such time any law or regulation is promulgated or amended, it shall be the duty of the body enacting the law or regulation to forward immediately a copy of the law or regulation to the Legal Revisor who in turn shall incorporate the law or regulation into the official version.
- (b) Within a reasonable time from the enactment of the law or regulation, the Legal Revisor shall:
 - (1) post a copy in at least 2 public and conspicuous places on the Reservation; and
 - (2) distribute the new law or regulations to any interested party.

1-12.05 Prior inconsistent law and regulations.

- (a) Any law or regulation that conflicts in any way with the official version held by the Legal Revisor is presumptively repealed to the extent that it is inconsistent with or is contrary to that of the official version.
- (b) If any law or regulation inconsistent with the official version held by the Legal Revisor is presented to the Spokane Tribal Court it shall be the burden of the offering party to show why the law or regulation was not included in the official version.

Section 1-13 Sovereign Immunity

1-13.01 Sovereign Immunity of the Spokane Tribe. The Spokane Tribe of Indians shall be immune from suit in any civil action unless it is clearly shown that the Spokane Tribe, with the consent of the United States, has, by specific language, waived its sovereign immunity.

1-13.02 Limited Waiver of Sovereign Immunity.

- (a) The Spokane Tribe of Indians provides a limited waiver the sovereign immunity of the Spokane Tribe or its entities solely as to claims arising from occurrences covered by the Tribe's liability insurance policy/policies, and only as to legal damages that do not exceed the limits of the Tribe's liability insurance policy/policies.
- (b) All disputes arising from occurrences covered by the Tribe's or any Tribal entity's liability insurance policy(ies) shall be adjudicated solely in the Spokane Tribal Court; and no court, other than the Spokane Tribe Court of Appeals, shall have jurisdiction to review, vacate, set aside, reverse, revise, correct, amend, or annul any decision of the Spokane Tribal Court in such matter.

1-13.03 Sovereign Immunity of Tribal Officials.

- (a) The sovereign immunity of the Spokane Tribe shall extend to Tribal Council members, the Executive Director of the Spokane Tribe, Tribal Judges, Chief of Police, Tribal Law Enforcement Officers, Tribal Attorney, and all other employees, agents, attorneys, or representatives of the Tribe, acting in their official capacity at the time the acts complained of occurred, if the acts were not in excess of their authority.

- (b) The Tribal officials are protected by absolute immunity, and need not specifically prove that they were acting in good faith.

Section 1-14 Habeas Corpus

1-14.01 Power to Grant Writ.

- (a) Writs of habeas corpus may be granted by the Appellate Court, any justice thereof, or the Trial Court and any Trial Court judge. The order of the Appellate Court shall be entered in the records of the Trial Court.
 - (b) The Appellate Court, and any justice thereof, may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the Trial Court.
- Legislative History-Amended 12/10/97, Resolu. 1998-055; Readopted 8/01/06, Resolu. 2006-524.

1-14.02 Who May Prosecute Writ.

- (a) Every person imprisoned or otherwise restrained of liberty on the Reservation or by order of the Spokane Tribal Court, may petition for a writ of habeas corpus to inquire into the reasons for such imprisonment or restraint, and if such reasons are found to be illegal the detainee shall be released from custody by order of the court.
 - (b) An application for a writ of habeas corpus made by a person in custody under the judgment of the Spokane Tribal Court must first be filed in the Spokane Tribal Court of Appeals before filing in the federal district court for the Eastern District of Washington.
- Legislative History-Amended 12/10/97, Resolu. 1998-055; Readopted 8/01/06, Resolu. 2006-524.

1-14.03 Writ For Purpose of Bail. When a person is imprisoned or detained in custody on any criminal charge for want of bail, such detainee is entitled to a writ of habeas corpus for the purpose of giving bail, after stating that fact in the detainee's petition and without stating that the detainee is illegally confined.

1-14.04 Application. Application for a writ of habeas corpus shall be in writing signed and verified by oath or affirmation by the person for whose relief it is intended or by someone acting in his behalf, and must state facts to show:

- (a) That the person in whose behalf the writ is applied for is unlawfully imprisoned or restrained of liberty;
- (b) Why the imprisonment or restraint is unlawful;
- (c) The officer or person by whom the detainee is so confined or restrained, and the place where held;
- (d) Name all the parties responsible for confinement, if they are known, or describing them if they are not known.

1-14.05 Issuance of Writ; Return. When the judge or justice is satisfied that the writ ought to be issued, it must be issued without delay or an order must be issued directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled to relief.

- (a) The writ or order to show cause shall be directed to the person having custody of, or restraining, the detainee. It shall be returned within 3 days unless for good cause additional time, not exceeding 20 days, is allowed.
- (b) The issue or issues to be determined upon return of the writ may be stated, either in the writ or in an order attached to the writ or in a copy of the petition attached to the writ.
- (c) The person to whom the writ or order is directed shall make a return certifying:
 - (1) the true cause of the detention;
 - (2) whether he or she has the detainee in custody or under power or restraint and the authority for so holding the detainee; and
 - (3) if he or she had, but no longer has, the detainee in his or her custody or under his or her power or restraint, the return must state particularly to whom, at what time and place, for what cause and by what authority custody was released.

- (d) The return must be signed by the person making the return, and, except when such person is a sworn public officer and makes such return in an official capacity, it must be verified by the oath of the person making the return.
- (e) The allegations of a return to the Writ or Order to Show cause in a habeas corpus proceeding, if not overcome, shall be accepted as true except to the extent that the judge finds from the evidence that they are not true.

Legislative History-Amended 12/10/97, Resolu. 1998-055; Readopted 8/01/06, Resolu. 2006-524.

1-14.06 Hearing on Return.

- (a) The detainee shall be brought before the person to whom the writ is directed when possible. The hearing must be held within 2 days of the filing of the return and may be summary in nature.
- (b) Unless the application for the writ and the return present only issues of law, the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.
- (c) Evidence may be taken orally or by deposition, or, in the discretion of the judge, by affidavit.
 - (1) If affidavits are admitted any party shall have the right to present written interrogatories to the affiant, or to file answering affidavits.
 - (2) Transcripts of proceedings upon arraignment, plea and sentence and a transcript of the oral testimony introduced on any previous similar application by or in behalf of the same petitioner shall be admissible in evidence.
 - (3) Transcripts may be by taped recording of the original proceedings.
 - (4) The certificate of the judge who presided at the trial resulting in the judgment, setting forth the facts occurring at the trial, shall be admissible in evidence.
 - (5) Copies of the certificate shall be filed with the court in which the application is pending and in the court in which the trial took place.

1-14.07 Service of the Writ. The writ must be served upon the person to whom it is directed and must be served in the same manner as a summons.

1-14.08 Finality of Determination.

- (a) If the detainee is in official custody, the detainee may only be released on a writ of habeas corpus if such commitment affects the detainee's substantial rights and not for any technical defect in commitment.
- (b) Following the hearing, the judge or justice shall make such judgment regarding the custody of the detained person as the facts and circumstance warrant and such order shall be effective immediately.

1-14.09 Duties of Respondent. Upon application for a writ, the respondent shall promptly file with the court certified copies of the indictment, plea of petitioner and the judgment, or such of them as may be material to the questions raised, if the petitioner fails to attach them to his petition, and same shall be attached to the return to the writ, or to the answer to the order to show cause.

1-14.10 Indigent Petitioner. If the petitioner is indigent, the clerk of the court shall furnish to the petitioner without cost certified copies of such documents or parts of the record on file as may be required by order of the judge before whom the application is pending.

1-14.11 Notice. Prior to the hearing of a habeas corpus proceeding in behalf of a person in custody of the Spokane Tribe or by virtue of Spokane Tribal or federal laws, notice shall be served on the Tribal attorney or other appropriate officer as the justice or judge at the time of issuing the writ shall direct.

1-14.12 Appeal.

- (a) In a habeas corpus proceeding, the final order shall be subject to review, on appeal, by the Spokane Tribal Court of Appeals.
- (b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the Spokane Tribe or the United States, or to test the validity of such person's detention pending removal proceedings.

(c) Unless the Tribal Court issues a certificate of appeal ability, an appeal may not be taken to the Court of Appeals.

Legislative History-Amended 12/10/97, Resolu. 1998-055; Readopted 8/01/06, Resolu. 2006-524.

Section 1-15 Priority of Laws

1-15.01 Priority of Laws. [blank]

Section 1-16 Severability

1-16.01 Severability. If any provision of this Law and Order Code of the Spokane Tribe of Indians or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of the Code which can be given effect without the invalid provision or application.

CHAPTER 2 – DEFINITIONS

Section 2-1.01	Agency
Section 2-1.02	Tribal Council or Council
Section 2-1.03	De novo
Section 2-1.04	Incompetent
Section 2-1.05	Indian
Section 2-1.06	Indian Police
Section 2-1.07	Minor
Section 2-1.08	Person not in Being
Section 2-1.09	Reservation
Section 2-1.10	Secretary
Section 2-1.11	Signature
Section 2-1.12	Superintendent
Section 2-1.13	Tribal Official

2-1.01 "Agency" means the Spokane Agency of the United States, Department of the Interior, Bureau of Indian Affairs, Wellpinit, Washington.

Readopted 8/01/06, Resolu. 2006-524.

2-1.02 "Tribal Council" or "Council" means the Tribal Council of the Spokane Tribe.

2-1.03 "De novo" means to try or hear a case again without regard to the evidence or proceedings in the preceding trial.

2-1.04 "Incompetent" means an insane or mentally ill person, an idiot, an imbecile, feebleminded or mentally deficient person, any person who because of old age, physical incapacity or imperfection or deterioration of mentality is incapable of managing his person or estate and any person who because of gambling, idleness, debauchery or the excessive use of intoxicants or drugs, so spends or wastes his estate as to expose himself or his family to want or suffering.

2-1.05 "Indian" means any person of Indian descent who is a member of a recognized Indian Tribe under federal jurisdiction.

2-1.06 "Indian Police," means all law enforcement officers employed by the Tribe or the Bureau of Indian Affairs.

2-1.07 "Minor" means any person who has not yet attained the age of 18 years.

2-1.08 "Person not in being" means an unborn infant who was in existence in its mother's womb at the time of the vesting of legal rights.

2-1.09 "Reservation" means all territory including all land, water and beds of all water bodies and courses, without exceptions, lying within the exterior of the Spokane Indian Reservation.

2-1.10 "Secretary" means the Secretary of the Interior or his authorized representative.

2-1.11 "Signature" means the written signature, official seal or the thumbprint or mark of any individual.

2-1.12 "Superintendent" means the Superintendent of the Spokane Agency or his authorized representative.

2-1.13 "Tribal Official" means any elected Tribal Council member or Tribal Judge, the Executive Director of the Tribe or a Tribal Law Enforcement Officer.

CHAPTER 3 - CRIMINAL PROCEDURE

Section 3-1	Complaints
Section 3-2	Complaint Limitation
Section 3-3	Speedy Trial
Section 3-4	Warrants to Apprehend
Section 3-5	Arrests
Section 3-6	Search Warrants
Section 3-7	Commitment
Section 3-8	Bail or Bond
Section 3-9	Corporation of Federal Employees
Section 3-10	Extradition
Section 3-11	Proof Beyond a Reasonable Doubt

Section 3-1 Complaints

3-1.01 Complaints.

- (a) Prosecution of violation of the Law and Order Code shall be by complaint, specifying the offense with which the accused is charged.
- (b) No complaint filed in the Spokane Tribal Court shall be valid unless it shall bear the signature of the complainant or the complaining witness, and be witnessed by 1 of the following: by a duly qualified Judge of the Court, the Clerk of the Court, the Tribal Executive Director, the Superintendent, or his authorized representative.

Section 3-2 Complaint Limitation

3-2.01 Limitations of Actions.

- (a) Prosecutions for all offenses, other than those set out in subsection (b) herein, must commence with 2 years of the commission of the offense.
- (b) Prosecutions for the offenses of child abuse, child molestation, carnal knowledge, or other criminal charges wherein the victim is a minor, may be commenced at any time before such child reaches the age of 21 years.

3-2.02 Tolling of Time For Complaint. If the person accused of an offense defined in this Code intentionally absents them self from the jurisdiction of the Tribal Court, the time within which filing of the complaint is to be made, or the trial to be conducted, is tolled for the duration of time that the individual absents them self from the jurisdiction of the Court.

Section 3-3 Speedy Trial

3-3.01 Speedy Trial. The Spokane Tribal Court shall have the responsibility of insuring that each person charged with a crime under this Code shall receive a speedy trial.

3-3.02 Length of Time. Trial must commence no more than 120 days after the defendant first appears in court, unless a longer period is agreed to or ordered by the Court.

Section 3 - 4 Warrants to Apprehend

3-4.01 Warrant to Apprehend. Upon written complaint, under oath, before a Tribal Judge, charging any person of a crime of which this Court has jurisdiction, a warrant shall issue causing the individual so charged to be brought before the tribal Court for trial.

- (a) No warrant to apprehend shall be valid unless it shall bear the signature of a duly qualified Judge of the Tribal Court.
- (b) Such warrants shall be served by a duly qualified member of the Tribal Law Enforcement Office, a duly qualified Probation officer or a police officer of the United States Bureau of Indian Affairs.
- (c) Any unexpected warrant may be cancelled by the Judge who issued it.

3-4.02 Summons in Lieu of a Warrant. When otherwise authorized to arrest a suspect, a Tribal Police Officer or a Judge may, in lieu of an arrest warrant, issue a summons commanding the accused to appear before the Tribal Court at a stated time and place to answer the charge.

- (a) The summons shall contain the same information as a warrant, except that it may be signed by a Tribal Police Officer.
- (b) If a defendant fails to appear in response to a summons, a warrant for defendant's arrest may be issued.

Section 3- 5 Arrests

3-5.01 Arrests.

- (a) No member of the Indian Police shall arrest any person for any offense defined in this Code or by Federal Law except when the officer shall have a warrant commanding him to apprehend such person, or the offense shall occur in the presence of the arresting officer, or he shall have reasonable cause to believe that the person arrested has committed an offense.
- (b) Any Probation officer appointed pursuant to this chapter may arrest a probationer without a warrant, or may authorize any other officer with power to arrest to do so by a written statement setting forth that the probationer has, in the judgment of the probation officer, violated one or more of the terms or conditions upon which the probationer was released on probation. Such a written statement by a probation officer delivered to the officer in charge of the jail shall be sufficient warrant for the detention of the probationer. Any officer authorized upon receipt of the written statement shall enter, or cause to be entered, the person's name and other appropriate information required by the Spokane Tribal Police Department into the "information systems" known as Spillman, (or any other system hereafter adopted) established and maintained by the Spokane Tribal Police Department. Such information shall be deemed a warrant authorizing the arrest of the person anywhere on the Spokane Indian Reservation.
- (c) A Tribal member may make a citizen's arrest for an offense, which occurred in his presence.

Section 3-6 Search Warrants

3-6.01 Who May Issue. Only a Judge of the Spokane Tribal Court shall have authority to issue warrants for the search of any person or the premises and property of any person under the jurisdiction of the Tribal Court or of any Indian person or their premises or property on the Spokane Reservation who is under the jurisdiction of any court other than the Tribal or Federal Court.

3-6.02 Probable Cause. Such Tribal Judge, when satisfied there is probable cause, may issue a search warrant, upon complaint under oath in writing, to search for and seize any evidence or contraband, material to the investigation of a criminal violation within the jurisdiction of this Court.

3-6.03 Warrant Content and Service. No warrant for search and seizure shall be valid unless it contains the name or description of the person or property to be searched and the article of property to be seized. Service of warrants of search and seizure shall be made only by members of the Tribal Indian Police, police officers of the Bureau of Indian Affairs or other Federal Officers.

3-6.04 Return of Search Warrant. An unexecuted search warrant shall be invalid after a period of 7 days from the date of issuance.

3-6.05 Search Without a Warrant. No Tribal law enforcement officer shall conduct any search without a valid warrant except:

- (a) When s/he shall know, or have probable cause to believe, that the person apprehended is engaged in the commission of an offense under this Code, or
- (b) Incident to the making of a lawful arrest, the scope of the search shall be limited to the arrestee's person and the area under his immediate control, or
- (c) With voluntary written consent of the person being searched, or
- (d) When s/he has probable cause to believe that the person searched may be armed and dangerous, or

- (e) When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen or embezzled property.

3-6.06 Disposition of Seized Property. The police shall make an inventory of all property seized by warrant or otherwise and copies of such inventory shall be left with the person from whom the property was taken and with the Tribal Court Clerk.

Section 3–7 Commitment

3-7.01 Commitment and Arraignment.

- (a) No person shall be detained, jailed, or imprisoned under this Code for a period longer than seventy-two (72) hours excluding holidays and weekends following arrest without being arraigned before a Judge of the Spokane Tribal Court or released from custody.
- (b) At the arraignment the following procedure shall be observed:
 - (1) The defendant shall have the complaint read to him/her.
 - (2) The Judge shall explain the offense charged and the penalties prescribed by this Code to the defendant and shall determine that the defendant understands the nature of the charges and possible penalties.
 - (3) The Court shall advise the defendant of the defendant's right to remain silent and to have legal counsel, at defendant's own expense.
 - (4) The Judge shall inform defendant of his right to plead not guilty, guilty, or no contest and ask him if he is ready to plead.
 - (5) The Clerk of Court shall record the defendant's plea, if the defendant enters a plea.
 - (6) If the defendant elects not to enter a plea, the Court shall enter a plea of not guilty for the defendant.
 - (7) The Court shall advise the defendant that the defendant may change their plea in an appearance before the Court at any time before trial or sentencing.

Section 3–8 Bail or Bond

3-8.01 Bail or Bond. Each person charged with an offense before the Spokane Tribal Court may be admitted to bail.

- (a) Bail may be by cash, corporate surety bond or by 1 or more reliable residents of the Reservation who shall appear before a Tribal Judge and there execute an agreement in accordance with the form provided therefore.
- (b) In no case shall the penalty specified in the agreement exceed twice the maximum penalty set for the violation or offense charged.
- (c) The Tribal Judge may, at his discretion, order or authorize the release of the person charged without posting bail or bond.

Section 3–9 Corporation of Federal Employees

3-9.01 Corporation of Federal Employees. No field employee of the Bureau of Indian Affairs shall be permitted to obstruct, interfere with, or control the functions of the Spokane Tribal Court, or to influence such functions in any manner, except as permitted in this Code or in response to a request for advice or information from the Court.

3-9.02 Assistance from Agencies of State and Federal Government. The Court may seek assistance from employees of the Bureau of Indian Affairs, particularly those who are engaged in Social Service, Health and Educational work, in the presentation of facts in a case and in the determination of proper treatment of individual offenders.

Section 3-10 Extradition

3-10.01 Extradition. If a person is charged with a violation of the laws of any other Tribe or Reservation or the Federal or State government, the Tribal Court shall order, unless good cause is shown to the contrary that such person be made available for pick up by the proper authorities, provided, that a copy of the warrant, or proof of its existence, is presented to a Judge of the Spokane Tribal Court.

3-10.02 Arrest and Hearing. On receipt of a valid warrant, the Judge may issue a court order directing the Spokane Police Chief to apprehend the person or persons named in the warrant.

- (a) Upon the written or oral request of the accused or upon the Judge's own motion, a hearing shall be conducted to determine if there is good reason or probable cause for an order of extradition.
- (b) Upon such a finding, the individual shall be made available for pick up by the proper authorities.
- (c) The accused shall always be informed of his or her right to an extradition hearing prior to deliverance to the authorities.
- (d) Written evidence of such disclosure shall be preserved as a part of the record of the proceeding.

3-10.03 Detention.

- (a) When such person is apprehended, it shall be the duty of the Chief of Police or the arresting officer to notify the proper authorities of the apprehension of the subject, and said subject may be detained in the Tribal jail for a period not to exceed 48 hours from the time of apprehension, unless an extradition hearing is ordered.
- (b) If the lawful authority requesting the apprehension of the subject, after first being notified, does not take possession of the person within 48 hours, the Court shall require a new warrant to be presented.

Section 3-11 Proof Beyond a Reasonable Doubt

3-11.01 Proof Beyond a Reasonable Doubt. Conviction of a criminal offense, as defined by this Code, shall be by a finding that the evidence shows beyond a reasonable doubt that the offender has committed the offense with which he is charged.

CHAPTER 4 - CIVIL ACTIONS

Section 4-1	Jurisdiction
Section 4-2	Commencement of Civil Actions
Section 4-3	Summons
Section 4-4	Service of Summons and Complaint
Section 4-5	Service Upon Minors, Wards, and Corporations
Section 4-6	Proof of Service
Section 4-7	Guardian ad Litem for Minor or Incompetent
Section 4-8	Applicable Law in Civil Actions
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Section 4-10	Default Judgment
Section 4-11	Costs
Section 4-12	Appeal
Section 4-13	Payment of Judgments from Individual Indian Monies
Section 4-14	Effect Upon Estate
Section 4-15	Judgment Lien
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Section 4-18	Examination of Judgment Debtor
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Section 4-21	Preponderance of Evidence
Section 4-22	Full Faith and Credit for State and Foreign Judgments
Section 4-23	Procedure for Repossession of Property
Section 4-24	Service of Process – Foreign Civil Actions
Section 4-25	Injunctions
Section 4-26	Arbitration

Section 4-1 Jurisdiction

4-1.01 Jurisdiction The Spokane Tribal Court shall have jurisdiction of all civil suits wherein the defendant is a resident of the Spokane Reservation, or the defendant has come onto the Reservation for whatever reason, and the cause of action arises from defendant's presence and activity on the Reservation.

4-1.02 Jurisdiction Over Non-Indians Who Violate a Tribal Code. Non-Indians who violate any Code approved and promulgated by the Spokane Tribal Council shall be subject only to the imposition of monetary civil penalties contained in any Code, and/or the initiation and completion of exclusion proceedings as set forth elsewhere in this Code, and/or any court order issued in conformity with such Code to correct the violation of such Code, and/or such other civil remedies that are appropriate.

4-1.03 Personal Jurisdiction Over Non-Residents.

- (a) Any person, whether or not a resident of Spokane Indian Country, who in person or through an agent does any of the acts in this section, as set forth below, within Spokane Indian Country, thereby submits said person, and if an incapacitated individual, his personal representative, to the jurisdiction of the Tribe as to any cause of action arising from the doing of any of said acts:
- (1) Transaction of business;
 - (2) Commission of tortuous act;
 - (3) The ownership, use, or possession of any property whether real or personal;
 - (4) Contracting to insure any person, property or risk;
 - (5) The act of sexual intercourse with the respect to which a child may have been conceived;
 - (6) Living in a marital relationship notwithstanding subsequent departure so long as the petitioning party has continued to reside within the jurisdiction;
 - (7) Any other basis consistent with law.

- (b) In a proceeding to: establish, enforce or modify a child support order for an Indian Child; to determine or terminate parentage of an Indian Child; and to establish custody and/or visitation of an Indian Child, the Spokane Tribal Court may exercise personal jurisdiction over a non-resident individual or the individual's guardian if:
 - (1) The individual is personally served with summons within Spokane Indian Country;
 - (2) The individual submits to the jurisdiction of the Spokane Tribe by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
 - (3) The individual resided with the Indian Child in Spokane Indian Country;
 - (4) The individual resided in Spokane Indian Country and provided prenatal expenses or support for the Indian Child;
 - (5) The Indian Child resides in Spokane Indian Country as a result of the acts or directives of the individual;
- (c) For the purposes of this Section, "Spokane Indian Country" shall mean any and all lands and waters within the jurisdiction of the Spokane Tribe of Indians as set forth in Article II of the Constitution of the Spokane Tribe.
- (d) For the purposes of this Section the term "Indian Child" shall be defined pursuant to Chapter 6, Section 1.07(l) of this Code. In addition the term "Indian Child" shall also specifically include any biological child of an enrolled member of the Spokane Tribe of Indians.

Section 4-2 Commencement of Civil Actions

4-2.01 Commencement of Civil Actions. Civil actions may be commenced by the filing of a complaint with the Clerk of the Tribal Court, stating the names of the plaintiff and the defendant, accompanied by a simple statement of the facts giving rise to the grievance for which relief is requested and the nature of such relief.

4-2.02 Signature of Complaint. Complaints filed in the Tribal Court shall bear the signature of the complainant, witnessed by a duly qualified Judge of the Tribal Court, Court Clerk, Tribal Executive Director or the Superintendent.

4-2.03 Limitations on Filing. An action must be commenced within a period of 3 years from the date of the act or event giving rise to the cause of action, except that:

- (a) any action based upon a contract in writing, or liability expressed or implied arising out of a written agreement, must be commenced within 6 years; and,
- (b) any action based upon a claim of damages to plaintiff's person or property, or damages related to consumer transactions, must be commenced within 3 years from the date the plaintiff discovered or reasonably should have discovered the damage, or the event that caused the damage, whichever is later.

4-2.04 Tolling the Limitation.

- (a) The 3 year limitation on the commencement of civil actions shall not apply during the time a person entitled to bring a civil action under this Code is incapacitated or under disability to bring suit by reason of being a minor under 18 years of age or by reason of being mentally incompetent.
- (b) Provided, however, that if the action is brought after the 3 year limitation has expired, a written statement of reasonable cause must be given why the person's parent, guardian or other available representative did not bring the action in behalf of said disabled or incapacitated person within the 3 year limitation.
- (c) The statement shall be filed with the complaint and if attached by the defendant or other party to the suit the Tribal Court shall consider the reasonable cause given and in its discretion decide whether it is sufficient to justify the tolling of the statute of limitations.
- (d) The decision of the Tribal Judge in this respect shall be appealable.
- (e) The 3-year limitation on the commencement of civil actions also shall not apply to actions brought by the Spokane Tribe related to damages to natural resources of the Tribe during the

reasonable time necessary for the Tribe to discover, assess and determine the nature and extent of said damages.

4-2.05 Filing Fee. The complainant shall pay a filing fee of \$15 or such other fee prescribed in the rules. Such fee may be waived by the Tribal Court upon a showing of good cause.

Section 4-3 Summons

4-3.01 Summons. Upon the filing of a complaint, the Clerk shall cause to be issued a summons requiring the defendant to appear before the Spokane Tribal Court at a date and time certain which shall be at least 5 days, but no more than 20 days after service of summons and complaint upon the other party.

Section 4-4 Service of Summons and Complaint

4-4.01 Service. A summons, with a copy of the complaint attached, shall be served upon the defendant by personal service, by mail, or by publication.

4-4.02 Personal Service. Service may be obtained by personally delivering the summons and complaint to the defendant or by leaving the summons and complaint at the place of his usual abode with some adult person who is a resident therein.

4-4.03 Service by Mail. Service may be obtained by means of certified mail, return receipt requested.

4-4.04 Service by Publication.

- (a) The Judge may allow service to be made upon the defendant by the posting of copies of the summons and complaint in 2 public places on the Reservation for 3 weeks and by publication of notice of the filing of said summons and complaint once a week for 3 consecutive weeks in any newspaper of general circulation on or adjacent to the Spokane Reservation or by 1 publication in the official Tribal newspaper.
- (b) Such service shall be made only upon sufficient showing by the complainant to the Tribal Court that diligent efforts were made to serve the summons with a copy of the complaint on the defendant and that service could not be made.

Section 4-5 Service Upon Minors, Wards, and Corporations

4-5.01 Service of Summons and Complaint Upon Minors. If the suit be against a minor under the age of 14 years, on such minor personally and also on his father, mother, or guardian, or if there be none within this state, then on any person having the care or control of such minor, or with whom he resides, or in whose service he is employed, if such there be.

4-5.02 Service Upon Guardian. If the suit be against any person for whom a guardian has been appointed, then on such guardian.

4-5.03 Service Upon Corporation. If the suit be against any company or corporation doing business within the Spokane Reservation, on the president or other head of the company or corporation, secretary, cashier, or managing agent thereof or on the secretary, stenographer, or office assistant of the president or other head of the company or corporation, secretary, cashier, or managing agent.

Section 4-6 Proof of Service

4-6.01 Proof Service. When there has been personal service, an affidavit of service shall be returned to the Clerk and filed in the Court records.

- (a) Where service was obtained by mail, the return receipt on such delivery shall be made a part of the records of the Court.
- (b) When there has been service by publication, affidavits shall be obtained for the Court records from the individual posting the summons and complaint and from the newspaper publishing the notice.

Section 4-7 Guardian Ad Litem for Minor or Incompetent

4-7.01 Guardian Ad Litem for Minor or Incompetent.

- (a) When a minor or incompetent is a party, he shall appear by guardian.

- (b) If he has no guardian or his guardian is not proper or unable to act as such, the Court shall appoint 1 as follows: [original contained no following particulars]

4-7.02 Minors. If the party is a minor without a proper guardian, the Court shall appoint him a guardian upon the minor's request if he is 14 or older or upon the application of a relative or friend, if the minor is under the age of 14 years.

4-7.03 Incompetent. If the party is incompetent other than by age, and has no proper guardian, the Court shall appoint one upon application of a friend or relative or upon the Court's own motion.

Section 4-8 Applicable Law in Civil Actions

4-8.01 Applicable Law in Civil Actions.

- (a) The Spokane Tribal Court shall, in civil cases, apply the applicable laws of the United States, regulations of the Department of the Interior and any relevant laws, Resolutions, Codes, customs or codes of the Tribe, not prohibited or superseded by Federal laws.
- (b) As to any matters not covered by the above, the Tribal Court may be guided by common law as developed by State and Federal Courts.

4-8.02 Tribal Custom Advisor. In the event of dispute or uncertainty regarding traditional Tribal customs, the court may utilize advisors familiar with these customs.

Section 4-9 Judgments in Civil Actions

4-9.01 Judgments. In all civil cases in which plaintiff prevails, judgment shall consist of an order of the Court directing payment to plaintiff of the monies found owing him, awarding money damages to be paid to the injured party, or ordering the performance of some other act for the benefit of the injured party.

4-9.02 Judgments in Cases Involving Injury. In cases involving injury to persons or property:

- (a) Where the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss he has suffered.
- (b) Where the injury was deliberately inflicted, the judgment shall impose an additional penalty upon the defendant, which additional penalty may run either in favor of the injured party or in favor of the Tribe.
- (c) Where the injury was inflicted as the result of an accident in which both the complainant and the defendant were at fault, the judgment shall compensate the injured party for a reasonable part of the loss he has suffered which shall reflect an adjustment thereof for the ratio or proportion of the accident caused by his negligence or fault.

Section 4-10 Default Judgment

4-10.01 Default Judgment.

- (a) Upon the failure of a defendant to appear at the time stated in the summons, the other party may proceed to offer evidence including proof that the defendant was served with a summons, and the Court may render a judgment granting such relief as the evidence warrants, provided that the defaulting party may apply in writing for a new trial within 20 days of the default judgment, showing good cause for his failure to answer the summons.
- (b) Upon failure of plaintiff to appear at the time set by the summons for hearing, the Court may dismiss the case.

Section 4-11 Costs

4-11.01 Costs. Unless the Court provides otherwise, Court costs incurred by the winning party shall be included in any judgment, including filing fees, service fees, expense of witnesses, expert witness fees, compensation of jurors and other incidental expenses.

Section 4-12 Appeal

4-12.01 Appeal. Any person who is a plaintiff or defendant in a civil proceeding and is aggrieved by a final order of the Court may appeal as provided in Chapter 1, Section 1-7.

Section 4-13 Payment of Judgments From Individual Indian's Monies

4-13.01 Payment of Judgments from Individual Indian's Monies. Whenever the Spokane Tribal Court has ordered payment of money damages to an injured party and payment is not made within the time specified therein, and when the party against whom judgment is rendered has sufficient funds to his credit, in an Individual Indian Money account with the BIA, to satisfy all or part of the judgment against him, the Clerk of the Court shall certify a copy of the case record to the Superintendent of the Agency where the losing party has such funds on deposit.

- (a) The Superintendent shall send this record and a statement as to the amount of funds available in the individual's account, to the Secretary of the Interior.
- (b) The Secretary of the Interior may direct the disbursing agent to pay over from the delinquent party's account to the injured party the amount of judgment, or such amount as may be specified by the Secretary of the Interior not to exceed the amount of judgment.

4-13.02 Where Applicable. Provisions for the payment of judgments from Individual Indian Monies shall not be applicable in any case where the judgment creditor is neither the Tribe nor an Indian as defined in this Code.

Section 4-14 Effect Upon Estate

14-4.01 Effect on Estate. A judgment by this Court shall be considered a lawful debt for purposes of probate proceedings or other actions regarding decedent's estates.

Section 4-15 Judgment Lien

4-15.01 Judgment Lien. An unsatisfied judgment shall be a lien against funds owing the judgment debtor by the Spokane Tribe upon the delivery of a copy of the judgment to the Chairman or Executive Secretary of the Tribe.

- (a) When such copy is received, the Chairman or Executive Secretary of the Tribe shall arrange for the pay over of the amount specified in the judgment as the funds become available to the credit of the judgment debtor.
- (b) If such funds be wages, seventy-five percent of the disposable earnings of defendant shall be exempt, such percentage to be computed for each interval said wages are to be paid defendant.

Section 4-16 Writ of Execution

4-16.01 Writ of Execution. The judgment creditor may seek a writ of execution upon specific personal property of the judgment debtor to be sold in order to satisfy all or part of the judgment.

- (a) The writ shall specify the property to be seized and the amount owing the judgment creditor.
- (b) A notice must be posted at 2 public places within the Reservation for 7 days prior to the sale by the Court.
- (c) The sale will be conducted by the Court Clerk, the property being sold to the highest bidder, but not for less than the appraised value of the property.
- (d) The proceeds of the sale shall first go to satisfy the cost of the sale, second to any unpaid court costs, next to satisfy any portion of the judgment still owing.
- (e) Any amount remaining after the above has been paid shall be paid over to the defendant.

Section 4-17 Garnishment

4-17.01 Definitions.

- (a) "Earnings" means compensation paid or payable to an individual for personal services, whether called wages, salary, commission, bonus, or otherwise, and includes periodic payments from a pension or retirement program.
- (b) "Disposable earnings" means that part of earnings remaining after the deduction from those earnings of any amounts required by law to be withheld.

4-17.02 Grounds for Issuance of Writ. The Clerk of Court may issue writs of garnishment returnable to the Tribal Court for the benefit of a judgment creditor who has a Spokane Tribal Court judgment wholly or partially unsatisfied.

- (a) A pre-judgment writ of garnishment may be issued if the Court is satisfied:

- (1) That the pending lawsuit is based upon a debt owed.
 - (2) That 1 of the following is true:
 - (3) The defendant is present on the Reservation now, but is not a resident of the Reservation, or if a resident of the Reservation is about to move off the Reservation.
 - (4) The defendant has concealed himself or herself so that the ordinary process of law cannot be served upon him or her.
 - (5) The defendant has removed or is about to remove any of his or her property from the Reservation with intent to delay or defraud creditors.
- (b) The proceeds of any pre-judgment writ of garnishment shall be paid into the Court and held by the Court pending a final determination of the lawsuit by the Court.
- (1) If the Court finds for the defendant, the money shall be returned to the defendant.
 - (2) If the Court finds for the plaintiff, all or part of the monies or property shall be paid to the plaintiff in accordance with the terms of the judgment.

4-17.03 Service of the Writ.

- (a) The garnishee defendant shall be served with the writ pleadings by certified mail, in accordance with Section 4-4.03, or by personal service, in accordance with Section 4-4.02.
- (b) The defendant shall, at that time, be sent a copy of the garnishment pleadings by the creditor through first class mail.

4-17.04 Form of Writ Pleadings. The Court shall make available for use by creditors the following garnishment pleadings and forms that set forth in detail the duties and rights of the various parties.

- (a) The Court Clerk shall assist all creditors in the preparation and use of the forms.
- (b) The substantive provisions listed in the form set forth the law on the issue of garnishment and shall have the force of law.

4-17.05 No Discharge of Employees. No employer shall discharge an employee for the reason that a creditor has attempted a writ of garnishment on the employee.

4-17.06 Spokane Tribe of Indians Immune From Writs of Garnishment. The Spokane Tribe of Indians possesses sovereign immunity from all writs of garnishment, except that it specifically allows writs of garnishment of Tribal employees based upon delinquent child support as long as such are judgments entitled to full faith and credit in conformity with this Chapter, or writs issued at the request of Spokane Tribal Housing, Spokane Tribal Credit, or the Wellpinit Trading Post.

4-17.07 Failure to Answer Writ or Perform Under the Terms of the Writ. If a garnishee defendant fails to answer the writ or otherwise perform under the terms of the writ, the creditor may seek payment of judgment by the garnishee defendant, and may file suit accordingly.

4-17.08 Appeal by Defendant.

- (a) Any defendant wishing to object to or contest a writ of garnishment shall file an objection in writing with the Court.
- (b) The Court shall send a copy of the objection to the creditor and set the time and place for a hearing of the objection.

4-17.09 Order to Pay Into Court. At the completion of the writ period, and upon receipt of the second answer by the garnishee defendant, the plaintiff shall seek an Order to Pay Into Court for the amount being held by the garnishee defendant.

Section 4-18 Examination of Judgment Debtor

4-18.01 Order for Examination of Judgment Debtor.

- (a) At anytime while a judgment is enforceable, a creditor may request the Court to order a judgment debtor to appear at a special time and place to answer questions posed by the creditor regarding the payment of the judgment, the assets or employment of the debtor, or any other question relevant to the payment of the judgment.
- (b) The debtor shall be personally served with a copy of the order in conformity with Section 4-4.02 of this Code.

4-18.02 Procedure of Examination. The judgment debtor shall appear at the time and place set.

- (a) The judge shall administer an oath, and the debtor shall respond to questions asked by the Court or the creditor.
- (b) If the creditor requests, the proceedings shall be on the record.
- (c) If it appears to the Court that testimony indicates that the debtor has money or personal property which belongs to the debtor and is capable of satisfying the judgment in whole or in part, the Court shall order the delivery of the same to the creditor within a certain time limit.
- (d) Failure of the debtor to do so will be disobedience of a lawful order of the Court, and punishable in accordance with Section 14-7 of this Code.

4-18.03 Failure to Appear. If the debtor, though properly served in accordance with Section 4-4.02 of this Code, fails to appear for examination, the Court shall issue a warrant for the debtor's arrest.

- (a) When arrested, the debtor shall be held until the creditor has an opportunity to be notified and appear for the examination.
- (b) The debtor shall not be released until the debtor has been examined or posted a bond equal to the amount of the debt.
- (c) If the examination cannot take place within 72 hours, the Court shall release the debtor provided the debtor pays into the Court the amount of the judgment or a bond sufficient enough to assure the appearance of the debtor for a subsequent examination.

4-18.04 Property Exempt From Seizure. This section does not authorize the seizure of:

- (a) Trust property unless permitted by Tribal and Federal law.
- (b) Any property exempted by law from levy and sale through execution, attachment or garnishment.

Section 4-19 Limitation of Enforcement of Judgment

4-19.01 Limitation of Enforcement of Judgment. A judgment shall be unenforceable after a period of 10 years has elapsed from the date of entry.

Section 4-20 Satisfaction of Judgment

4-20.01 Satisfaction of Judgment. It shall be the duty of the judgment creditor to notify the Court in writing that a judgment has been fully or partially satisfied.

Section 4-21 Preponderance of the Evidence

4-21.01 Preponderance of the Evidence. Judgment in civil cases shall be rendered upon a finding that the plaintiff has proved or failed to prove his case by a preponderance of the evidence.

Section 4-22 Full Faith and Credit For State and Foreign Tribal Court Judgments

4-22.01 Full Faith and Credit. Full faith and credit shall be given in the Spokane Tribal Court to the judicial proceedings of every State and of every federally recognized Indian Tribe in which a final judgment has been obtained, provided, the person seeking enforcement of such a judgment fully conforms to the procedures outlined below.

4-22.02 State and Tribal Courts Entitled to Full Faith and Credit.

- (a) Notwithstanding any of the provisions in this Title, the Spokane Tribal Court may refuse to recognize the judgment of any State or Tribal Court which has refused or has clearly indicated that it would refuse to honor the valid final judgments of the Spokane Tribal Court.
- (b) The Tribal Council shall work in conjunction with the Tribal Court Administrator and the Chief Judge of the Tribal Court to develop agreements with the various States and other federally recognized Tribes concerning mutual recognition of valid Court judgments.

4-22.03 Jurisdiction and Procedure for Establishing Full Faith and Credit. Any judgment creditor shall be entitled to seek enforcement of a final state or foreign Tribal Court judgment in accordance with the following procedures:

- (a) Written Petition by Judgment Creditor. The judgment creditor shall file a written petition with the Clerk of the Spokane Tribal Court, accompanied by a verified copy of the State or foreign Tribal Court judgment sought to be enforced. The petition shall set forth the facts relevant, sufficient to fully advise the Court of the parties and nature of the underlying cause of action. The petition shall be served upon the judgment debtor in the same manner as authorized by the Law and Order Code of the Spokane Tribe for service of civil process.
- (b) Written Answer by Judgment Debtor. The judgment debtor may file with the Clerk a written answer or response to the petition at any time prior to the hearing on the petition.
- (c) Hearing on Petition. After reasonable notice to the judgment debtor, the petition seeking full faith and credit shall be heard. The debtor shall be required at the hearing to show cause why the State or Tribal Court judgment should not be enforced. However, in accordance with the provisions of Sections 4.22.03 and .04 of this Title, the Spokane Tribal Court shall inquire into the underlying facts and circumstances of the incident which formed the basis for such proceeding.

4-22.04 Review of Jurisdictional Basis for State or Tribal Judgment. At the hearing upon the petition, the Tribal Court shall examine the underlying facts of the State or Tribal judicial order sought to be enforced in order to determine:

- (a) that the State or Tribal Court had proper subject matter jurisdiction over the dispute to enable it to render a valid judgment;
- (b) that the State or Tribal Court had proper personal jurisdiction over the judgment debtor to enable it to render a valid judgment; and
- (c) that the judgment debtor received fair notice and opportunity to be heard prior to entry of the State or Tribal judgment.
- (d) Full faith and credit shall be given to a State or foreign Tribal Court judgment only if the Spokane Tribal Court determines that all the requirements of sub-sections (a), (b) and (c) were met.

4-22.05 Review of Consumer Transactions. In considering a petition for full faith and credit from a judgment creditor in connection with a consumer transaction, the Tribal Court shall review the underlying facts and circumstances of the consumer transaction in order to determine the existence of any unconscionable act or practice by the supplier.

- (a) In determining whether an act or practice by the supplier is unconscionable, the Tribal Court shall consider the following circumstances which the supplier knew or had reason to know:
 - (1) That the supplier took advantage of the inability of the consumer reasonably to protect his or her interests because of physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement, or similar factors.
 - (2) That when the consumer transaction was entered into, the price grossly exceeded the price at which similar property or services were readily obtainable in similar transactions by like consumers.
 - (3) That when the consumer transaction was entered into there was no reasonable probability of payment of the obligation in full by the consumer.
 - (4) That the supplier made a misleading statement of opinion on which the consumer was likely to rely to his detriment.
- (b) If the Tribal Court determines that an act or practice in a consumer transaction was unconscionable, the Court may refuse to enforce the State or other Tribal Court judgment or may enforce only such part of the judgment that was not affected by the unconscionable act or practice.

4-22.06 Entry of Judgment.

- (a) Once the Spokane Tribal Court has satisfied itself that the State or Tribal judicial proceedings are entitled to full faith and credit, the Court shall enter a judgment in favor of the judgment creditor.

- (b) The entry of said judgment shall entitle the judgment creditor to enforce its judgment against the judgment debtor.

4-22.07 Remedies Available to Judgment Creditor. After judgment is entered in the Spokane Tribal Court, the judgment creditor may enforce its judgment in any manner currently available for judgment creditors in this Code.

Section 4-23 Procedure for Repossession of Property

4-23.01 Personal Property of Indians.

- (a) The Spokane Tribe of Indians possesses exclusive jurisdiction over the repossession of any personal property located within the exterior boundaries of the Spokane Indian Reservation or upon Spokane Tribal and allotted Indian lands outside the exterior boundaries of the Reservation and is held by or belongs to an Indian.
- (b) Such Indian personal property shall not be taken from such lands except in strict compliance with the procedures set forth in this Section.

4-23.02 Repossession of Indian Personal Property. On-Reservation creditors may use the procedures outlined in this section or the procedures of Article 9-503 of the Uniform Commercial Code referred to as "self-help repossession."

- (a) Because on-Reservation creditors using self-help repossession will be within the continuing jurisdiction of the Court, and because the property will be remaining on the Reservation, all disputes regarding the property and method of repossession can be resolved properly in the Tribal Court for the Spokane Tribe of Indians.
- (b) Off-Reservation creditors shall not use "self-help repossession" but must repossess property only in conformity with this section as set forth below.
- (c) A creditor may contact a debtor orally or in writing concerning a dispute with such debtor that may lead to repossession of personal property located within the exterior boundaries of the Spokane Indian Reservation.
- (d) Such Indian debtor may give written consent to the creditor permitting a repossession of the personal property without formal court proceedings.
- (e) A creditor may enter the Reservation for the purpose of repossessing personal property pursuant to the debtor's written consent only when accompanied by a Tribal Police Officer.

4-23.03 Court Order and Absence of Written Consent by Indian Debtor. If an Indian debtor refuses to sign a written consent allowing repossession, the property may be removed by the creditor from the Reservation only by order of a judge of the Spokane Tribal Court, entered in accordance with the procedures set forth in Section 4-23.04.

4-23.04 Procedure to Obtain Court Order for Repossession. A creditor may seek an order of repossession against an Indian debtor in accordance with the following procedures:

- (a) Petition by Creditor. The creditor shall file a written petition with the Clerk of the Spokane Tribal Court, accompanied by a verified copy of the contract or other document entitling the creditor to repossess the personal property of the Indian debtor.
 - (1) The petition shall contain a concise statement of the creditor's claim against the Indian debtor.
 - (2) The petition shall be served upon the Indian debtor in the same manner as authorized by the Law and Order Code for service of other civil process.
- (b) Answer by Debtor. The Indian debtor may file with the Clerk a written answer or response to the creditor's petition at any time prior to the hearing on the petition.
- (c) Hearing on Petition. After reasonable notice to the Indian debtor, hearing shall be held on the petition for repossession.
- (d) Both the creditor and debtor may present evidence and witnesses relevant to the contract or debt dispute which forms a basis for the repossession request. The timing of the hearing on the petition for repossession may be accelerated by the Court if:

- (1) The petition contains verified, specific facts showing reasonable cause to believe that the personal property involved may be lost, damaged or removed off the Reservation prior to a regularly scheduled hearing; and
 - (2) An accelerated hearing can be held without substantially prejudicing the ability of the Indian debtor to present any good faith defenses to the petition for repossession.
- (e) Contents of Court Order. If after a hearing, the Court determines that repossession is justified, the Court shall issue an order authorizing the creditor to repossess the personal property involved in the proceeding.
- (1) Every such order may direct that a creditor shall repossess the property of the Indian debtor only when accompanied by a Tribal Police Officer.
 - (2) An order shall contain this directive if the Indian debtor has failed to appear at the hearing despite reasonable notice, and the Court has therefore entered the repossession order in the absence of the debtor.

4-23.05 Remedies for Violation of this Section.

- (a) Exclusion from Reservation. Any non-member of the Spokane Tribe, except persons authorized by federal law to be present on the Spokane Reservation, may be excluded from the Reservation in accordance with procedures set forth in Chapter 21 of the Spokane Law and Order Code, if such non-member is found to be in deliberate or willful violation of this section.
- (b) Denial of Business Privileges. Any creditor and any agents or employees of any creditor who are found by the Tribal Council to be in deliberate and willful violation of this title may be denied the privilege of doing business within the Spokane Reservation.
 - (1) The Council shall afford any creditor fair notice and opportunity for hearing prior to denial of any business privileges on the Reservation.
- (c) Civil Damage Liability. Any person who violates this Title and creditor whose agents or employees violate this Title, shall be deemed to have breached the peace of the Spokane Reservation, and they shall be civilly liable to any debtor for any actual damages caused by the deliberate or negligent failure to comply with the provisions of this section.

Section 4-24 Service of Process - Foreign Civil Actions

4-24.01 Service of Process Involving Foreign Causes of Action. If service is desired to be obtained upon an Indian within the exterior boundaries of the Spokane Indian Reservation for purposes of a civil judicial proceeding in a foreign Tribal, state or federal court, such service must be performed by the Tribal Court.

- (a) Any person desiring such service shall submit a written request for such service to the Spokane Tribal Police together with the document that is desired to be served, and a statement of the name of the individual desired to be served and the location where they can be served.
- (b) A schedule of fees and mileage for such service shall be as determined by the Police Chief and approved by the Tribal Court.
- (c) For that fee, an affidavit of service shall also be provided upon obtaining the desired service.

Section 4-25 Injunctions

4-25.01 Restraining Orders and Injunctions. In addition to other remedies, the Court may also issue a temporary restraining order, preliminary injunction, permanent injunction or other appropriate order to enjoin or prevent a violation or threatened violation of any person's rights or legally protected interests, or any provision of the Spokane Law and Order Code, regulation, or order issued there under or other laws of the Spokane Tribe.

4-25.02 Emergency Restraining Order. When the complaining party demonstrates by affidavit or verified complaint filed with the court that immediate and irreparable damage, injury, or loss will occur unless restrained by the court, the Court may issue an ex parte emergency restraining order; provided that the applicant provides the Court with written reasons supporting the claim that notice should not be required and certifying the efforts made, if any, to notify the adverse party.

- (a) Emergency restraining orders shall contain a statement of the injury, why it is irreparable, and why the order was granted without notice. No restraining order shall be issued unless a complaint in writing shall have been filed with the Court.

- (b) An emergency restraining order shall expire by its own terms, but not more than 5 days from the date of its issuance, and this fact shall be shown on the face of the order.
- (c) Such an order may be renewed for a like period of time not more than once.
- (d) Such renewal must be requested before the expiration of the initial order, and shall be granted only upon notice to the opposing party.
- (e) An emergency restraining order may be so renewed, vacated, set aside, or modified by motion of either party upon notice and opportunity for hearing.

4-25.03 Preliminary Injunction.

- (a) Following opportunity for hearing either on affidavits or on testimony, the Court may enter a preliminary injunction restraining a party from taking certain action or requiring a party to take certain action during the pendency of the lawsuit.
- (b) A preliminary injunction may be entered only after an appropriate motion by a party and after notice and opportunity to be heard by the opposing party or parties.

4-25.04 Permanent Injunction. Every order granting a permanent injunction shall set forth the reasons for its issuance and shall be specific in terms.

- (a) It shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained.
- (b) The injunction is binding only upon the parties to the action, their officers, agents, servants, employees, and counsel, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

4-25.05 Security.

- (a) The Court may require the applicant to give security as a condition to issuing a restraining order or preliminary injunction, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.
- (b) No such security shall be required of the Spokane Tribe or an agency or officer thereof.

4-25.06 Security on Injunction Restraining Collection of Money; Injunction Made Permanent.

- (a) Upon dissolution of a preliminary injunction or temporary restraining order restraining the collection of money, if the action is continued over for trial, the court may require the defendant to give security to be approved by the court, and payable to the plaintiff in the amount previously enjoined and such additional amount as the court requires, and conditioned upon refunding to the plaintiff the amount of money, interest and costs which may be collected by him in the action.
- (b) If a permanent injunction is ordered on final hearing, the court may, on motion of the plaintiff, enter judgment against the security for the amount shown to have been collected and to which the plaintiff appears entitled.

4-25.07 Disobedience of Injunction as Contempt; Order to Show Cause; Warrant; Attachment; Punishment.

- (a) Disobedience of a restraining order or injunction may be addressed by the court as civil contempt.
- (b) When a party in whose favor an injunction has been issued files an affidavit that the party against whom the injunction was issued has disobeyed the injunction and describes the acts constituting such disobedience, the court may order the person so charged to show cause at the time and place the court directs why such disobedient party should not be adjudged in contempt of court.
- (c) The order to show cause, with a copy of the affidavit, shall be served upon the person charged with the contempt within sufficient time to enable him to prepare a response to the charge.
- (d) If such a person fails or refuses to appear and show cause as ordered, a warrant of arrest may be issued directing the police to deliver him and bring him before the court at a time and place directed by the court.

- (e) If the alleged contemnor is a corporation, an order of attachment for sequestration of the corporation may be issued seizing corporation property upon refusal or failure to appear, which may be held until the contemnor appears as directed by the court.
- (f) Upon the appearance of the alleged contemnor, or at the trial of the issue, the court shall hear the evidence, and if the court finds by a preponderance of the evidence that the person enjoined has disobeyed the injunction he may be committed to jail until he purges himself of the contempt as may be directed by the court or until he is discharged by law.

Section 4-26 Arbitration

4-26.01 Scope of Code. This Code applies to any written contract, agreement or other instrument entered into by:

- (a) the Spokane Tribe of Indians, or
- (b) any other person in a transaction that is subject to the jurisdiction of the Spokane Tribe of Indians, in which the parties thereto agree to settle by arbitration any controversy arising out of such contract, agreement or other instrument, or any other controversy existing between them at the time of the agreement.

4-26.02 Agreements to Arbitrate are Enforceable. An agreement in any written contract, agreement or other instrument, or in a separate writing executed by the parties to any written contract, agreement or other instrument, to settle by arbitration any controversy thereafter arising out of such contract, agreement or other instrument, or any other transaction contemplated there under, including the failure or refusal to perform the whole or any part thereof, or a written agreement between 2 or more persons to submit to arbitration any controversy existing between them at the time of the agreement, shall be valid, irrevocable and enforceable.

4-26.03 Law to be Applied.

- (a) In any contract, agreement or instrument described in Section 1 of this Code, the parties may agree upon the jurisdiction whose substantive law shall govern the interpretation and enforcement of the contract, agreement, instrument or controversy.
 - (1) Such choice of law shall be valid and enforceable, and not subject to revocation by 1 party without the consent of the other party or parties thereto, provided that the subject matter of the contract, agreement, instrument or controversy, and at least 1 of the parties thereto, shall have some contact with the jurisdiction so selected.
- (b) In any proceeding under this Code, whenever the contract, agreement or other instrument sets forth a choice of law provision, the Spokane Tribal Court shall apply the procedural rules of the Spokane Tribal Court and the substantive law of the jurisdiction selected in such choice of law provision; provided that no procedural rule of the Spokane Tribal Court shall be effective to bar, delay or impair any action, proceeding or remedy where such action, proceeding or remedy would not be barred, delayed or impaired by the procedural rules of the courts of the jurisdiction whose substantive law applies.
- (c) In any proceeding under this Code, whenever the contract, agreement or other instrument does not set forth a choice of law provision, the Spokane Tribal Court shall first apply the substantive law of the Spokane Tribe of Indians, including any applicable choice of law principles, and then the substantive law of the State of Washington, including any applicable choice of law principles, provided that such law does not conflict with this Code or other applicable Tribal law.

4-26.04 Stay of Proceedings and Order to Proceed with Arbitration.

- (a) If any action for legal or equitable relief or other proceeding is brought by any party to any contract, agreement or instrument described in Section 1 of this Code, the Tribal Court Judge who is presiding over the pending action or proceeding shall not review the merits of the pending action or proceeding, but shall stay the action or proceeding until an arbitration has been had in compliance with the agreement.
- (b) A party to any contract, agreement or instrument described in Section 1 of this Code claiming the neglect or refusal of another party thereto to proceed with an arbitration there under may

make application to the Spokane Tribal Court for an order directing the parties to proceed with the arbitration in compliance with their agreement.

- (1) In such event, the Spokane Tribal Court shall order the parties to arbitration in accordance with the provisions of the contract, agreement or instrument and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

4-26.05 Advice of the Court. At any time during an arbitration, upon request of all the parties to the arbitration, the arbitrator(s) may make application to the Spokane Tribal Court for advice on any question of Tribal or state law arising in the course of the arbitration, *provided that* such parties shall agree in writing that the advice of the Court shall be final as to the question presented and that it shall bind the arbitrator(s) in rendering any award.

4-26.06 Time Within Which Award Shall be Rendered.

- (a) If the time within which an award is rendered has not been fixed in the arbitration agreement, the arbitrator(s) shall render the award within 30 days from the date the arbitration has been completed.
 - (1) The parties may expressly agree to extend the time in which the award may be made by an extension or ratification thereof in writing.
- (b) An arbitration award shall be in writing and signed by the arbitrator(s).
 - (1) The arbitrator(s) shall provide written notice of the award to each party by certified or registered mail, return receipt requested.

4-26.07 Application for Order Confirming Award; Record to be Filed with Clerk of Court; Effect and Enforcement of Judgment.

- (a) At any time within 1 year after an arbitration award has been rendered and the parties thereto notified thereof, any party to the arbitration may make application to the Spokane Tribal Court for an order confirming the award.
- (b) Any party applying for an order confirming an arbitration award shall, at the time the order is filed with the Clerk of the Spokane Tribal Court for entry of judgment thereon, file the following papers with the Clerk:
 - (1) the agreement to arbitrate;
 - (2) the selection or appointment, if any, of the arbitrator(s);
 - (3) any written agreement requiring the reference of any question as provided in Section 5;
 - (4) each written extension of the time, if any, within which to make the award;
 - (5) the award;
 - (6) each notice and other paper used upon an application to confirm; and
 - (7) a copy of each order of the Spokane Tribal Court upon such an application.
- (c) An arbitration award shall not be subject to review or modification by the Spokane Tribal Court, but shall be confirmed strictly as provided by the arbitrator(s).
 - (1) The judgment confirming an award shall be docketed as if it were rendered in a civil action.
 - (2) The judgment so entered shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in the Tribal Court.
 - (3) When the award requires the performance of any other act than the payment of money, the Tribal Court may direct the enforcement thereon in the manner provided by law.

4-26.08 Arbitration Award Not Appealable. No further appeal may be taken from an order issued by the Tribal Court pursuant to this Code enforcing an agreement to arbitrate or an award issued by an arbitrator.

4-26-09 Jurisdiction of the Tribal Court in Actions to which the Spokane Tribe is a Party.

- (a) The Spokane Tribal Court shall have exclusive Tribal Court jurisdiction over any action to enforce an agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate and to enforce an award made by an arbitrator pursuant to such agreement to arbitrate, contained in any contract, agreement or other instrument described in Section 1 of this Code to which the Spokane Tribe of Indians is a party; *provided that* the Spokane Tribal Council explicitly has waived the defense of Tribal sovereign immunity in the contract, agreement, or other

instrument; and provided further that the contract, agreement, or other instrument does not expressly prohibit the Spokane Tribal Court from exercising jurisdiction there under.

- (b) The jurisdiction of the Spokane Tribal Court under this Code shall be concurrent with the jurisdiction of any state or federal court to the jurisdiction of which the Spokane Tribe of Indians shall have explicitly consented in such contract, agreement or other instrument.
 - (1) Any consent to the jurisdiction of a state or federal court contained in a contract, agreement or other instrument described in Section 1 of this Code to which the Spokane Tribe of Indians is a party shall be valid and enforceable in accordance with its terms.

CHAPTER 5 - PROBATE AND GUARDIANSHIP

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Section 5-1 Jurisdiction

- 5-1.01 Jurisdiction.** The Spokane Tribal Court may regulate the distribution of a decedent's estate provided:
- (a) that such estate consists solely of non-trust personal property including fixtures attached to Indian Trust lands belonging to the decedent, but not included in the probate covering said trust lands;

(b) that such property is located within the boundaries of the Spokane Reservation;

(c) that such decedent would have been subject to the jurisdiction of the Tribal Court prior to decedent's death; and

(d) that such decedent was an Indian as defined by this Code.

5-1.02 Authority.

(a) The Tribal Court shall have full and adequate power and authority to administer and settle all estates of decedents, minors, and insane and mentally incompetent persons mentioned in this chapter.

(b) If any of the provisions in this chapter regarding the administration and settlement of such estates should prove inapplicable, insufficient, or doubtful, the Tribal Court shall have full power and authority, nevertheless, to proceed in any manner that to the Court seems correct and proper with such administration and settlement to the end that such estates may be administered and settled by the Tribal Court.

5-1.03 Trust Property. Jurisdiction to administer decedent's estates consisting of real property held in trust by the United States, shall be with the Secretary of the Interior pursuant to federal code and regulations.

Section 5-2 Wills - Applicable Law Governing

5-2.01 Applicable Law Governing Wills.

(a) The requirements governing the validity of wills shall be in accordance with the applicable laws of the State of Washington.

(b) Said laws shall also govern the revocation of such wills.

Section 5-3 Conflicts in Probate

5-3.01 Conflicts in Probate. In situations where there is both a probate by the Department of the Interior of decedent's Indian trust assets and a probate in Tribal Court of an Indian's non-trust assets, involving the same will, claims, or identical issues of law or fact, the decisions and orders of the Tribal Court regarding the non-trust assets shall take precedence over, and shall be binding upon, the Judge or Board of Indian Appeals in the probate by the Department of the Interior.

Section 5-4 Petition for Appointment of Personal Representative

5-4.01 Petition for Appointment of Personal Representative. Any person having legal interest in a decedent's estate may petition the Tribal Court for the appointment of himself or his designate as a personal representative for the administration of said decedent's estate as hereinafter provided:

(a) If 2 or more persons petition the Tribal Court for appointment within 60 days of the death of the decedent, the Tribal Judge shall appoint the personal representative with the following priority.

(b) Surviving spouse or his designate, lineal descendant, parent, collateral descendant, creditor, others.

(c) No petition for appointment by a person other than the surviving spouse of decedent shall be acted upon within 60 days of the date of death unless notice of such petition is first served upon the surviving spouse and more than 20 days have elapsed from the date of service and the surviving spouse or his designate has failed to petition for appointment.

Section 5-5 Duty and Liability of Will Custodian

5-5.01 Duty and Liability of Will Custodian.

(a) Every custodian of a will must deliver the will to the Tribal Court or to the personal representative named in said will within 20 days after receipt of information that the maker thereof is deceased.

(b) Any such custodian who fails and neglects to do so may be liable for damages sustained by a person injured thereby.

Section 5-6 Application for Probate Hearing Order

5-6.01 Application for Probate Hearing Order. Upon the receipt of a petition for the probate of a will, the Court shall, on hearing evidence as to the validity of such will, admit the will to probate or reject it as the evidence may justify.

- (a) An order shall be entered by the Court admitting or rejecting such will to probate.
- (b) This order shall be final for all purposes unless a contest is begun pursuant to the procedure set out in this chapter.
- (c) All evidence pertaining to the validity of the will shall be reduced to writing, signed by the witnesses and certified by the Judge of the Court.

Section 5-7 Appointment of Personal Representative

5-7.01 Appointment of Personal Representative.

- (a) If, after receipt of the petition for appointment of personal representative, it shall initially appear to the Court that the value of the estate does not exceed the sum of \$45,000, the Court shall appoint an executor, if the decedent's will has been admitted to probate, or an administrator, if the decedent left no will or the will has been rejected by the Tribal Court.
- (b) The term "personal representative" shall be inclusive of the terms "executor" and "administrator" as used in this Code.

Section 5-8 Qualification of Personal Representative

5-8.01 Qualification of Personal Representative. A person shall not be qualified to act as a personal representative who is of unsound mind, has been adjudged incompetent, has been convicted of a crime involving moral turpitude, is below the age of 18 years.

Section 5-9 Inventory

5-9.01 Inventory.

- (a) Every personal representative shall, within 60 days of his appointment, make and return upon oath to the court a true inventory of all of the property of the estate including any encumbrances against the said property.
- (b) The Court shall have the discretion to grant a longer period of time upon a sufficient showing of necessity.

Section 5-10 Appointment of Appraisers

5-10.01 Appointment of Appraisers.

- (a) Upon the appointment of the personal representative of the estate, the Court may authorize 1 or more parties of discretion (not related to the decedent or interested in the administration of the estate) to appraise the goods and chattels listed in the inventory.
- (b) On the death or the refusal or neglect to act as an appraiser, another may be appointed to act in his place.

Section 5-11 Compensation of Appraisers

5-11.01 Compensation of Appraisers.

- (a) The appraiser shall receive as compensation for his services an amount to be set by the Court in consideration of the circumstances, but to be not less than \$10 nor more than \$50.
- (b) Such sums shall constitute a claim against the estate.

Section 5-12 Return of Appraisal

5-12.01 Return of Appraisal. The appraisers shall list each article with its value in dollars and cents.

- (a) When the appraisal is completed, the appraisers shall attest to its accuracy in writing and attach such document to the appraisal and deliver it to the Court with a copy to the personal representative.
- (b) If any goods and chattels come within the knowledge of a personal representative which are not included in previous appraisals, they shall be appraised and a return thereof shall be made in like manner within 30 days of their discovery.

- (c) The Clerk shall record all appraisals filed with him.

Section 5-13 Notice to Creditors

5-13.01 Notice to Creditors. Immediately after his appointment, the personal representative shall cause to be posted, in 2 public places on the Reservation, and published in the Tribal Newspaper or, if there is none, in a newspaper of general circulation on or adjacent to the Spokane Reservation, a notice that he has been appointed personal representative in the named probate proceedings.

- (a) Such notice shall require all creditors of the deceased and all persons having claims against the deceased to serve such claims upon the personal representative and file them with the Clerk of the Court, within 2 months from the date of the first publishing of the notice.
- (b) The notice is to be posted for a period of 3 weeks and published once in the Tribal newspaper or once a week in a non-Tribal newspaper for 3 consecutive weeks, such posting and publishing to be concurrent.

Section 5-14 Exception to Notice Requirement

5-14.01 Exception to Notice Requirement. Where all of the property is awarded to the surviving spouse or children as provided, the notice to creditors may be omitted.

Section 5-15 Order of Claim Preference

5-15.01 Order of Claim Preference. All claims shall be preferred in the following order:

- (a) Expenses of administration;
- (b) Expenses of last illness and burial;
- (c) Any amount due the Spokane Tribe; and
- (d) All other claims.

Section 5-16 Sale of Estate by Personal Representative

5-16.01 Sale of Estate by Personal Representative. A personal representative may, by petitioning the Court in writing and obtaining an authorizing order there from, sell, mortgage or pledge all or part of the estate of the decedent when reasonably necessary for the proper administration of said estate.

Section 5-17 Notification of Acceptance or Rejection of Claim

5-17.01 Notification of Acceptance or Rejection of Claim.

- (a) Upon the expiration of the 2 month period provided in this Chapter for the filing of claims against the decedent, the personal representative shall examine each claim filed and within 30 days thereafter he shall notify the claimant in writing, whether he will recommend its acceptance or rejection and file a copy of such notice.
- (b) If he rejects the claim or does not approve it within 60 days after filing the claimant may begin legal action to establish his claim. Such action must be commenced within 30 days of notification of rejection or if there is no rejection or approval within 100 days after filing.

Section 5-18 Petition for Determination of Heirs and Distribution of Estate;

5-18.01 Petition for Determination of Heirs and Distribution of Estate.

- (a) The personal representative shall as soon as reasonably possible after the administration of the estate as set out above is completed file with the Clerk of the Court a petition for the determination of heirs and distribution of the estate.
- (b) This petition shall include the names of all claimants entitled to payment, a statement of heirs and devisees entitled to receive the net proceeds and assets of the estate and such other information as may be necessary to assist the Court in the distribution of the estate.

Section 5-19 Court Hearing on Petition for Determination of Heirs and Distribution of Estate

5-19.01 Court Hearing on Petition for Determination of Heirs and Distribution of Estate.

- (a) Upon the filing of the petition for determination of heirs and distribution of the estate, the Tribal Court shall set a date for hearing said petition and notice of said hearing shall be given to all interested parties.

- (b) Such notice shall be posted no later than 10 days before the date of said hearing in 2 public places on the Reservation with written notice being given via United States mail to all claimants, heirs and devisees and all persons claiming an interest in said estate.
- (c) A copy of said notice shall also be forwarded to the Superintendent.

Section 5-20 Hearing Proceedings

5-20.01 Hearing Proceedings. At the time set for hearing the petition for distribution of heirs and distribution of the estate, the Tribal Court shall hear and examine all evidence relating to the distribution of decedent's estate and determine any controversy relating to claims or to those entitled to receive the estate.

Section 5-21 Final Order and Discharge of Personal Representative

5-21.01 Final Order and Discharge of Personal Representative. Upon conclusion of the hearing or hearings, the Tribal Court shall enter its order determining heirs or devisees and providing for distribution of the estate and the payment of claims.

- (a) The Tribal Court shall distribute the estate according to the terms of the decedent's will if said will has been admitted to probate; otherwise, the estate shall be distributed in accordance with the laws of the State of Washington relating to descent and distribution.
- (b) Within 30 days after the entry of said order, the personal representative shall file his report with the Court showing that he has fully discharged his duties and shall file receipts or other proof of delivery of all property of decedent and the making of all payments in accordance with the order of the Tribal Court.
- (c) The Court, upon finding that the personal representative has faithfully discharged his duties, shall enter an order closing the estate and discharging said personal representative.

Section 5-22 Compensation of Personal Representative

5-22.01 Compensation of Personal Representative. A personal representative of an estate may be compensated from the assets and income of the estate in an amount determined by the Court as being fair and reasonable taking into consideration the complexities of the administration and the value of the estate.

Section 5-23 Bond of Personal Representative

5-23.01 Bond of Personal Representative.

- (a) Every person appointed by the Court as a personal representative in any probate proceeding shall, except in the case of the probate of a will that provides that the named executor not be bonded before such appointment becomes effective, execute a bond to the Spokane Tribal Court, in a sum equal to the estimated value of the estate.
- (b) Such bond shall be through a surety company or 2 reliable members of the community, resident within the boundaries of the Spokane Reservation, who shall execute an agreement in compliance with the form provided therefore by the Spokane Tribal Court.

Section 5-24 Exceptions to Bond Requirements

5-24.01 Exceptions to Bond Requirements. If it appears to the Court on the basis of evidence presented at the time the personal representative is appointed that the estate shall not exceed a value of \$500, and that the rights of heirs and creditors will not be jeopardized by so doing, the Court may waive the bond requirement when the personal representative is the surviving spouse or a principal heir.

Section 5-25 Liability for Mismanagement

5-25.01 Liability for Mismanagement. A personal representative and the surety on his bond may be liable to any person who suffers monetary loss or damage by any mismanagement of the estate.

Section 5-26 Limitations of Action

5-26.01 Limitations of Action. An action against a personal representative or his surety for mismanagement of an estate must be commenced within 2 years from the date of the order of the final distribution of the estate.

Section 5-27 Will Contests

5-27.01 Will Contests.

- (a) The right to institute or continue a proceeding to contest the validity of a will survives and descends to the heir, legatee, devisee, executor, administrator, grantee, or assignee of the person entitled to institute the proceeding.
- (b) Upon the filing of the petition, process shall be issued, served and proof of service given as prescribed in other civil cases.

Section 5-28 Grounds of Will Contest

5-28.01 Grounds of Will Contest.

- (a) If anyone appears to contest the will, he must file written grounds or opposition to the probate thereof, and serve a copy on the individual petitioning for the probate of the will and other heirs in the estate within 2 months after the admission of the will to probate.
- (b) Issues of fact and law that may be considered by the court will be as follows:
 - (1) The competency of the decedent to make the Last Will and Testament.
 - (2) Whether the will was the result of duress, menace, fraud or undue influence.
 - (3) Whether the will is in legal form and was properly executed.
- (c) Any other questions substantially affecting the validity of the will under applicable laws of the State of Washington.

Section 5-29 Hearing Upon Will Contest

5-29.01 Hearing Upon Will Contest.

- (a) A hearing shall be held to determine the issues raised by the contest.
- (b) If the court, for any reason, decides that the will is invalid, or that it was not sufficiently proven to have been the Last Will and Testament of the testator, the will itself and the resultant probate thereof shall be void and any powers of the personal representative shall cease.
- (c) The personal representative shall not be liable for any act done in good faith previous to such voiding.

Section 5-30 Appeal

5-30.01 Appeal. Any party aggrieved by the action of the Court in sustaining or rejecting a will contest shall have the right to appeal the determination in the same manner as prescribed in civil cases.

Section 5-31 Power to Appoint Guardian Ad Litem

5-31.01 Power to Appoint Guardian Ad Litem. Upon the filing of a petition contesting a will the Tribal Court shall appoint a guardian ad litem for any minor, incompetent or person not in being who might be legally affected by the outcome of the will contest.

Section 5-32 Duties of Guardian Ad Litem

5-32.01 Duties of Guardian Ad Litem. Any guardian ad litem appointed under this Chapter shall appear and defend on behalf of the minor, incompetent or person not in being whom he represents.

Section 5-33 Compensation of Guardian Ad Litem

5-33.01 Compensation of Guardian Ad Litem. The guardian ad litem shall be entitled to such reasonable compensation as may be fixed by the Court to be taxes as costs in the proceedings and paid in the course of the administration of the estate.

Section 5-34 Surviving Spouse and Child's Award

5-34.01 Surviving Spouse and Child's Award. The surviving spouse of a decedent, whose estate is being administered by the Spokane Tribal Court, shall be allowed as the surviving spouse's own property free from execution, garnishment or attachment such sums of money from the estate of the decedent as the Court deems reasonable for the support of the surviving spouse for a period of 6 months after the death of the decedent.

- (a) The Court may award such additional sums of money as it deems reasonable for the support, during such period, of minor and adult dependent children of the decedent who resided with the surviving spouse at the time of the decedent's death.
- (b) The award shall in no case be more than the appraised value of the estate.
- (c) The award shall be paid to the surviving spouse at such time or times, not exceeding 6 installments, as the Court directs.

Section 5-35 Dwelling Exemption

5-35.01 Dwelling Exemption. Upon appraisal of an estate and determination that a dwelling inventoried in said estate is personal property in which other heirs and/or creditors have an interest, and the dwelling is occupied by the surviving spouse and/or children of the deceased, and it being further determined that said dwelling is necessary for the welfare and protection of such surviving spouse and/or children, the Court may order such dwelling set aside for the benefit of said surviving spouse and/or children as a homestead for a period of 10 years, or the Court, in its discretion, may grant to the surviving spouse and/or children additional rights of occupancy and use up to and including permanently setting aside said property or passing title thereto, provided, however, that this exemption shall not preclude the claims of secured creditors who perfected liens prior to death of decedent.

Section 5-36 Notice

5-36.01 Notice.

- (a) Except where specifically provided for in this Chapter, no notice to interested persons need be given.
- (b) Sufficiency of notice where required, shall be in accordance with the provisions of Chapter 5 .

Section 5-37 Wrongful Slayer Provision

5-37.01 Wrongful Slayer Provision. No slayer who has participated either as a principal or as an accessory before the fact in the willful and unlawful killing of the decedent shall in any way acquire any property or receive any benefit as the result of the death of the decedent.

- (a) Said slayer is to be deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the slayer under the provisions of this Chapter.
- (b) This provision shall also apply to any statutory right of the surviving spouse relating to community property agreements made with the decedent under the provisions of the laws of the State of Washington.

Section 5-38 Escheat to Tribe for Want of Heirs

5-38.01 Escheat to Tribe for Want of Heirs. Whenever any person shall die leaving property which would be subject to the jurisdiction of the Spokane Tribal Court, without being survived by any person entitled to said property under the provisions of this Chapter, such property shall be designated as escheat property and title to such property shall vest in the Spokane Indian Tribe.

Section 5-39 Simultaneous Death Provision

5-39.01 Simultaneous Death Provision. Where the title to property covered under this Chapter or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived except where provided otherwise in this Chapter.

Section 5-40 Adult Guardianship

5-40.01 Intent. The intent of this document is to establish a guardianship code for the Spokane Tribe of Indians for the purpose of protecting the health and welfare of all persons on all lands within the Tribe's jurisdiction.

5-40.02 Jurisdiction. The Tribal Court of the Spokane Indian Tribe shall have authority, whenever it appears necessary, to appoint guardians over the person and estate of a natural person over the age of 18 years incapacitated only by reason of physical or mental sickness or deficiency, advanced age, or chronic use of drugs or alcohol.

- (a) The Tribal Court shall have authority to appoint guardians when the person for whom the guardianship is sought is a member of the Spokane Indian Tribe, whether or not he or she resides on the Reservation.
- (b) The Tribal Court must refer matters concerning the custodianship of a minor, under the age of 18 years, to the Youth Court of the Spokane Tribe of Indians.
- (c) The minor shall be under the jurisdiction of the youth court in accordance with Chapter 6 of the Law and Order Code of the Spokane Tribe of Indians.
- (d) The Tribal Court shall, in the process of administering an estate for which there is a valid will containing a designation of a guardian or custodian for minor children, appoint the person therein designated as guardian or custodian in accordance with Chapter 6 of the Law and Order Code of the Spokane Tribe of Indians.

Section 5-41 Guardianship Petitions

5-41.01 Petition.

- (a) Guardianship proceedings shall be initiated by the filing of a petition by a relative or other person on behalf of the alleged incapacitated person.
 - (1) The Court may initiate proceedings to appoint a guardian if such appointment reasonably appears necessary and no other person has initiated such proceedings.
- (b) The petition shall set forth the name of the petitioner; the petitioner's relationship to the alleged incapacitated person and shall list all known relatives of the alleged incapacitated person and their addresses, relationships, and ages insofar as is known to petitioner.
 - (1) It shall list all property of the person, real and personal, known to petitioner and shall list in detail the present conditions and circumstances that warrant the appointment of a guardian.
 - (2) The petition shall pray that Letters of Guardianship be issued to him/herself or some other suitable person to act as guardian of the alleged incapacitated person.

5-41.02 Notice; Hearing.

- (a) The petitioner, or the Clerk of the Court, shall cause notice to be given in accordance with this code to all known interested persons listed on the petition not less than 15 days before a scheduled hearing.
- (b) Upon filing of the petition with the Court, the Court shall appoint an independent third party to act as a guardian-ad-litem pursuant to the Law and Order Code of the Spokane Tribe of Indians.
 - (1) The guardian-ad-litem shall represent the interests of the alleged incapacitated person for the purpose of and duration of all guardianship hearings.
 - (2) The guardian-ad-litem shall represent the alleged incapacitated person until such time the Court issues Letters of Guardianship, at which time the guardian-ad-litem shall be discharged.
- (c) Hearing for alleged incapacitated person. At a hearing conducted to appoint a guardian for an alleged incapacitated person, the Court shall: examine the petition; determine the need to have a guardian appointed by taking such testimony as any interested party wishes to present, but including not less than 2 independent doctors' reports, written or oral, under oath, to the effect that the alleged incapacitated person is not presently able to handle his property or affairs, the anticipated duration of the incapacity, and that the best interests of the incapacitated person will be served by having a guardian appointed.
 - (1) At the hearing the court shall determine which person, either the petitioner or some other person, is most suitable to act as guardian, and that person's willingness to act as such.
 - (2) The court shall order the appointment of a guardian, setting forth the authority of the guardian, whether or not security for his/her performance is to be required, and the duration of such appointment.

Section 5-42 Guardian

5-42.01 Who May Serve As Guardian.

- (a) Any adult person 21 years of age or older and subject to the jurisdiction of the Tribal Court may serve as a guardian.
- (b) In all cases, the Court shall determine the best interests of the incapacitated person in selecting a guardian.

5-42.02 Security For Faithful Performance Of Duties.

- (a) The Court may, but need not, require a guardian to provide security in the form of a bond or otherwise to assure the faithful performance of the guardian's duties.
- (b) Any surety of any such security will be deemed to have consented to the jurisdiction of the Tribal Court for purposes of action against such security.

5-42.03 Declaration; Letters Of Guardianship.

- (a) The guardian appointed by the Court shall be required to make a declaration, the form of which is prescribed by and attached to this chapter, to the effect that he/she will faithfully perform his/her duties as guardian.
- (b) Upon making the declaration and filing with the Court such security, if any, as may have been required, the guardian shall be issued Letters of Guardianship, issued by the clerk under the seal of the Court, as evidence of his/her appointment.
 - (1) Any limitations in the authority of the guardian shall be set forth on the Letters of Guardianship so issued.

5-42.04 Guardian's Compensation.

- (a) No guardian shall receive any compensation for acting as such, without the prior approval of the Court.
- (b) The guardian of an estate in excess of \$3,000 in value may receive annual compensation for acting as such in an amount not less than \$25 nor greater than 10% of the gross income of the estate; such compensation must be approved by the Court.
- (c) The guardian of an estate worth less than \$3,000 in value shall receive no compensation unless specifically ordered by the Court for extraordinary service to the estate.

5-42.05 Powers and Responsibilities Of Guardian.

- (a) Except as otherwise specifically ordered or limited by the Court:
 - (1) A guardian of the incapacitated person shall have the right to take or provide for the custody of the person and shall be required to care for the health, safety and welfare of the person and provide for their education and medical care as needed or appropriate.
 - (2) A guardian of the estate and property of an incapacitated person shall have authority to invest, manage and dispose of the personal property of the person in a prudent and reasonable manner and expend such portions of the estate, income and principal, as he/she shall deem reasonably necessary for the support, care, including medical care, and education of the person given the size and nature of the estate and the station in life and needs of the person.
 - (3) A guardian shall have power and authority to represent an incapacitated person's best interests in actual, threatened or contemplated litigation or other proceedings of a legal nature (other than of a criminal nature), and to employ counsel, and settle or compromise suits or claims, subject to the approval of the Court.
- (b) A guardian of any kind may petition the Court for authority to do any act which he/she is uncertain of his/her authority, and the Court may grant such authority after such notice and hearing, if any, as the Court may direct, if such appears to be consistent with the best interests of the incapacitated person.
- (c) A guardian of any kind shall stand in a fiduciary relationship to the incapacitated person ward; shall exercise a high degree of care in managing the estate of his/her ward; shall derive no personal benefit of any kind from his/her management of the estate of his/her ward; and shall be civilly liable to said ward for any losses to the estate attributable to a breach of these duties.

- (1) Action to enforce such liability may be brought by the ward or a subsequently appointed guardian on behalf of the ward within 2 years after the appointment of a new guardian or the removal of the incapacity.

Section 5-43 Inventory and Appraisement

5-43.01 Inventory And Appraisement.

- (a) Within 45 days after the appointment of a guardian the guardian shall prepare and submit to the Court an inventory and appraisement of the estate.
- (b) The appraisement shall be made by 2 disinterested persons, not related to the incapacitated person by blood or marriage, who shall certify under oath to their appraisement and may receive reasonable compensation for their services.
- (c) No appraisement shall be required of items of obvious, readily ascertainable value, e.g. bank account assets, or where the value of the entire estate is reasonably believed by the guardian to be less than \$1,000.
- (d) If the appraisement is required, the guardian shall certify under oath to the obvious or estimated value of the assets not appraised.

5-43.02 Annual Accounting.

- (a) The guardian of every estate in value over \$1,000 shall submit an annual account of the estate to the court for approval. In each year in which the value of the estate is or is reasonably believed to be in excess of \$1,000 the guardian shall have this affirmative duty.
- (b) Such accounting shall be verified on the oath of the guardian and shall contain an accounting of all additions to any withdrawals from the estate, and shall be accompanied by, but not by way of limitation, supporting canceled checks, vouchers, receipts and statements.

Section 5-44 Discharge of Guardian

5-44.01 Discharge Of Guardian.

- (a) Every guardian appointed shall serve until discharged by the Court.
- (b) An incapacitated person who has had a guardian appointed, the guardian or a relative of such incapacitated person may petition the Court for a determination of his/her restoration to capacity and for the discharge of the guardian.
 - (1) The Court shall hold a hearing, after such notice to known interested persons as the Court shall direct, and receive evidence, both of a medical nature and otherwise, of the person's capacity.
 - (2) If it be found that the incapacitated person is of sound mind and capable of taking care of him/herself and his/her property, his/her restoration to capacity shall be adjudged and his/her guardian discharged.

Section 5-45 Guardianship Records

5-45.01 Guardianship Records. The clerk shall keep a separate, permanent file for each guardianship proceeding and shall file all relevant papers.

Section 5-46 Guardianship of Real and Trust Property

5-46.01 Guardianship Of Real And Trust Property.

- (a) The Court is hereby authorized to appoint a guardian of the trust estate of the incapacitated person consistent with federal law.
- (b) The guardian shall use the procedures and safeguards outlined in this chapter for the purpose of conveying or consenting to the conveyance of an interest in real and trust property owned by such incapacitated person if it appears that the price to be paid is reasonable and adequate and that such sale is to the best interest of the incapacitated person.

(c) The Court must enter an order authorizing such action.

Section 5-47 Temporary Guardianship and Custody

5-47.01 Temporary Guardianship And Custody. The court shall have the power to entertain and grant or deny petitions for temporary guardianship when it determines it to be in the best interests of the person involved.

Legislative History-Amended 8/5/94, Resolu. 1994-237; Readopted 8/01/06, Resolu. 2006-524.

**SPOKANE TRIBAL COURT
SPOKANE INDIAN RESERVATION**

Guardianship of:

NO.

DECLARATION OF GUARDIAN;
LETTERS OF GUARDIANSHIP

I. DECLARATION OF GUARDIAN

I, _____ declare under penalty of perjury this _____ day of _____, 20__ that:

1. I am the person who has been confirmed as guardian by this court of [the person and/or estate] of [_____] who has been determined legally incapacitated person by this court.
2. I solemnly swear that I will perform, according to law, the duties of my trust as guardian of [_____].
3. As guardian of [_____] I understand that I must do the following:

- (a) Exercise a high degree of care in managing the affairs of [_____] and derive no personal benefit from doing so.
- (b) Within 45 days of my appointment, prepare and submit an inventory and appraisal of the estate in accordance with law. I must also make a yearly accounting to the court by [date] for each year I am guardian.
- (c) Comply with all of the provisions of Chapter 5 of the Law and Order Code of the Spokane Tribe of Indians.

Guardian

II. LETTERS OF GUARDIANSHIP

A. BASIS

1. [_____] was found to be incapacitated by this court on _____.
2. [_____] was appointed the guardian of [_____'s] [estate and/or person].
3. The guardian has qualified.
4. Limitations of appointment:

B. AUTHORIZATION

THIS CERTIFIES that: _____ is authorized by this court to act as the guardian of _____.

DATED: _____

JUDGE

[SEAL]

CHAPTER 6 - YOUTH CODE

Section 6-1 Youth Code

Section 6-2 Foster Care

Section 6-3 Youth in Need of Care

Section 6-4 Appointment of Custodian

Section 6-5 Referrals Under the Indian Child Welfare Act

Section 6-6 Full Faith and Credit

Section 6-7 Delinquent Children

Section 6-8 Truancy Code

Section 6-1 Youth Code

6-1.01 Title. This Code shall be known as the Youth Code of the Spokane Tribe of Indians.

6-1.02 Purpose. The purpose of this Code is to assist Indian children within the jurisdiction of the Tribal Youth Court to receive the care and guidance needed to prepare them to take their places as responsible adults; to prevent the unwarranted breakup of Indian families; and to preserve and strengthen the child's individual, cultural, and Tribal identity.

6-1.03 Intent. It is the intent of the Spokane Tribe, in adopting this Code, to incorporate to the fullest extent the recognized customs and traditions of the child's Tribe, consistent with the Indian Civil Rights Act, 25 USC Section 1301-3 (1968), and the Indian Child Welfare Act, 25 USC Section 1901, et. seq., and with the needs of Tribal members.

6-1.04 Establishment of Court.

- (a) There is hereby established a Court to be known as the Tribal Youth Court.
- (b) The Spokane Tribal Judge, when presiding at the Tribal Youth Court, shall be known as the Spokane Youth Court Judge and is qualified to act as such.

6-1.05 Jurisdiction. The Youth Court shall have jurisdiction over all matters covered in the Youth Code involving an Indian child residing or domiciled upon the Spokane Reservation.

- (a) In addition, the Youth Court shall have the exclusive jurisdiction over all child custody proceedings, as defined by the Indian Child Welfare Act, 25 USC, Section 1903, involving an Indian child who resides or who is domiciled upon the Spokane Indian Reservation.
- (b) An Indian child who is domiciled or resides upon the Spokane Indian Reservation, and, who is the subject of any state or foreign Tribal Court child custody proceeding, shall remain subject to that foreign Court's jurisdiction.
- (c) The Spokane Youth Court, if it so desires, may petition the foreign Court to allow the Spokane Tribe to intervene or to have the case transferred to the Youth Court.

6-1.06 Protected Children of the Youth Court. In any case where this Court transfers legal custody of a Spokane Indian child to any person other than a natural parent of the child, or to any agency or institution, the Youth Court shall retain jurisdiction over all future custody proceedings involving that child, until the child reaches the age of 18 years, unless otherwise specified by a Tribal Youth Court order.

6-1.07 Definitions. For the purpose of this Code, the following words and phrases shall, unless otherwise indicated, have the following meaning:

- (a) "Adult" means any individual who has reached his or her 18 birthday.
- (b) "Child" means any individual born or unborn under the age of 18 years or a person age 18 to 21 years who remains a Youth in Need of Care under the continuing jurisdiction of the Tribal Youth Court.
- (c) "Child custody proceedings" means any voluntary or involuntary court action, informal or formal, not including divorce actions, that may result in the temporary or permanent removal of a child from his parent or parents or his custodian.
- (d) "Custodian" means that person who has the legal right to custody of the child.

- (e) "Delinquent Act" means an act that, if committed by an adult, is designated a crime under the Spokane Tribal Law and Order Code.
- (f) "Domicile" means the place considered to be the child's home, according to the traditions and customs of the child's Tribe, or the place where the child is living and is expected to continue living for an indefinite period of time.
- (g) "Extended Family Member" means an adult who is the child's grandparent, great-grandparent, aunt or uncle or great-aunt or great-uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin or step-parent.
- (h) "Foster care" means the placement of a child to reside with another family or person for a temporary period of time.
- (i) "Indian Child Welfare Advocate" means an attorney, Tribal member, or spokesperson who serves as counsel for the child in a Tribal Youth Court proceeding.
- (j) "Indian Child Welfare Act" means the Indian Child Welfare Act, 25 USC 1901, et. seq.
- (k) "Indian Child Welfare Advisory Committee" means the committee established by the Spokane Tribal Council, that is to be consulted in matters regarding the adoption, foster care and child protective services involving an Indian child as defined by this section.
 - (1) The Committee's membership and qualifications shall be determined by the Spokane Tribal Council.
- (l) "Indian Youth" or "Indian Child" means any unmarried person born or unborn who is under 18 years of age and is either:
 - (1) a member of an Indian Tribe, or
 - (2) is eligible for Membership in an Indian Tribe and is the biological child of a member of an Indian Tribe.
- (m) "Least Restrictive Alternative" means the least drastic method of achieving this Court's goal; the restrictions placed on the child must be reasonably related to the Court's objectives and must be the least restrictive way of achieving that objective.
- (n) "Parent" means a natural or adoptive parent but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been formally acknowledged or established.
- (o) "Residence" means the place where the child is presently living.
- (p) "Shelter care" means the temporary residential care of children in a shelter care facility or group home approved by the Spokane Tribe.
- (q) "Spokane Indian Child" means any unmarried person born or unborn who is under the age of 18 and is either
 - (1) a member of the Spokane Indian Tribe, or
 - (2) is eligible for membership in the Spokane Indian Tribe and is the biological child of a member of the Spokane Indian Tribe, or
 - (3) the child (natural or adopted) of a member of the Spokane Indian Tribe.

6-1.08 Confidentiality. All Court files and documents prepared in matters before this Court shall be held confidential.

- (a) These records shall be kept in a secure place by the Clerk of the Youth Court, and shall be released only to Tribal Judges, the child's Indian Child Welfare Advocate, the Indian Child Welfare Advisory Committee Chairperson, and authorized social service workers.
- (b) No other release of such information shall be allowed without an order of the Youth Court Judge.

6-1.09 Appeal. Any person aggrieved by a final order of this Court may appeal the order as provided in Section 1-7.03 of this Code.

Section 6-2 Foster Care

6-2.01 Foster Care and Pre-Adoptive Care.

- (a) Each Spokane Indian child and Indian child accepted for foster care or pre-adoptive placement shall be placed in the least restrictive alternative setting.
- (b) In placement, a preference shall be given to:
 - (1) a member of the Indian child's extended family;
 - (2) a foster home licensed, approved or specified by the Indian child's Tribe;
 - (3) an Indian foster home licensed or approved by authorized non-Indian licensing authority; or
 - (4) an institution for children approved by the Spokane Indian Tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

Section 6-3 Youth in Need of Care

6-3.01 Youth in Need of Care – Definitions. A youth in need of care means a child who has been found to be in 1 or more of the following situations:

- (a) "Abused Child" means a child that has been injured, sexually abused, sexually exploited, neglected or maltreated by any person under circumstances which indicate that the child's health, welfare, and safety is harmed thereby; provided, that this subsection shall not be construed to authorize the interference with child-raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare, and safety.
- (b) "Neglected Child" means a child whose parent or custodian fails to provide such food, clothing, shelter, medical attention, hygiene, education, or supervision as a child needs for normal development, and such failure is likely to result in serious harm to the child.
 - (1) A neglected child includes an unborn child whose mother does not adequately protect its safety, health and well-being from date of conception to birth.
- (c) "Delinquent Child" means a child who has been found, in a Tribal Court or other appropriate proceeding, to have committed delinquent acts, and whose parent or custodian is unable or unwilling to control such behavior.
- (d) "Dependent Child" means a child who has no parent or custodian available, willing or capable of adequately caring for the child such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

6-3.02 Action on Reporting. Within 24 hours after the receipt of any report or information regarding a Spokane Indian child and an Indian child who may be a youth in need of care, it shall be the duty of the Spokane Reservation social worker to investigate the circumstances surrounding the report, including the home environment of the child, any physical or emotional injuries suffered by the child, and all other matters which, in the view of the Reservation social worker, shall be relevant to the investigation.

- (a) If the Spokane Reservation social worker is unavailable, the information or report is to be referred, within the aforementioned time frame, to the Tribal or Bureau of Indian Affairs Police, or the Indian Child Welfare Advisory Committee Chairperson.
- (b) If from the investigation, it shall appear that there is probable cause to believe that the Spokane Indian child and/or Indian child is a youth in need of care, the person receiving the information shall file a petition with the Tribal Youth Court.
- (c) If, from the investigation, it appears that the Spokane Indian child and/or Indian child is in need of emergency protective care the person receiving the information shall take appropriate steps to provide emergency protective services as provided in Section 6-3.04.

6-3.03 Responsibility and Confidentiality of Reporting.

- (a) Any individual who knows or suspects that a child is an Indian youth in need of care, should report the case to the Reservation social worker, Tribal or Bureau of Indian Affairs Police, the Indian Child Welfare Advisory Committee Chairperson, or the Youth Court.
- (b) When any professional school personnel, registered or licensed nurse, social worker, psychologist, pharmacist, medical professional, day care worker, Head Start worker, law enforcement officer, child care agency worker, Tribal advocate, or mental health personnel, has reasonable cause to believe that a child is a youth in need of care, that person shall report such incident, or cause a report to be made.

- (c) Any information regarding the source of the report of a youth in need of care will be kept confidential.

6-3.04 Emergency Protective Care.

- (a) Whenever a Tribal or Bureau of Indian Affairs Police Officer or Reservation social worker has reasonable grounds to believe that a Spokane Indian child or an Indian child is in danger of serious and imminent physical or emotional harm and that the removal of the child from the child's home is necessary to avoid such harm, and if the Court is unavailable to issue a custody order, or if the issuance of a custody order would involve a delay which would contribute to the risk of harm to the child, the policy officer or social worker may take the child into Emergency Protective care.
- (b) Upon the removal of a Spokane Indian child or an Indian child into protective care, the Tribal or Bureau of Indian Affairs police officer or social worker shall:
 - (1) Immediately notify the child's parents or custodian of such removal, and the reasons therefore. If attempts to notify the child's parents or custodian are unsuccessful, then the child's nearest relatives shall be notified.
 - (2) The police shall notify the Reservation social worker of the removal or if the social worker is unavailable, the Chairperson of the Indian Child Welfare Advisory Committee.
 - (3) If the return of the child to the child's parents or custodian is impossible or would involve continued risk to the child, then the child shall be placed in foster care, or a shelter care facility. A child shall not be placed in a jail facility unless such a placement is determined, by a Tribal Youth Court Judge, to be necessary for the best interests of the child.
 - (4) Upon the placement of a child, the Tribal police officer or social worker shall make and deliver a report to the Tribal Youth Court and the Indian Child Welfare Advisory Committee Chairperson containing a summary of the circumstances surrounding the Emergency Protective Care.

6-3.05 Termination of Protective Care.

- (a) In no case shall emergency temporary care extend beyond 36 hours, exclusive of weekends and holidays.
- (b) Prior to the expiration of this period, the Reservation social worker shall:
 - (1) Cause the child to be returned to the child's parents or custodian; or
 - (2) Have the child brought before a Tribal Youth Court Judge for an emergency hearing to determine further placement of the child.

6-3.06 Emergency Hearing. In the case of an emergency hearing, the Reservation social worker shall make every reasonable effort to notify the child's parents or custodian of the time and place of the hearing, and inform the parents or custodian of their right to attend the hearing and be heard.

- (a) Notice hereunder shall be provided by personal service unless otherwise provided for by a Court Order.
- (b) If notice of such hearing was not received by the child's parent or custodian, the parent or custodian can request a new hearing, such hearing to take place as soon as possible, but no later than 5 days after its request.
- (c) If the Court continues the emergency, temporary care pursuant to an emergency hearing, the Reservation social worker, or their appointee, shall file a petition as provided below and there shall be an "initial" hearing within 14 days of such emergency order.
- (d) This matter will then proceed as a case initiated hereunder by virtue of a petition.

6-3.07 Initiation of Proceedings - Petition.

- (a) All Court proceedings under this part shall be initiated by a petition filed with the Tribal Youth Court.
- (b) The petitions shall contain the following information:
 - (1) Identification of the youth. The name, age, sex, and residence of the youth so far as is known to the petitioner.
 - (2) Identification of parent, guardian, or custodian.

- A. The name, marital status, and residence of the parent, guardian, or custodian, or person with whom the juvenile is residing, so far as is known to the petitioner.
- B. If not known, the petition shall so state.
- (c) The basis of the Court's jurisdiction.
- (d) An allegation that the youth is an Indian youth in need of care, and a plain statement of facts supporting this allegation;
- (e) A statement of any relief requested, including termination of any parental or custodial rights or appointment of a substitute custodian.

6-3.08 Indian Child Welfare Advocate. Upon the filing of a petition, the clerk of the Tribal Court shall immediately notify the Indian Child Welfare Advocate and the Indian Child Welfare Committee Chairperson.

- (a) The Indian Child Welfare Advocate will be the advocate who will represent the alleged youth in need in the proceedings upon the petition.
- (b) If there is no Indian Child Welfare Advocate, the Court shall appoint one and provide him or her with a copy of the petition and access to other materials involving the child.

6-3.09 Notice. Written notice of any hearing, except an emergency hearing, held under this section shall be given at least 5 days prior to hearing date, to all parents and legal custodians of the child and to other persons as the Court may direct.

- (a) A copy of the petition shall also be provided to such parties with the notice of the hearing.
- (b) Service of such notice and petition shall be by personal service if the whereabouts of the parents are known, otherwise, service shall be as ordered by the Court.

6-3.10 Intervention. Intervention will be allowed at any point in the proceeding by the Indian custodian or parent of the child and/or the child's Tribe.

6-3.11 Initial Hearing. Within 14 days, or as soon as possible, after the filing of the petition, there shall be an initial hearing.

- (a) The general public shall be excluded from the hearings under this section and only such persons who are found by the Court to have a direct interest in the case or the work of the Court shall be admitted to the proceedings.
- (b) Where applicable, the Court shall follow the traditions and customs of the child's Tribe regarding involvement of interested persons.
- (c) At the time of the hearing, the parents or custodians of the youth shall be advised of:
 - (1) The nature of the charges;
 - (2) The factual allegations;
 - (3) The present custodial situation;
 - (4) The relief requested by the Reservation social service worker.
- (d) The parent or custodian will be allowed to admit or deny the allegations in the petition.
- (e) Unless the allegations are admitted, the Tribal Advocate shall have the burden of proving, by clear and convincing evidence, that the child is a youth in need of care. If temporary custody is requested, the Tribe shall have the burden of proving, by clear and convincing evidence, that such relief is necessary for the protection of the child.
- (f) Upon the conclusion of the hearing the Court shall issue a temporary order, including a statement concerning the following:
 - (1) Its jurisdiction over the case;
 - (2) Whether it has been proven by clear and convincing evidence that the child is a youth in need of care. If the Court does not so find, the petition shall be dismissed;
 - (3) If temporary custody is requested, whether it has been proven by clear and convincing evidence that such temporary custody is necessary for the protection of the child;
 - (4) The date of the final disposition hearing upon the petition to determine the custody or placement of the child. Such hearing may be no later than 6 months after the initial hearing date.

(g) The Youth Court Judge may order such other actions which the Judge deems necessary.

6-3.12 Final Disposition Hearing on Indian Child. Notice of final disposition hearing shall be given in accordance with Section 6-3.09.

- (a) All parties may testify, and otherwise give evidence on their behalf regarding the circumstances of the child and of the parents, custodians, or possible custodians of the children.
- (b) The procedure and burden of proof of this hearing shall be as set forth in section 6-3.11.
- (c) Provided, however, no termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.
- (d) In addition, the Court may order any of the following dispositions or other appropriate dispositions:
 - (1) Temporarily suspending parental rights for a specified or indefinite period of time, placing the child's legal custody for such period with the Tribe and the physical custody of the child with an extended family member, foster home, shelter care home, or other appropriate person or facility.
 - (2) Terminate those parental rights and place the child with an appropriate custodian.
- (e) In any of the above situations where the parental rights have been suspended or terminated, but the child has not been adopted, the child shall be considered a protected child of the Youth Court.

6-3.13 Preservation of Tribal Rights of an Indian Child. The termination of parental rights of an Indian child shall not adversely affect the child's rights and privileges as an Indian, nor as a member of any Tribe to which the child is entitled to membership, nor shall it effect the child's enrollment status with the child's Tribe.

Section 6-4 Appointment of Custodian

6-4.01 Appointment of Custodian of Child. The Spokane Tribal Youth Court has the authority to appoint a custodian for a child whose parents or existing custodian has been deprived of temporary or permanent custody of such child and the child has not been adopted or placed with some other individual or institution making the appointment of a custodian unnecessary.

- (a) A custodian may also be appointed in other cases where the parent or custodian has not had such custody terminated, but only if the parent or the custodian consents to such appointment.
- (b) Formal Custodianship. A formal custodianship shall be created upon petition and by order of the court.
 - (1) Petition. The process for creation of a custodianship shall be initiated by the filing of a petition. The petition shall be on behalf of the child needing such custodianship. The petition shall contain the following information:
 - A. The name, age, and residence of each living parent of the child;
 - B. The name, age, and residence of the child;
 - C. The name, age, and residence of the proposed custodian or custodians;
 - D. The jurisdictional basis of the Tribal Court;
 - E. A statement of the facts indicating that the custodianship is in the best interest of the child;
 - F. The duration of the proposed custodianship;
 - G. Whether the custodianship is consented to by each living parent of the child, and if not, any facts requiring such custodianship without the consent of the parent or custodian.
 - H. A full statement of the value of any property of the child's, or of which the child is expected to become entitled to during the custodianship.
 - (2) Consent. The written consent of each parent consenting to the custodianship will be filed with the petition. Such consent shall be executed before an adult witness. Such consents shall not be invalidated by reasons of the minority of the consenting parent.

- (3) Court Order. Any Court order temporarily or permanently terminating the custody of the parent or an existing custodian shall be attached to the petition.
- (4) Investigation. Upon the filing of a petition, the Court may order such investigation, as it deems necessary.
- (c) Summary Order. If the Court determines that the proposed custodian is a member of the child's extended family, or otherwise has significant ties to the child, and that the custodianship has been consented to by each living parent of the child, and that the custodianship is in the best interest of the child, the Court may enter an order of custodianship as requested in the petition without need for formal hearings.
- (d) Notice. If the custodianship has not been consented to in writing by each living parent of the child, then each parent not having consented shall be given written notice of the proceedings. Such notice shall be served personally if the whereabouts of the parent is known, otherwise service shall be made as ordered by the Court.
- (e) Hearings. Unless the custodianship is granted by summary order, the Court shall hold a hearing upon the petition and shall determine if the custodianship is in the best interest of the child.
 - (1) If a non-consenting parent appears at the hearing and contests the custodianship the petition shall be denied unless the Court determines, upon clear and convincing evidence that the custodianship is in the best interest of the child, or that an order has already been entered temporarily or permanently depriving that parent of custody pursuant to section 6-3 of this Code.
- (f) Order. Upon a determination that the petition should be granted, the Court shall enter an order of custodianship.
 - (1) Such order shall contain the following:
 - A. The jurisdiction basis of the Court;
 - B. The name of the custodian;
 - C. The duration of the custodianship;
 - D. A factual finding that the custodianship is in the best interest of the child and the reasons therefore;
 - E. Any specific conditions of custodianship.
- (g) Termination of Custodianship. The custodianship shall terminate upon any of the following:
 - (1) Duration specified in the order;
 - (2) The child reaching the age of 18 years;
 - (3) The further order of the Court, terminating custodianship, or the death of the custodian or other circumstances creating a practical inability of the custodian to care for the child.
- (h) Upon termination of the custodianship, all legal parental rights shall be returned to the person or persons having such rights prior to the creation of the custodianship unless otherwise provided.

6-4.02 Informal Custodianship. An informal custodianship may be created by the placement of a child by a custodial parent or parents with another person or family, without Court involvement.

- (a) Creation of Informal Custodianship. Such a custodianship must be voluntarily entered into by the custodial parent or parents involved and the custodian and shall be recognized as a legal custodianship for so long as a consensual relationship continues.
- (b) Rights of Non-Consenting Parent. No informal custodianship may be created over the objections of a natural parent having custody or joint custody of the child.
 - (1) A natural parent who does not have custody of the child, and who has not consented to such an informal custodianship may petition the Court for denial or termination of the custodianship status, for custody of the child or for such other appropriate relief as the parent believes may be in the best interests of the child.
- (c) Hearing Upon Petition. Upon the filing of such a petition, the Court shall hold a hearing in accordance with RSLOC 6-4.01(e) above, and the matter shall thereafter be determined in accordance with the preceding rules for determination of a formal custodianship petition.

- (d) Termination. After the creation of an informal custodianship status, if the natural parent or parents consenting to the custodianship shall elect to terminate the custodianship and request the return of the child, such requests shall be granted.
- (1) If the custodian does not believe that the termination of the custodianship is in the best interests of the child, the custodian may, in the alternative, file or cause to be filed, a petition asking that the youth be declared a youth in need of care under Section 6-3 of this Code.

Section 6-5 Referrals Under the Indian Child Welfare Act

6-5.01 Purpose.

- (a) The purpose of this section is to provide for speedy and effective processing of referrals under the Indian Child Welfare Act of 1978 from State or Tribal Courts, in order to best protect the interests of a Spokane Indian child or an Indian child and the interests of the Spokane Tribe.
- (b) It is intended that the Tribe investigate cases referred to them, and act or transfer to the Tribal Youth Court those cases where transfer is in the best interests of the child.

6-5.02 Receipt of Referrals.

- (a) Referrals shall be received by the Reservation social worker or Indian Child Welfare Advisory Committee Chairperson.
- (b) Upon receipt of a referral, the social worker or Indian Child Welfare Advisory Committee Chairperson shall immediately deliver the referral to the Youth Court Judge, and the Spokane Tribal attorney.

6-5.03 Duties of the Recipient of Referral. The recipient of a referral, upon receipt of such a referral, shall enter in the record all essential information relevant to the referral including:

- (a) The source of the referral;
- (b) The names and addresses of the child and parent, guardian, or custodian;
- (c) The date of the referral;
- (d) The form of the proceedings in the foreign Court;
- (e) The Tribal affiliation and blood quantum of the child, if known.

6-5.04 Duties of the Youth Court Judge. The Chairperson of the Indian Child Welfare Advisory Committee, Reservation social worker and the Indian Child Welfare Advocate where practicable, shall determine if it is necessary to request a 20 day extension to prepare the case, and if so, the Reservation social worker shall see that such request is properly made.

6-5.05 Investigation of Referral. Upon receipt of referral and/or request of the 20 day extension, the Reservation social service worker shall assist in the investigation of the referral.

- (a) The Indian Child Welfare Advisory Committee after consulting with the Youth Court Judge and the Reservation social worker, and after reviewing the investigation report, shall make a decision as to whether the transfer of the case would be appropriate and in the best interests of this child.
- (b) If the Indian Child Welfare Advisory Committee determines that the transfer is in the best interests of the child, the Chairperson of Indian Child Welfare Advisory Committee shall file or cause to be filed a petition, with the referring Court a notice of willingness to accept jurisdiction, affidavits, consents of parent or parents, and other documentation as may be necessary.
- (c) If the Indian Child Welfare Advisory Committee determines a transfer is unacceptable, the Indian Child Welfare Advisory Committee shall decide whether or not it would be appropriate to intervene in the proceedings and, if so, cause such intervention procedures to be initiated.
- (d) The Indian Child Welfare Advisory Committee shall complete the above duties within 10 days after receiving the notice of referral, unless request has been made, in writing by registered mail, for the 20 day extension as provided in the Indian Child Welfare Act.

6-5.06 Proceedings Upon Transfer. When transfer of a case has been made by a referring Court, (the Youth Court Judge shall immediately notify Tribal Social Services and) a petition under Section 3 of this Code shall be filed at the earliest practicable date by the Reservation social worker.

Section 6-6 Full Faith and Credit

6-6.01 Full Faith and Credit. The Spokane Youth Court shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian Tribe or State applicable to Indian Child Custody Proceedings to the same extent that such entities give full faith and credit to the public acts, records and judicial proceedings of the Spokane Youth Court.

Section 6-7 Delinquent Children

6-7.01 Delinquent Child. A delinquent child herein is an Indian child who:

- (a) Has committed an act which is a violation, or which if done by an adult would constitute a violation, of a law or Code of the United States, the State of Washington, or the Spokane Tribal Code; or
- (b) Is beyond the control of his parents or other persons having his custody; or
- (c) Whose behavior or condition is such as to endanger his own welfare or the welfare of others; or
- (d) Has run away from home; or
- (e) Is repeatedly absent from school without good cause; or
- (f) Violates any law or Codes enacted by the Spokane Tribal Council, governing the actions of such children.

6-7.02 Time When Court Jurisdiction Attaches. The jurisdiction of the Youth Court of the Spokane Tribe under this section shall attach from the time the child is taken into custody or a complaint is filed hereunder.

6-7.03 Procedure for Taking a Child Into Custody. Procedure in taking a child into custody is as follows:

- (a) As soon as practicable after the child is taken into custody, the police officer or other person taking the child into custody shall notify the child's parents, guardian or other person responsible for the child.
- (b) The police officer or other person taking the child into custody shall release the child to the parents or other responsible person, except in the following circumstances:
 - (1) Where the Court orders the child not to be released.
 - (2) Where it appears to the officer or the Court that the welfare of the child or of others may be immediately endangered by the release.
- (c) Only children 14 years of age or older may be held in the Juvenile Detention Quarters without prior approval of Chief Judge.
- (d) No child may be held in Juvenile Detention Quarters more than 72 hours, excluding Saturdays, Sundays and judicial holidays, except on order of the Court.
- (e) As soon as practicable after the child is taken into custody, the police officer, the other person taking the child into custody or Court staff shall prepare a Complaint and deliver it to the child and his or her parents or custodians.

6-7.04 Children Not Released Immediately to Parents or Guardians.

- (a) If a child taken into custody is not released as provided, the police officer or other person taking the child into custody shall without unnecessary delay:
 - (1) Bring the child before the Youth Court; or
 - (2) Bring the child to the Juvenile Detention Quarters, and as soon as possible thereafter, notify the Court that the child has been taken into custody;
- (b) The police officer or other person taking the child into custody (except where the child is taken into custody pursuant to an order of the Court) shall promptly file with the Court a written report stating the child's name, age and address and the reason why the child was not released to his parents or guardian.

6-7.05 Procedure in Youth Court Involving Delinquency Matters. Any person may file a Complaint in the Tribal Court alleging that a child is a delinquent child as defined in subsection 6-7.01 of this section.

- (a) When a person files a complaint with the Court, a preliminary inquiry shall be made to determine whether this Court has jurisdiction and whether the interests of the child or the public require that further action be taken.
- (b) If the Court decides that further action can be taken, the Court shall appoint a guardian ad litem to represent the child in all further proceedings.
- (c) Upon the basis of the preliminary inquiry, or later hearing, the Court may:
 - (1) Make informal recommendations to the child and his parent or person having custody as are appropriate to the circumstances.
 - (2) Direct the juvenile and his parents or person having custody to appear for an informal hearing.
 - (3) Direct the juvenile and his parents or person having custody to appear in a formal hearing before the Court.
 - (4) Have the child arrested and brought before the Court.
- (d) Any juvenile 14 years of age or older may be ordered to stand trial as an adult for the offense charged.
 - (1) The Court shall consider the relevant reports, facts, opinions, and arguments presented by the parties and their advocate to determine that such order would be in the best interests of the child or the public.

6-7.06 Conducting the Hearing.

- (a) Delinquency hearings before the Youth Court shall be closed hearings, unless the child or his parent or person having custody otherwise requests.
- (b) The general public shall be excluded and only such persons admitted as the Judge finds have a proper interest in the case or the work of the Court.
- (c) No right to jury trial exists in delinquency hearings, except cases where the juvenile is tried as an adult in open Court.
- (d) Witnesses or other persons necessary for the conduct of the hearing may be subpoenaed by the Court.
 - (1) The child or his parents, or guardian, or person appearing in his behalf, may have persons subpoenaed in the same manner as provided in Section 6, Chapter 1 of the Code.
- (e) For the purpose of determining proper disposition of the child, testimony, reports or other material relating to the child's mental, physical and social history may be received by the Court without regard to the relevancy under rules of evidence.
- (f) At the termination of the hearing, in the proceedings, the Court shall enter an appropriate order directing the disposition to be made in the case.

6-7.07 Disposition by the Court in Delinquency Cases.

- (a) If a child is found to be delinquent under this Chapter of the Code, the Court may:
 - (1) Place the child on probation or under protective supervision;
 - (2) Direct that the child remain in the legal custody of his parents or other person with whom he is living;
 - (3) Direct that the child be placed in the legal custody of some relative or some person maintaining a foster home approved by the Court;
 - (4) Specify particular requirements to be observed during the probation period of protective supervision, including but not limited to restrictions on visitations by child's parents, restrictions on the child's associates, and on activities, and may require the juvenile to report to an appointed counselor;
 - (5) Order restitution for properly taken, damaged or destroyed by the child as a condition of probation.
 - A. The child may also be ordered to perform acts that will be beneficial to the child or the community;

- (6) Place the juvenile under the supervision of a responsible person, institution or organization, or take any other action deemed necessary, as may be beneficial for said juvenile;
 - (7) Direct the juvenile to stand trial as an adult in open Court, as provided in 6-7.05(d) of this Chapter;
 - (8) Place the child in detention in the Juvenile Detention Quarters;
 - (9) Provide other remedies and punishment as the Court deems necessary.
- (b) No probation, protective supervision or detention may extend beyond the date on which the child becomes 21 years of age.

6-7.08 Remanding of Child to Trial as an Adult. A child may be required to stand trial as an adult if:

- (a) The child is at the time of remand, 14 years of age or older, and
- (b) The child has committed or is alleged to have committed a criminal violation of the Tribal Code, and
- (c) The Youth Court determines that handling the case to Youth Court will not serve the best interests of the child and the public.

6-7.09 Termination of Court's Delinquency Jurisdiction. Except for the purpose of enforcing an order of restitution, fines, or court costs, the delinquency jurisdiction of the Court over a child brought before it continues until whichever of the following occurs first:

- (a) The Court dismisses the juvenile from Court Supervision,
- (b) The child is remanded to be tried as an adult,
- (c) The child reaches their 21st birthday.

6-7.10 Obligations to Support Children.

- (a) The Court may require the parents or other person legally obligated, to support a child found to be within the jurisdiction of the Court, and to pay toward a child's support such amounts and at such intervals as the Court may direct.
- (b) The Court may order that a specified amount of the child's funds be used for the care of the child and his needs, or both.
- (c) The Court, in determining the amount of support to be paid, shall give due regard to the cost of maintaining the child, the financial resources of the parents, or other responsible person.
- (d) Unless otherwise ordered, the specified amount to be paid shall be paid to the Court to be distributed as directed by the Court.
- (e) Failure on the part of parents, or other person having control over said child, to comply with a lawful order of the Court may be grounds for charges for Contempt of Court, as provided in Section 8 of Chapter 1.

6-7.11 Special Juvenile Offenses.

- (a) Truancy. Any child who willfully and intentionally absents himself from school without his parents' consent or without being excused by proper authorities or who refuses to attend school shall be deemed guilty of an offense.
- (b) Runaway. Any child who has run away from his or her place of abode or any residence where he or she has been placed either by the Youth Court or by his parents/custodians shall be deemed guilty of an offense under this chapter.
- (c) Harboring a Runaway. Any adult who voluntarily harbors a runaway knowing that minor to be a runaway, shall be deemed guilty of Section 9-3.01 of this Code and subject to the penalties contained therein.

CHAPTER 7 - DOMESTIC RELATIONS

Section 7-1 General Provisions

7-1.01 Purposes and Rules of Construction.

- (a) This Code shall be applied to promote its underlying purposes which include:
- (1) To provide adequate procedures for the ceremony and registration of marriage;
 - (2) To strengthen and preserve the institution of marriage and safeguard family relationships;
 - (3) To promote the peaceful and fair settlement of disputes that have arisen between parties to a marriage;
 - (4) To minimize the potential harm to spouses and their children caused by the process of legal dissolution of marriage;
 - (5) To make reasonable provisions for spouses and minor children during and after Court intervention;
 - (6) To provide adequate procedures for establishing the legal relationship existing between a child and his/her natural or adoptive parents.
- (b) This Chapter shall be exempt from the rules of strict construction and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

7-1.02 Severability and Repealer.

- (a) If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the Chapter, or the application of the provision to other persons or circumstances is not affected.
- (b) This Chapter repeals and supersedes any and all prior domestic relations Codes.

7-1.03 Non-waiver of Sovereign Immunity. Nothing in this Chapter shall be deemed to constitute a waiver by the Spokane Tribe of Indians of its sovereign immunity, rights, powers or privileges.

7-1.04 Custom/Other Law. As to any matters which are not covered by the codes, Codes and Resolutions of the Tribe, or by the traditional customs and usages of the Tribe, the Tribal Court may be guided by common law as developed by other Tribal, state or federal courts.

7-1.05 Terms.

- (a) The terms and provisions of this Chapter shall be construed according to the fair import of their terms, but when the language is susceptible of differing construction, it shall be interpreted to further the general purposes stated in this Chapter.
- (b) Where a term is not defined herein, it shall be given its ordinary meaning.
- (c) Any reference to "he", "him", or other masculine terms shall include male and female persons.
- (d) Any reference to a singular term includes the plural.

Section 7-2 Marriage

7-2.01 Persons Who May Marry.

- (a) Marriage is a personal relationship between 2 persons of the opposite sex arising out of a civil contract to which the consent of the parties is essential.
- (b) No marriage license shall be issued or marriage performed unless the persons to be married are of the opposite sex, and meet the following qualifications:
- (1) Both persons to be married are at least 16 years old; provided that if either is less than 18 years of age, written consent to marry shall be signed by his/her parent or guardian, properly notarized; and
 - (2) At least 1 of the persons to be married is an enrolled member of the Spokane Tribe of Indians.

7-2.02 Prohibited Marriages.

- (a) Marriages in the following cases are prohibited:
- (1) When either party thereto has a wife or husband living at the time of marriage;
 - (2) When the parties thereto are nearer of kin to each other than second cousins;

- (b) It shall be unlawful for any man to marry his father's sister, mother's sister, daughter, sister, son's daughter, daughter's daughter, brother's daughter or sister's daughter; it shall be unlawful for any woman to marry her father's brother, mother's brother, son, brother, son's son, daughter's son, brother's son or sister's son.

7-2.03 Who May Perform Marriages.

- (a) A marriage may be solemnized and performed on the Spokane Indian Reservation by the following:
 - (1) A Judge of the Tribal Court, or
 - (2) Any person recognized by the Spokane Tribal Business Counsel as having authority to perform marriages.
- (b) No marriage solemnized or performed before any person professing to have authority to marry shall be invalid for lack of such authority, if consummated in the belief of the parties or either of them that they have been lawfully joined in marriage.

7-2.04 Marriage Ceremony. No particular form of marriage ceremony is required, provided that the persons to be married shall declare in the presence of the person performing the marriage ceremony that they take each other to be husband and wife and that such declaration is made in the presence of at least 2 attending witnesses.

7-2.05 Marriage Licenses, Affidavits and Certificates.

- (a) No marriage shall be performed unless the parties have first obtained a marriage license from the Clerk of the Tribal Court.
- (b) In addition to payment of a reasonable fee to be set by the Tribal Council, the Clerk shall require each party to make and file an affidavit upon forms provided by the Tribal Court showing that if an applicant is afflicted with any contagious sexually transmitted disease, the condition is known to both applicants, without requiring the parties to state whether either or both of them are afflicted by such disease, and that the applicants are of the age of eighteen or over, or those exempted under Tribal law, the license shall be granted.
 - (1) Such affidavit shall also show that 1 of the parties is an enrolled member of the Spokane Tribe of Indians.
 - (2) Anyone knowingly swearing falsely to any of the statements contained in the affidavits shall be deemed guilty of perjury and punished as provided by the laws of the Spokane Tribe of Indians.
- (c) The Clerk shall keep a public record of all marriage licenses and certificates issued.
- (d) The marriage license, properly endorsed by the authorized person performing the marriage and 2 attending witnesses, shall be returned to the Clerk within 30 days of the ceremony, who shall issue a marriage certificate to the parties.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-2.06 Voidable Marriages. When either party to a marriage shall be incapable of consenting thereto, for want of legal age or a sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage is voidable, but only by the party laboring under the disability or upon whom the force or fraud is imposed.

7-2.07 Existing Marriages. All marriages performed other than as provided under this Chapter, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Tribe.

Section 7-3 Dissolution of Marriage, Legal Separation, and Declaration of Invalidity of Marriage

7-3.01 Policy.

- (a) Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this Chapter, the best interests of the child shall be the standard by which the Court determines and allocates parental responsibilities.

- (b) The Tribe recognizes the fundamental importance of the parent-child relationship and that the relationship between the child and each parent should be fostered unless inconsistent with the best interests of the child.
- (c) The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, Tribal and cultural ties, health and stability, and physical care.
- (d) The best interests of the child are ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed marital relationship of the parents or as required to protect the child from physical, mental or emotional harm.

7-3.02 Definitions.

- (a) "Child Support Schedule" means the Tribal Council's approved formula for calculating in a fair and consistent manner the amount of child support payments equitable in any given situation. The Child Support Schedule shall be used by the Court as a guideline for its child support orders.
- (b) "Community Property" means property acquired during marriage, except by gift, inheritance or devise to either spouse individually. All property acquired during marriage is presumed to be community property.
- (c) "Conciliation Conference" means a conference conducted by an impartial third party to assist the married parties in determining the prospects of preserving the marital relationship as opposed to instituting or continuing with dissolution proceedings.
- (d) "Dissolution" means the act of terminating a marriage (i.e., divorce).
- (e) "Irretrievably Broken" means that there is no reasonable prospect for reconciliation between the parties.
- (f) "Parenting Plan" is the document which sets forth the kind and degree of involvement each parent will have with their children after the dissolution.
- (g) "Separate Property" means property acquired before marriage or acquired during marriage as a result of a gift, inheritance or devise.
 - (1) Property acquired after a permanent separation is also separate property provided community property did not generate the funds for the acquisition (i.e., money from a community business).
 - (2) For purposes of this Chapter, a permanent separation shall be established by either a temporary or permanent order of a Court.

7-3.03 Civil Procedure to Govern; Designation of Proceedings.

- (a) Except as otherwise specified herein, or another section of the civil code, the Federal Rules of Civil Procedure shall be looked to for guidance until local rules are created and they shall govern all proceedings under this Chapter, except that trial by jury is dispensed with.
- (b) A proceeding for dissolution of marriage, legal separation or a declaration concerning the validity of a marriage shall be entitled "In re the marriage of and ."
- (c) In cases where there has been no prior proceeding in this Court involving the marital status of the parties or support obligations for a minor child, a separate parenting and support proceeding between the parents shall be entitled "In re the parenting and support of."
- (d) The initial pleading in all proceedings under this Chapter shall be designated a "Petition." A responsive pleading shall be designated a "Response."
- (e) A decree of dissolution or legal separation or a declaration concerning the validity of a marriage shall not be awarded to 1 of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

7-3.04 Informal Dispute Resolution.

- (a) In any proceeding under this Chapter, an informal Resolution of the contested issues may be arranged with the Court's permission, at or before the time the matter is set for a hearing.
- (b) The informal Resolution process may include counseling, mediation or any Tribally accepted

process that is consistent with the customs and traditions of the Spokane Tribe of Indians.

- (c) The purpose of the informal dispute Resolution process shall be to encourage cooperation, reduce hard feelings and develop an agreement that to the extent possible meets the needs and best interests of all the parties involved, consistent with the provisions of this Code and the customs and traditions of the Spokane Tribe of Indians.
- (d) Informal dispute Resolution proceedings shall be held in private and shall be confidential. No 1 shall testify in Court as to any aspect of the proceedings; provided, that if an agreement is reached by the parties it shall be reduced to writing, signed by the parties and presented to the Court.

7-3.05 Dissolution of Marriage; Findings Necessary. The Court shall enter a decree of dissolution if it finds the following:

- (a) That 1 of the parties is an enrolled member of the Spokane Tribe of Indians and at the time the action was commenced was domiciled within the exterior boundaries of the Spokane Reservation for 90 days. There is a presumption that all enrolled Tribal members are domiciled on the Spokane Indian Reservation.
- (b) The marriage is irretrievably broken.
- (c) The Court has considered, approved, and made provision for the parenting and support of any natural or adopted child common to the parties of the marriage entitled to such and to the disposition of liabilities and property of the parties.

7-3.06 Decree of Legal Separation; Findings Necessary. The Court shall enter a decree of legal separation if it finds each of the following:

- (a) That 1 of the parties is an enrolled member of the Spokane Tribe of Indians and at the time the action was commenced that party was domiciled within the exterior boundaries of the Spokane Reservation for a period of 90 days. There is a presumption that all enrolled Tribal members are domiciled on the Spokane Indian Reservation.
- (b) The marriage is irretrievably broken.
- (c) The other party does not object to a decree of legal separation.
 - (1) If the other party objects to decree of legal separation, the Court shall direct that the pleadings be amended to seek dissolution of the marriage.
- (d) The Court has considered, approved, and made provision for the parenting and support of any natural or adopted child common to the parties of the marriage entitled to such and for the disposition of property and assumption of debt by the parties.

7-3.07 Declaration of Invalidity of Marriage (Annulment); Findings Necessary.

- (a) The Court shall enter a declaration of invalidity of marriage if it finds each of the following:
 - (1) That 1 of the parties is an enrolled member of the Spokane Tribe of Indians and at the time the action was commenced was domiciled within the exterior boundaries of the Spokane Reservation for a period of 90 days. There is a presumption that all enrolled Tribal members are domiciled on the Spokane Indian Reservation.
 - (2) The marriage should not have been contracted because of the age of 1 or both of the parties, lack of required parental or Court approval, a prior undissolved marriage of 1 or both of the parties, reasons of consanguinity, or because a party lacked capacity to consent to the marriage, either because of mental incapacity or because of the influence of alcohol or other incapacitating substances, or because a party was induced to enter into the marriage by force or duress, or by fraud involving the essentials of marriage and that the parties have not ratified their marriage by voluntarily cohabitating after attaining the age of consent, or after attaining capacity to consent, or after cessation of the force or duress or discovery of the fraud.
 - (3) The Court has considered approved and made provision for the parenting and support of any natural or adopted child common to the parties of the marriage entitled to such and the disposition of the property and assignment of debt of the parties.

- (b) If the Court finds that a marriage contracted in a jurisdiction other than this Tribe was void or voidable under the law of the place where the marriage was contracted and in the absence of proof that such marriage was subsequently validated by the laws of the place of contract, or of a subsequent domicile of the parties, it shall declare the marriage invalid as of the date of the marriage.

7-3.08 Pleadings; Contents; Defense; Joinder of Parties.

- (a) The petition in a proceeding for dissolution of marriage, legal separation or a declaration of invalidity shall allege that the marriage is irretrievably broken or was never legally valid and shall set forth under oath:
 - (1) The name, last known address and Tribal enrollment, if any, of each party and the length of domicile on the Spokane Indian Reservation.
 - (2) The date of the marriage and the place at which it was performed.
 - (3) If the parties are separated, the date on which the separation occurred.
 - (4) The names, ages and address of all living children, natural or adopted, common to the parties and whether the wife is pregnant.
 - (5) The details of any agreements between the parties as to the parenting and support of any children of the parties.
 - (6) The details of the parties respective incomes and earning potentials.
 - (7) A list of all property of the parties.
 - (8) A statement specifying the debt of the parties.
 - (9) The relief sought.
- (b) Either or both parties to the marriage may initiate the proceeding.
- (c) The only defense to a petition for declaration of invalidity of marriage shall be that the marriage is legally valid.

7-3.09 Temporary Order or Preliminary Injunction; Effect.

- (a) In a proceeding for dissolution of marriage, legal separation, declaration of invalidity or parenting and support, either party may move for temporary support of a child, natural or adopted, common to the parties entitled to support.
 - (1) The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.
- (b) As a part of a motion for support or by an independent motion accompanied by affidavit, either party may request the Court to issue a preliminary injunction for any of the following relief:
 - (1) Restraining any person from transferring, encumbering, concealing or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued.
 - (2) Enjoining a party from molesting or disturbing the peace of the other party or of any child.
 - (3) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm may otherwise result.
 - (4) Enjoining a party from removing a child from the jurisdiction of the Court.
 - (5) Provide other injunctive relief proper in the circumstances.
- (c) The Court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed. No security shall be required unless the Court deems it appropriate.
- (d) On the basis of the showing made, and in conformity with the computation factors for child support under this Chapter, the Court may issue a preliminary injunction and an order for child support in amounts and on just and proper terms under the circumstances.
- (e) Restraining orders issued under this section restraining the person from molesting or disturbing another party or from entering a party's home shall clearly state: "Violation of this order with

actual notice of its terms is a criminal offense under Spokane Law and will subject a violator to arrest, and upon conviction, jail time not to exceed 1 year, and a fine of \$300, or both.”

- (f) Restraining orders issued under the Domestic Violence Protection Orders filed in conjunction with a petition for Dissolution, Separation, or Annulment shall clearly state: “Violation of a Protection Order for domestic abuse, with actual notice of its terms is a violation of Chapter 29, and is punishable by jail time not to exceed 1 year and/or a fine of up to \$5,000, or both.
- (g) A temporary order or preliminary injunction:
 - (1) Does not prejudice the rights of the parties or any child which are to be adjudicated at the subsequent hearings in the proceedings.
 - (2) May be revoked or modified before final decree upon a showing by motion and affidavit of facts necessary for revocation or modification of a final decree.
 - (3) Terminates when the final decree is entered or when the petition for dissolution of marriage, legal separation, or declaration of invalidity is dismissed.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-3.10 Irretrievable Breakdown; Finding. If 1 of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, the Court shall make a finding that the marriage is irretrievably broken and enter a decree of dissolution.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-3.11 Separation Agreement; Effect.

- (a) To promote amicable settlement of disputes between parties to a marriage or parental relationship attendant upon their separation or upon the filing of a petition for dissolution of marriage, legal separation or declaration of invalidity, the parties may enter into a written separation agreement containing provisions for payment of any debt, disposition of any property owned by either of them, payment of any debt, and the parenting plan and support for their children.
- (b) In a proceeding for dissolution of marriage, legal separation, or declaration of invalidity, the terms of the separation agreement, except for those terms providing for a parenting plan and amounts of support for the children, shall be binding upon the Court unless it finds, after considering the economic circumstances of the parties and other relevant evidence produced by the parties, on their own motion or on request of the Court, that the separation agreement is unfair.
 - (1) Child support may be included in the separation agreement and shall be reviewed in any subsequent proceeding as to its reasonableness consistent with Section 7-3.14.
- (c) If the Court finds the separation agreement unfair as to disposition of property and payment of debt, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property or debt.
- (d) If the Court finds that the separation agreement is fair as to the payment of debt and disposition of property, and that it is reasonable as to the parenting plan and child support, the separation agreement shall be set forth or incorporated by reference into the decree of dissolution, legal separation, or declaration of invalidity, and the parties shall be ordered to comply with the terms.
- (e) If the separation agreement provides that its terms shall not be set forth in the decree or declaration, the decree or declaration shall identify the separation agreement as incorporated by reference and state that the Court has found the terms as to property disposition and maintenance are fair and the parenting plan and child support reasonable.
- (f) Terms of the agreement set forth or incorporated by reference in the decree or declaration shall be enforceable by all remedies available for enforcement of a judgment, including contempt proceedings, garnishment proceedings subject to limitations of Tribal law, and are enforceable as contract terms.

- (g) Except for terms concerning the parenting plan and support for their children, entry of the decree or declaration shall thereafter preclude the modification of the terms of the decree or declaration, and the property settlement, if any, set forth or incorporated by reference therein.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-3.12 Parenting Plan.

- (a) The objectives of any proposed or ordered parenting plan shall be:
- (1) To provide for the child's physical care and to maintain the child's emotional stability;
 - (2) To provide for the child's changing needs as the child grows;
 - (3) To promote and preserve the child's Indian heritage and to provide for the maintenance of the child's Tribal affiliation;
 - (4) To set forth the authority and responsibilities of each parent consistent with the restrictions noted in subsection (e) below;
 - (5) To minimize the child's exposure to harmful parental conflict;
 - (6) To encourage parents to meet their responsibilities through the parenting plan rather than by relying on Court intervention; and
 - (7) To otherwise protect the best interests of the child consistent with the policy expressed in Section 7-3.01.
- (b) The contents of any proposed or ordered parenting plan shall include:
- (1) Dispute Resolution - A process for resolving disputes, other than Court action shall be provided unless not financially within the means of the parties, or precluded or limited by the Court as provided herein.
 - A. The dispute Resolution process may include counseling, mediation, arbitration or any other traditional Tribal dispute Resolution process.
 - B. In the dispute Resolution process:
 - i. Preference shall be given to carrying out the parenting plan;
 - ii. The parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to child support, unless there is an emergency.
 - iii. If the Court finds that a parent has used or frustrated the dispute Resolution process without good reason, the Court may impose financial sanctions against that parent, as well as civil contempt.
 - iv. Both parents have the right of Court review for the dispute Resolution process.
 - (2) Decision Making Authority - The plan shall allocate decision making authority to 1 or both parents regarding the children's education, health care and religious or spiritual upbringing. The plan shall state that:
 - A. Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent, including emergency decisions affecting the health and safety of the child.
 - B. When mutual decision-making is designated but cannot be achieved, the parents shall make a good faith effort to resolve the issue through the dispute Resolution process.
 - (3) Residential Provisions - The residential schedule shall designate in which parent's home each child shall reside on given days of the year, including provisions for holidays, birthdays, vacations and other special occasions.
- (c) Compliance - If a parent fails to comply with a provision of the parenting plan, the other parent's obligations under the parenting plan are not affected.
- (d) Uniform Parenting Plan Forms - The Court may authorize and approve the utilization of a uniform parenting plan form for all proceedings under this Chapter.
- (e) Restrictions in Parenting Plans - The Court may restrict or limit any provision of a parenting plan based on factors or conduct it finds adverse to the best interests of the child including:
- (1) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions;

- (2) Physical, sexual, or a pattern of emotional abuse of a child;
 - (3) A history of acts of domestic violence if it interferes with the performance of parenting functions;
 - (4) An assault or sexual assault which causes grievous bodily harm or the fear of such harm;
 - (5) Neglect or substantial non-performance of parenting functions;
 - (6) Long term emotional or physical impairment which interferes with the parent's performance of parenting functions;
 - (7) Long term impairment resulting from drug, alcohol or other substance abuse that interferes with the performance of parenting functions;
 - (8) Abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;
 - (9) Withholding from the other parent access to the child for a protracted period without good cause; or
 - (10) Such other factors as the Court expressly finds adverse to the best interest of the child.
- (f) Failure to Agree - If the parents are unable to reach agreement on the terms of the parenting plan and the Court determines that it needs additional information before ordering a parenting plan, the Court may appoint a guardian ad litem whose investigation shall be provided to the parties and the Court and be subject to cross-examination.
- (g) Presumptions - In ordering a permanent parenting plan, the Court shall not draw any presumptions from the provisions of a temporary parenting plan or separation agreement.

Legislative History--Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-3.13 Visitation Rights: Person Other Than Parent.

- (a) A person other than a parent may petition the Court for visitation rights at any time after a petition has been filed by a parent under this Chapter.
- (b) The Court may order visitation rights for a person other than a parent only upon a finding that it:
 - (1) does not infringe upon fundamental parental rights to make decisions concerning the care, custody, and control of the child(ren);
 - (2) is consistent with Tribal custom and tradition, and
 - (3) is in the best interest of the child(ren).
- (c) The Court may modify an order granting or denying visitation rights only if such modification would satisfy this Section.

7-3.14 Child Support: Computation Factors.

- (a) In a proceeding for dissolution of marriage, legal separation, declaration of invalidity, maintenance, or child support, the Court may order either or both parents owing a duty of support to a child, born to or adopted by the parents, to pay an amount reasonable and necessary for support, without regard to marital misconduct after considering all relevant factors, including:
 - (1) The financial resources and needs of the child.
 - (2) The financial resources and needs of each parent.
 - (3) The standard of living the child would have enjoyed had the marriage not been dissolved.
 - (4) The physical and emotional condition of the child, and his educational needs.
 - (5) Excessive and abnormal expenditures, destruction, concealment, or fraudulent disposition of property held in common.
 - (6) The age and ability of the child to finish high school before age 18.
- (b) In the case of a mentally or physically disabled child, the Court may order support to continue past the age of emancipation and to be paid to the parent or guardian with whom the child resides, or to the child.

- (c) The Court, with prior approval of the Spokane Indian Tribal Council may adopt a Spokane Tribal Court Child Support Schedule.

7-3.15 Disposition of Property. In a proceeding for dissolution of marriage, legal separation, or a declaration of invalidity, the Court shall, without regard to marital misconduct, divide the property and liabilities of the parties, either community or separate, and order support for children, as shall appear just and equitable after considering all relevant factors, including:

- (a) The nature and extent of the community property;
- (b) The nature and extent of the separate property;
- (c) The nature and extent of any trust or restricted property which is subject to the jurisdiction of the United States;
- (d) The duration of the marriage; and
- (e) The economic circumstances of each spouse at the time the division of property is to become effective, including: the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse with whom the children reside the majority of the time; the desirability of insuring that both spouses' ability to continue working in their chosen field or livelihood is not unreasonably jeopardized.

7-3.16 Assignments.

- (a) In the event a person obligated to pay child support is in arrears for at least 1 month, the Court may order the person obligated to pay child support to make an assignment in an amount not to exceed that set forth in Section 4-15.01 of the Spokane Law and Order Code, of part of the person's periodic earnings, excluding trust income and per capita, to the person entitled to receive the payments.
- (b) The assignment is binding on the employer, trustee, or other payer of the funds 2 weeks after service upon such person of notice that the assignment has been made.
- (c) The payer shall withhold the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the Clerk of the Court.
- (d) The payer may deduct from each payment a sum not exceeding \$1 as reimbursements for costs.
- (e) An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

7-3.17 Costs and Expenses.

- (a) The Court, upon motion of a party, after considering the financial resources of both parties, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under this Chapter.
- (b) For the purpose of this Section, costs and expenses may include fees of an attorney, litigation costs and such other reasonable expenses as the Court finds necessary for the full and proper presentation of the action, including any appeal.
- (c) The Court may order all such amounts paid directly to the attorney, who may enforce the order in his or her name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-3.18 Decree: Finality; Restoration of Maiden Name.

- (a) A decree of dissolution of marriage or legal separation, or declaration of invalidity of marriage is final when entered, subject to the right of appeal.
 - (1) An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolved the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.
 - (2) An order directing payment of money for support of minor child(ren) shall not be suspended or the execution thereof stayed pending the appeal.

- (b) The Court shall upon motion of either party after expiration of 6 months from the entry of a legal separation, convert the decree to a decree of dissolution of marriage.
- (c) Upon request by a wife whose marriage is dissolved or declared invalid, the Court shall order her maiden name or a former name be restored.

7-3.19 Independence of Provisions of Decree or Temporary Order. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to comply with a parenting plan is not suspended, but he may move the Court to grant an appropriate order.

7-3.20 Modification and Termination of Provisions for Child Support and Property Disposition.

- (a) Except as otherwise provided in subsection 7-3.11(F), the provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the motion for modification and, except as otherwise provided in subsection (b) below, only upon a showing of changed circumstance which are substantial and continuing.
- (b) The provisions as to property disposition may not be revoked or modified, unless the Court finds the existence of conditions that justify the reopening of a judgment under the laws of the Spokane Tribe of Indians.
- (c) An order of child support may be modified 1 year or more after it has been entered without a showing of changed circumstances which are substantial and continuing if:
 - (1) The order works a severe economic hardship on either party or the child;
 - (2) A party requests an adjustment in an order which was based on guidelines which determined the amount of support according to the child's age, and the child is no longer in the age category on which the current support amount is based;
 - (3) A child is still in high school, upon a finding that there is a need to extend support beyond the 18 birthday to complete high school; or
 - (4) There has been a change in the Court-adopted Child Support Schedule.
- (d) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child, but not by death of a parent obligated to support the child.
 - (1) When a parent obligated to pay support dies, the amount of support may be modified, revoked or commuted to a lump sum payment, to the extent just and appropriate in the circumstances.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

Section 7-4 Parentage

7-4.01 "Parent and Child Relationship" Defined. As used in this Code, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations.

- (a) It includes the mother and child relationship and the father and child relationship.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-4.02 Relationship Not Dependent on Marriage. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-4.03 How Parent and Child Relationship Established. The parent and child relationship between a child and:

- (a) the natural mother may be established by proof of her having given birth to the child, or under this Chapter;
- (b) the natural father may be established under this Chapter; or
- (c) an adoptive parent may be established by proof of adoption or under the laws of the Spokane Tribe.

7-4.04 Presumption of Paternity.

- (a) A man is presumed to be the natural father of a child if:

- (1) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or dissolution, or after a decree of separation is entered by a Court; or
 - (2) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born within 300 days after the termination of cohabitation; or
 - (3) After the child's birth, he and the child's natural mother have married, or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is, or could be, declared invalid, and:
 - A. He has acknowledged his paternity of the child in writing filed with the registrar of vital statistics of the Spokane Tribal Enrollment Office; or
 - B. With his consent, he is named as the child's father on the child's birth certificate; or
 - C. He is obligated to support the child if he has signed an affidavit of paternity at the hospital, under a written voluntary promise, or by Court order.
 - (4) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his child; or
 - (5) He acknowledges his paternity of the child in writing filed with the Registrar of Vital Statistics, or any Tribal Enrollment Office, who shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the Registrar of Vital Statistics or the appropriate Tribal Enrollment Office.
 - A. In order to enforce rights of residential time, custody and visitation, a man presumed to be the father as a result of filing a written acknowledgment must seek appropriate judicial orders under this Chapter.
- (b) A presumption under this section may be rebutted in an appropriate action only by clear, cogent, and convincing evidence.
- (1) If 2 or more presumptions arise which conflict with each other, the presumption that on the facts is founded on the weightier considerations of policy and logic controls.
 - (2) The presumption is rebutted by a Court decree establishing paternity of the child by another man.

7-4.05 Artificial Insemination.

- (a) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of the child thereby conceived.
 - (1) The husband's consent must be in writing and signed by him and his wife.
 - (2) The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the Registrar of Vital Statistics, where it shall be kept confidential and in a sealed file.
- (b) The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived, unless the donor and the woman agree in writing that said donor shall be the father.
 - (1) The agreement must be in writing and signed by the donor and the woman.
 - (2) The physician shall certify their signatures and the date of the insemination and file the agreement with the Registrar of Vital Statistics, where it shall be kept confidential and in a sealed file.
- (c) The failure of a licensed physician to perform any administrative act required by this section shall not affect the father and child relationship.
 - (1) All papers and records pertaining to the insemination, whether part of the permanent record of a Court or of a file held by the supervising physician or elsewhere, are subject

to inspection only in exceptional cases upon an order of the Court for good cause shown.

7-4.06 Determination of Father and Child Relationship-Who May Bring Action-When Action May Be Brought.

- (a) A child, a child's natural mother, a man alleged or alleging himself to be the father, a child's guardian, a child's personal representative, the Spokane Tribe, or any interested party may bring an action at any time for the purpose of declaring the existence or nonexistence of the father and child relationship.
- (b) A man presumed to be a child's father under Section 7-4.04 may bring an action for the purpose of declaring the nonexistence of the father and child relationship only if the action is brought within a reasonable time after obtaining knowledge of relevant facts.
- (c) After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party, and had proper notice.
- (d) In an action brought by the Tribe pursuant to this Chapter, the Tribe may be represented by either the Tribal prosecutor, or Tribal attorney, presenting officer, or other representative authorized by the Spokane Tribal Council.
- (e) Regardless of its terms, no agreement between an alleged or presumed father and the mother or child, shall bar an action under this section.
- (f) If an action under this section is brought before the birth of the child, all proceedings may be stayed until after the birth, except service of process and discovery, including the taking of depositions to perpetuate testimony.
- (g) Actions under this Chapter may be maintained as to any child, whether born before or after the enactment of this Chapter.

7-4.07 Jurisdiction.

- (a) The Tribal Court shall have jurisdiction of any action brought under this Chapter.
- (b) The action may be joined with an action for divorce, dissolution, declaration of invalidity, separate maintenance, support, or any other civil action in which paternity is an issue including proceedings in Juvenile or Youth Court.
- (c) Any person who has sexual intercourse within the exterior boundaries of the Spokane Indian Reservation with a person who is a member or is eligible to become a member of the Spokane Tribe thereby submits to the jurisdiction of the Courts of the Tribe as to an action brought under this Chapter with respect to a child who may have been conceived by that act of intercourse.
- (d) In addition to any other method provided by law, personal jurisdiction may be acquired by personal service of summons outside the Reservation or by service in accordance with the Tribal Rules of Civil Procedure as now or hereafter amended.

7-4.08 Parties.

- (a) The child shall be made a party to the action.
 - (1) If the child is a minor, the child may be represented by the child's general guardian or a guardian ad litem appointed by the Court.
 - (2) The child's mother or father may not represent the child as guardian or otherwise.
 - (3) The natural mother, each man presumed to be the father and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the Court, shall be given notice of the action in a manner prescribed by the Court and an opportunity to be heard.
- (b) Any party may cause to be joined as additional parties other men alleged to be the father of the child or any other person necessary for a full adjudication of the issues.
- (c) The failure or inability to join as a party an alleged or presumed father does not deprive the Court of jurisdiction to adjudicate some or all of the issues based on the evidence and parties available to it.

- (d) If more than 1 party is alleged to be the father of the child, the default of a party shall not preclude the Court from finding any other party to be the father of the child.

7-4.09 Paternity Tests.

- (a) The Court may, and upon request of a party shall, require the child, mother, and any alleged father who has been made a party to submit to paternity tests.
 - (1) If an alleged father objects to a proposed order requiring him to submit to paternity tests, the Court may require the party making the allegation of possible paternity to provide sworn testimony, by affidavit or otherwise, stating the facts upon which the allegation is based.
 - (2) The Court shall order paternity tests if it appears that a reasonable possibility exists that the requisite sexual contact occurred.
 - (3) The tests shall be performed by an expert in paternity testing appointed by the Court.
 - (4) The expert's verified report identifying the characteristics observed is admissible in evidence in any hearing or trial in the parentage action, if
 - A. the alleged or presumed father has had the opportunity to gain information about the security, validity, and interpretation of the tests and the qualifications of any experts, and
 - B. the report is accompanied by an affidavit from the expert which describes the expert's qualifications as an expert and analyzes and interprets the results.
 - i. Verified documentation of the chain of custody of any samples is admissible to establish the chain of custody.
 - ii. The Court may consider published sources as aids to interpretation of the test results.
- (b) The Court, upon request by a party, shall order that additional tests be performed by the same or other experts qualified in paternity testing, if the party requesting additional tests advances the full costs of the additional testing within a reasonable time.
 - (1) The Court may order additional testing without requiring that the requesting party advance the costs only if another party agrees to advance the costs or if the Court finds, after hearing, that
 - A. the requesting party is indigent, and
 - B. the laboratory performing the initial tests recommends additional testing or there is substantial evidence to support a finding as to paternity contrary to the initial test results.
 - (2) The Court may later order the person determined to be the father, to reimburse the party who advanced the costs of additional testing for all or a portion of the costs.
- (c) In all cases, the Court shall determine the number and qualifications of the experts.

7-4.10 Evidence Relating to Paternity. Evidence relating to paternity may include:

- (a) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;
- (b) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;
- (c) Paternity test results, weighted in accordance with evidence of the statistical probability of the alleged father's paternity;
- (d) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts.
 - (1) If a man has been identified as a possible father of the child, the Court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and
- (e) All other evidence relevant to the issue of paternity of the child.

7-4.11 Civil Action-Testimony-Evidence-Jury.

- (a) An action under this Chapter is a civil action governed by the Rules of Civil Procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify.
- (b) Upon refusal of any witness, including a party, to testify under oath or produce evidence of any other kind on the ground that said witness may be incriminated thereby, and if a party requests the Court to order that person to testify or provide the evidence, the Court shall then hold a hearing and shall so order, unless it finds that to do so would be clearly contrary to the public interests, and that person shall comply with the order.
 - (1) If, but for this section, the witness would have been privileged to withhold the answer given or have evidence produced, the witness may not refuse to comply with the order on the basis of the privilege against self-incrimination; but the witness shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which he has been ordered to testify pursuant to the section.
 - (2) The witness may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or for offering false evidence to the Court.
- (c) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.
- (d) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the Court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if he has undergone and made available to the Court paternity tests, the results of which do not exclude the possibility of the nonparty's paternity of the child.
- (e) The trial shall be by the Court without a jury.

7-4.12 Judgment or Order Determining Parent and Child Relationship-Support Judgment and Orders-Custody.

- (a) The judgment and order of the Court determining the existence or nonexistence of the parent and child relationship shall be determinative for all purposes.
- (b) If the judgment and order of the Court is at variance with the child's birth certificate, the Court shall order that an amended birth certificate be issued.
- (c) The judgment and order shall contain other appropriate provisions directed to the appropriate parties to the proceeding, concerning the duty of current and future support, the extent of any liability for past support furnished to the child if that issue is before the Court; the furnishing of bond or other security for the payment of the judgment; or any other matter in the best interest of the child.
 - (1) The judgment and order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.
- (d) Support judgment and orders shall be for periodic payments which may vary in amount.
 - (1) The Court may limit the father's liability for the past support to the child to the proportion of the expenses already incurred as the Court deems just.
 - (2) The Court shall not limit or affect in any manner the right of nonparties to seek reimbursement for support and other services previously furnished to the child.
- (e) After considering all relevant factors, the Court shall order either or both parents to pay an amount of support determined pursuant to Section 7-3.14.
- (f) On the same basis as provided in Chapter 7-3, the Court shall make residential provisions with regard to minor children of the parties, except that a parenting plan shall not be required unless requested by a party, after paternity has been established.
- (g) In any dispute between the natural parents of a child and a person or persons who have (a) commenced adoption proceedings or who have been granted an order of adoption, and (b) pursuant to a Court order, or placement by the Spokane Tribal Children and Family Services or by a licensed agency, have had actual custody of the child for a period of 1 year or more before

Court action is commenced by the natural parent or parents, the Court shall consider the best welfare and interests of the child, including the child's need for situation stability, in determining the matter of custody, and the parent or person who is more fit shall have the superior right to custody.

7-4.13 Support Orders-Time Limit, Exception.

- (a) A Court may not order payment for support provided or expenses incurred more than 5 years prior to the commencement of the action.
- (b) Any period of time in which the responsible party has concealed himself, avoided service of process, or been absent from the jurisdiction of the Court under this Chapter shall not be included within the 5-year period.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-4.14 Temporary Support-Temporary Restraining Order-Preliminary Injunction-Support Debts, Notice.

- (a) If the Court has made a finding as to the paternity of a child, or if a party's acknowledgment of paternity has been filed with the Court, or a party alleges he is the father of the child, any party may move for temporary support for the child prior to the date of entry of the final order.
 - (1) The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.
- (b) Any party may request the Court to issue a temporary restraining order or preliminary injunction providing relief proper in the circumstances, and restraining or enjoining any party from:
 - (1) Molesting or disturbing the peace of another party;
 - (2) Entering the home of another party; or
 - (3) Removing a child from the jurisdiction of the Court.
- (c) The Court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.
- (d) The Court may issue a temporary restraining order or preliminary injunction and an order for temporary support in such amounts and on such terms as are just and proper in the circumstances.
- (e) A temporary order, temporary restraining order, or preliminary injunction:
 - (1) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearing in the proceedings;
 - (2) May be revoked or modified;
 - (3) Terminates when the final order is entered or when the petition is dismissed; and
 - (4) May be entered in a proceeding for the modification of an existing order.

7-4.15 Costs.

- (a) The Court may order reasonable fees of experts and the child's guardian ad litem, and other costs of the action, including the cost of paternity tests, to be paid by the parties in proportions and at times determined by the Court.
- (b) The Court may order that all or a portion of a party's reasonable attorneys' fees be paid by another party.

7-4.16 Enforcement of Judgments or Orders.

- (a) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this Chapter or under other or prior law, the obligation of the father may be enforced in the same or to her proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by another person, including a private agency, to the extent it has furnished or is furnishing these expenses.
- (b) The Court may order support payments to be made to a parent, the Clerk of the Court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the Court.

(c) All remedies for the enforcement of judgments apply.

7-4.17 Modification of Judgment or Order—Continuing Jurisdiction.

- (a) The Court has continuing jurisdiction to prospectively modify a judgment and order for future support upon showing a substantial change of circumstances.
- (b) A judgment or order entered under this Chapter may be modified without a showing of substantial change of circumstances upon the same grounds as provided pursuant to Section 7-3.20(b).

7-4.18 Action to Determine Mother and Child Relationship.

- (a) Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship.
- (b) Insofar as practicable, the provisions of this Chapter applicable to the father and child relationship shall apply.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-4.19 Hearing or Trials to be in Closed Court - Records Confidential.

- (a) Any hearing or trial held under this Chapter shall be held in closed Court without admittance of any person other than those necessary to the action or proceeding or for the orderly administration of justice.
- (b) All papers and records, other than the final judgment and matters related to the enforcement of the final judgment, pertaining to the action or proceeding are subject to inspection by a nonparty only upon an order of the Court for good cause shown following reasonable notice to all parties of the hearing where such order is sought.

Legislative History—Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

7-5 Adoption

7-5.01 Adoptions of Indian Children, Jurisdiction. The Spokane Indian Tribal Youth Court shall be empowered to hear all matters involving the adoption of an Indian child or adoptions by members of the Tribe occurring within the external boundaries of the Spokane Indian Reservation, any extensions of the Reservation, and all Spokane Tribal and allotted Indian lands outside the exterior boundaries of the Reservation as well as those lands that fulfill the definition of Indian Country as defined in 18 USC Section 1151.

7-5.02 Definitions. Unless the context clearly requires otherwise, the definitions in this subsection shall apply throughout this section.

- (a) "Minor" means a person under the age of 18 years.
- (b) "Parent" means the natural or adoptive mother or father or legal father of a child, regardless of the marital status of the parent.
- (c) "Indian Child Welfare Advocate" means a person, appointed by the Court, to represent the child in the judicial proceeding brought to terminate the child and parent relationship and to aid the Court in its investigation.

7-5.03 Who May Adopt. Any person not married, or any husband and wife jointly, or either spouse, when the object of adoption is the child of the other spouse, may petition the Tribal Youth Court for leave to adopt, and to change the name, if desired, of any person.

7-5.04 Petition.

- (a) An adoption shall be initiated by the filing of a petition entitled "Petition for Adoption."
- (b) The petition shall be filed in the name of the proposed adoptive parents and shall contain the following information:
 - (1) The name, age and residence of each living parent or alleged parent of the child;
 - (2) The name, age, date of birth, place of birth, and residence of the youth, and the Tribal affiliation of the youth;
 - (3) The name, age, and residence of the proposed adoptive parent or parents;
 - (4) The basis for the Court's jurisdiction over the adoption of such child;

- (5) Whether the adoption is consented to by each living parent of the child, and, if not, any facts excusing such consent or the Court, under Section 6-3 terminated such parents' rights;
 - (6) A full statement of the value of any property of the child; and
 - (7) Any facts related to the physical care or custody of the child, either past or present, which is relevant to the petition.
- (c) The petition shall be signed and verified under oath by the proposed adopter.
 - (d) If the petition is by 1 spouse to adopt a child of the other spouse, it shall also be approved under oath by such other spouse.

7-5.05 Consent.

- (a) The written consent of each parent consenting to the adoption shall be filed with the petition.
- (b) Each consent shall be executed before 2 adult witnesses, who shall sign their name and address upon the consent, or a Notary Public.
- (c) If the consenting parent is a minor, such consent must be signed before a Judge of the Tribal Court or under other circumstances which the Tribal Court finds sufficient to assure the Court that the consent was executed voluntarily and with the knowledge of the legal effect of the consent.
- (d) The adopting parent must obtain the consent of the child if the child is fourteen (14) years of age or older.

7-5.06 Withdrawal of Consent. A consent may be withdrawn, for any reason, at any time prior to the final order of adoption.

7-5.07 Investigation.

- (a) Upon the filing of a petition for adoption, the Court shall appoint a next friend and order such investigation as it deems necessary for full determination upon the petition.
- (b) The Court shall appoint an Indian Child Welfare Advocate for purposes of assisting this Court in its determination whether to grant the petition for adoption.

7-5.08 Order of Adoption Without Hearing. The Court may enter an order of adoption without hearing if the Court, upon investigation and inquiry, determines the following:

- (a) That 1 of the proposed adoptive parents is a member of the child's extended family, or otherwise has significant ties to the child;
- (b) That the adoption has been consented to by each living parent of the child;
- (c) That the proposed adoptive home is an adequate environment for the normal development of the child; and
- (d) That the adoption is in the best interests of the child.

7-5.09 Notice.

- (a) If the adoption has not been consented to in writing by each living parent of the child, then each such parent not having consented shall be given written notice of the proceedings.
- (b) Such notice shall be served personally if the whereabouts of the parent or parents is known, otherwise service shall be made as ordered by the Court.

7-5.10 Hearing.

- (a) Unless both parties consent and the adoption is granted pursuant to Section 7-5.08, the Court shall hold a hearing upon the petition.
- (b) The hearing shall first address the question of the termination of parental rights of any non-consenting parent may be terminated as provided in Chapter 6 of this Code or if it is proven beyond a reasonable doubt that the parent has failed, without good cause, to establish a relationship with the child, and did not provide support or care for the child prior to notice of hearing being served on the parent, the Court may order the termination of those parental rights if it deems appropriate.

- (c) If the parent has, before notice of the hearing was served on the parent, established a relationship with the child, the rights of the parent shall not be terminated except as otherwise provided by this Code.
- (d) The hearing shall then address the proposed adoption and the Court shall grant the petitioner's request if the adoption is in the best interests of the child.

7-5.11 Order.

- (a) Upon a determination that good cause exists to terminate the parental rights of the living parent or parents of a child, or that all living parents have voluntarily consented to the adoption, the Court shall enter an order of adoption.
- (b) The order shall include the following.
 - (1) The name, age and residence of each parent of the child;
 - (2) The name, age, date of birth, residence of the youth, and all relevant facts as to Tribal affiliation and membership of the youth;
 - (3) The jurisdiction of the Court;
 - (4) Whether the adoption is consented to by each living parent of the child and, if not, facts upon which the Court relies in terminating the parental rights of a non-consenting parent or parents, such termination having taken place by virtue of an order entered for that purpose;
 - (5) A full statement of the property of the child, and the value thereof, and any provisions the Court may impose for the protection or distribution of such property;
 - (6) That the adoptive parents are fit to provide a home environment for the healthy development of the child, and that the adoption is in the best interests of the child; and
 - (7) Facts showing that all parties entitled to notice were given notice consistent with their rights to due process.

7-5.12 Effect of Order of Adoption. By the order of adoption, the natural parents shall be divested of all legal rights and obligations with respect to the child, and the child shall be free from all legal obligations of obedience and maintenance with respect to them, and shall be, for all legal purposes, the child, legal heir, and lawful issue of his or her adopter or adopters, entitled to all rights and privileges, including the right of inheritance and the right to take under testamentary disposition, and subject to all the obligations of a child of the adopter or adopters begotten in lawful wedlock.

7-5.13 Confidentiality of Records and Proceedings.

- (a) Unless the Court shall otherwise order, all hearings held and proceedings under this section shall be held in closed Court without admittance of any persons other than parties having a proper interest in the case or the work of the Court.
- (b) All records shall be sealed and kept confidential in conformity with 6-1.08 of this Code.

7-5.14 Copy of Order to Registrar. If an order of adoption is entered, as soon as possible, the Clerk of the Court shall transmit to the State of Washington Registrar of Vital Statistics a certified copy of such order.

CHAPTER 8 – OFFENSES AGAINST THE PERSON

Section 8-1 Simple Assault

8-1.01 Assault/Communicating Threats. A person is guilty of communicating threats if, without lawful authority:

- (a) The person willfully threatens to inflict bodily harm or death upon a person, or to damage the property of another; and
- (b) The threat is communicated to the other person, orally, in writing, or by any other means; and
- (c) The threat is made in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out.
- (d) A violation of this section shall be punishable by a fine of not more than \$2500, or imprisonment of not more than 6 months, or both.

8-1.02 Assault with a Dangerous or Deadly Weapon. Any person who shall attempt or threaten bodily harm to another person by use of a dangerous or deadly weapon shall be deemed guilty of assault with a dangerous or deadly weapon and upon conviction thereof shall be sentenced to confinement of not more than 90 days but not less than 2 days, and to pay a fine of not more than \$300 but not less than \$50.

Section 8-2 First Degree Assault and Battery

8-2.01 First Degree Assault and Battery.

- (a) Any person who shall intentionally or knowingly use force or violence on another person shall be guilty of assault and battery in the first degree when he:
 - (1) Shall use force or violence upon the person or body of another with a firearm or any other deadly or dangerous weapon;
 - (2) Shall administer to or cause to be taken by another, poison or any other noxious or destructive thing so as to endanger the life of another person.
- (b) Any person convicted thereof shall be sentenced to confinement for not more than 6 months but not less than 30 days and to pay a fine of not more than \$500 but not less than \$150.

8-2.02 Second Degree Assault and Battery.

- (a) Any person who shall willfully and knowingly use force or violence on another person shall be guilty of assault and battery in the second degree when he willfully and unlawfully touches, strikes or otherwise harms the person or body of another.
- (b) Any person convicted thereof shall be sentenced to confinement of not more than 90 days but not less than 2 days and to pay a fine of not more than \$350 but not less than \$200.

8-2.03 Mandatory Sentence and Fine.

- (a) The minimum sentences provided for in this Chapter are mandatory.
- (b) Each sentence for conviction of such offenses shall include both the confinement and the fine and neither may be suspended or reduced. Furthermore, any sentence of confinement for first degree assault and battery shall be given without consideration for work release or other such programs.

Section 8-3 Abduction

8-3.01 Abduction. Any person who shall willfully detain or take away another person against that person's will, or if such person be under the age of eighteen years, without the consent of the parent or other lawful custodian shall be deemed guilty of abduction and upon conviction thereof shall be sentenced to a period of confinement not to exceed 6 months or ordered to pay a fine of not to exceed \$500, or both the jail sentence and fine, and costs.

Section 8-4 Sexual Violence

8-4.01 Definitions: When a term is not defined in any provision of the code establishing a criminal offense, it shall be given its commonly accepted meaning. If there is any doubt as to the meaning of a term, the Court may refer to definitions utilized in other jurisdictions. Any reference to "he", "she" or other gender pronouns includes both male and female persons.

- (a) Consent- means words or actions by a person indicating a voluntary agreement to engage in sexual intercourse, sexual penetration, or sexual contact.
- (b) Forcible compulsion – where physical force which overcomes resistance or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person or in fear that he or another person will be kidnapped.
- (c) Penetration - any intrusion, however slight with any part of a person's body or of any object into the genital or anal openings of any other person's body.
- (d) Sexual Contact- the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, including but not limited to;
 - (1) any intentional display of the genitals, anus, or breasts for the purpose of arousal or sexual gratification
 - (2) any intentional touching or fondling of the genitals, anus, breasts, directly or indirectly, including through clothing that one person is forced to perform by another person
 - (3) any forced display of the alleged victim's genitals, anus, breasts for the purpose of arousal or sexual gratification of self or others
 - (4) any intentional or knowing touching of the clothed or unclothed body of a child under the age of 13, if done for the purpose of sexual gratification or arousal of self or of others
 - (5) any coerced or forced touching or fondling by a child under the age of 13, directly or indirectly, including through clothing, of the genitals, anus, breasts of self or others.
- (e) Sexual Intercourse – means conduct between persons consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any intrusion, however slight, by any part of a person's body or any object into the genital or anal opening of another.

8-4.02 Victim Testimony and Evidence

- (a) In order to convict a person of any crime defined in this chapter it shall not be necessary that the testimony of the alleged victim be corroborated.
- (b) Evidence of the victim's past sexual behavior including, but not limited to, the victim's marital history, divorce history, or general reputation for promiscuity, non-chastity, or sexual mores contrary to community standards is inadmissible on the issue of credibility and is inadmissible to prove the victim's consent except as provided in subsection (c) of this section; but when the perpetrator and the victim have engaged in sexual intercourse with each other in the past, and when the past behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense.
- (c) In any prosecution for the crime of rape or for an attempt to commit, or an assault with an intent to commit, any such crime, evidence of the victim's past sexual behavior including, but not limited to, the victim's marital behavior, divorce history, or general reputation for promiscuity, non-chastity, or sexual mores contrary to community standards is not admissible if offered to attack the credibility of the victim and is admissible on the issue of consent to the offense only pursuant to the following procedure;
 - (1) The defendant shall make a written pretrial motion to the Court and the prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the past

sexual behavior of the victim proposed to be presented and its relevancy on the issue of the consent of the victim.

- (2) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.
 - (3) If the Court finds that the offer of proof is sufficient, the Court shall order a hearing out of the presence of the jury, if any, and the hearing shall be closed except to the necessary witnesses, the defendant, counsel, and those who have direct interest in the case or in the work of the Court,
 - (4) At the conclusion of the hearing, if the Court finds that the evidence proposed to be offered by the defendant regarding the past sexual behavior of the victim is relevant to the issue of the victim's consent; that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice; and that its exclusion would result in denial of substantial justice to the defendant, the Court shall make an order stating what evidence may be introduced by the defendant, which order may include the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the Court.
- (d) Nothing in this section shall be construed to prohibit cross-examination of the victim on the issue of past sexual behavior when the prosecution presents evidence in its case in chief tending to prove the nature of the victim's past sexual behavior, but the Court may require a hearing pursuant to subsection (c) of this section concerning such evidence.

8-4.03 Evidence of Child

- (a) With the legislative purpose in mind to find the truth while allowing a child protection from trauma to the extent that is constitutionally permitted, the Spokane Tribe of Indians Tribal Court may [issue] rules of procedure regarding the admissibility of evidence
- (b) A statement made by a child when under the age of 10 describing any act of sexual contact performed with or on the child by another, not otherwise admissible by statute or court rule, is admissible in evidence in dependency proceedings and criminal proceedings, including juvenile offense adjudications, in the courts of the Spokane Nation when:
 - (1) the Court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and
 - (2) the child either:
 - A) testifies at the proceedings; or
 - B) is unavailable as a witness; provided, that when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.
- (c) A statement may not be admitted under (b) of this section unless the proponent of the statement makes known to the adverse party his intention to offer the statement and particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statement.

8-4.04 Defenses to Prosecution Under this Chapter

- (a) In any prosecution under this chapter in which lack of consent is based solely upon the victim's mental incapacity or upon the victim's being physically helpless, it is a defense, which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless.
- (b) In any prosecution under this chapter in which the offense or degree of the offense depends on the victim's age, it is no defense that the perpetrator did not know the victim's age, or that the perpetrator believed the victim to be older, as the case may be: PROVIDED, That it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed the alleged victim to be the age identified in subsection (c) of this section based upon declarations as to age by the alleged victim.
- (c) The defense afforded by subsection (b) of this section requires that for the following defendants, the reasonable belief be as indicated:

- (1) For a defendant charged with rape of a child in the first degree, that the victim was at least twelve, or was less than twenty-four months younger than the defendant;
 - (2) For a defendant charged with rape of a child in the second degree, that the victim was at least fourteen, or was less than thirty-six months younger than the defendant;
 - (3) For a defendant charged with rape of a child in the third degree, that the victim was at least sixteen, or was less than forty-eight months younger than the defendant;
 - (4) For a defendant charged with sexual misconduct with a minor in the first degree, that the victim was at least eighteen, or was less than sixty months younger than the defendant;
 - (5) For a defendant charged with child molestation in the first degree, that the victim was at least twelve, or was less than thirty-six months younger than the defendant;
 - (6) For a defendant charged with child molestation in the second degree, that the victim was at least fourteen, or was less than thirty-six months younger than the defendant;
 - (7) For a defendant charged with child molestation in the third degree, that the victim was at least sixteen, or was less than thirty-six months younger than the defendant;
 - (8) For a defendant charged with sexual misconduct with a minor in the second degree, that the victim was at least eighteen, or was less than sixty months younger than the defendant.
- (d) Voluntary intoxication is not a defense available under this Chapter.

8-4.05 Rape in the First Degree

- (a) A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory:
- 1) uses or threatens to use a deadly weapon or what appears to be a deadly weapon;
 - 2) kidnaps the victim;
 - 3) inflicts serious physical injury; or
 - 4) unlawfully enters into the building or vehicle where the victim is situated
- (b) Rape in the first degree is a Class A offense

8-4.06 Rape in the Second Degree

- (a) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:
- 1) by forcible compulsion;
 - 2) when the victim is incapable of consent by reason of being physically helpless o[r] mentally incapacitate[d]; or
 - 3) when the victim is developmentally disabled and the perpetrator is a person who has supervisory authority over the victim
- (c) Rape in the second degree is a Class A offense.

8-4.07 Rape in the Third Degree

- (a) A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person:
- 1) when the victim did not consent as defined in 8-4.01 (a), to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct; or
 - 2) where there is threat of substantial unlawful harm to property rights of the victims
- (b) Rape in the third degree is a Class B offense

8-4.08 Rape of a Child in the First Degree

- (a) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than 12 years old and not married to the perpetrator and the perpetrator is at least 24 months older than the victim
- (b) Rape of a child in the first degree is a Class A offense

8-4.09 Rape of a Child in the Second Degree

- (a) A person is guilty of rape of a child in the second degree when the person has sexual intercourse with another who is at least 12 years old but less than 14 years old and the perpetrator is at least 36 months older than the victim
- (b) Rape of a child in the second degree is a Class A offense.

8-4.10 Rape of Child in the Third Degree

- (a) A person is guilty of rape of a child in the third degree when the person has sexual intercourse with another who is at least 14 years old but less than 16 years old and not married to the perpetrator and the perpetrator is at least 48 months older than the victim.
- (b) Rape of a child in the third degree is a Class B offense.

8-4.11 Child Molestation in the First Degree

- (a) A person is guilty of child molestation in the first degree when the person has sexual contact with another who is less than 12 years old and the perpetrator is at least 36 months older than the victim.
- (b) Child Molestation in the first degree is a Class A offense.

8-4.12 Child Molestation in the Second Degree

- (a) A person is guilty of child molestation in the second degree when the person has sexual contact with another who is at least 12 years old but less than 14 years old and the perpetrator is at least 36 months older than the victim.
- (b) Child molestation in the second degree is a Class B offense.

8-4.13 Child Molestation in the Third Degree

- (a) A person is guilty of child molestation in the third degree when the person has sexual contact with another who is at least 14 years old but less than 16 years old and not married to the perpetrator and the perpetrator is at least 48 months older than the victim.
- (b) Child molestation in the third degree is a Class B offense.

8-4.14 Sexual Misconduct with a Minor in the First Degree

- (a) A person is guilty of sexual misconduct with a minor in the first degree when the person has sexual intercourse with another person who is at least 16 years old but not less than 18 years old and not married to the perpetrator, if the perpetrator is at least 60 months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in sexual intercourse with the victim.
- (b) Sexual misconduct with a minor in the first degree is a Class B offense.

8-4.15 Sexual Misconduct with a Minor in the Second Degree

- (a) A person is guilty of sexual misconduct with a minor in the second degree when the person has sexual contact with another person who is at least 16 years old but less than 18 years old and not married to the perpetrator, if the perpetrator is at least 60 months older than the victim, is in significant relationship to the victim and abuses a supervisory position within that relationship in order to engage in sexual contact with the victim.
- (b) Sexual misconduct with a minor in the second degree is a Class C offense.

8-4.16 Indecent Exposure

- (a) A person is guilty of indecent exposure when a person:
 - (1) makes any open or obscene exposure of genitals, buttocks or female breasts knowing that such exposure is likely to cause reasonable affront or alarm; or
 - (2) masturbates, even though covered, while observed by a child less than 16 years old or while observed by any person knowing that such conduct is likely to cause reasonable affront or alarm.
- (b) Indecent exposure is a Class C offense.

8-4.17 Incest in the First Degree

- (a) A person is guilty of incest in the first degrees when he engages in sexual intercourse with a person he knows to be related to him, either legitimately or illegitimately, as an ancestor, descendant, brother or sister of either whole or half, nephew, or niece. This includes stepchildren and adopted children under 18 years of age.
- (b) Incest in the first degree is a Class B offense.

8-4.18 Incest in the Second Degree

- (a) A person is guilty of incest in the second degree when he engages in sexual contact with a person he knows to be related to him, either legitimately or illegitimately, as an ancestor, descendant, brother or sister of either whole or half, nephew, or niece. This includes stepchildren and adopted children under 18 years of age.
- (b) Incest in the second degree is a Class C offense.

8-4.19 Indecent Liberties

- (a) A person is guilty of indecent liberties when he knowingly has sexual contact with another person without that person's consent.
- (b) A person is guilty of aggravated indecent liberties when he knowingly causes another person to have sexual contact with him or another:
 - (1) by forcible compulsion;
 - (2) when the other person is incapable of consent by reason of being mentally incapacitated, or physically helpless; or
 - (3) when a victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority over the victim.
- (c) Indecent Liberties is a Class C offense. Aggravated Indecent Liberties is a Class B offense.

8-4.20 Sexual Exploitation of a Minor

- (a) A person is guilty of sexual exploitation of a minor if the person:
 - (1) compels a minor by threat or force to engage in sexually explicit conduct, knowing the conduct will be photographed or part of a live performance;
 - (2) aids or causes the minor to engage in sexually explicit conduct, knowing the conduct will be photographed or part of a live performance; or
 - (3) being a parent or legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing the conduct will be photographed or part of a live performance.
- (b) Sexual exploitation of a minor shall be a Class A offense if the victim is less than 16 years old; and shall be a Class B offense if the victim is 16 years of age or older, but less than 18 years old.

8-4.21 Crimes Involving the Depiction of Minor engaged in Sexually Explicit Conduct

- (a) A person is guilty of the offense of dealing in depictions of a minor engaged in sexually explicit conduct when the person possesses such material with the intent to sell or distribute such material, or knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, or attempts to finance, any visual or printed matter that depicts a minor engaged in sexually explicit conduct. Dealing in a depiction of a minor less than 16 years of age engaged in sexually explicit conduct is a Class A offense. Dealing in a depiction of a minor 16 years of age or older, but less than 18 years of age, is a Class B offense.
- (b) A person is guilty of the offense of importing depictions of minors engaged in sexually explicit conduct when the person knowingly sends or causes to be sent, or brings or causes to be brought, into this jurisdiction for sale or distribution, any visual or printed matter that depicts a minor engaged in sexually explicit conduct. Sending or bringing into the Spokane Tribe jurisdiction a depiction of a minor less than 16 years of age engaged in sexually explicit conduct is a Class A offense. Sending or bringing into the Spokane Tribe jurisdiction a depiction of a minor 16 years of age or older, but less than 18 years of age, engaged in sexually explicit conduct is a Class B offense.

- (c) A person is guilty of a Class C offense of possession of a depiction of a minor engaged in sexually explicit conduct when the person knowingly possesses visual or printed matter depicting a minor less than 16 years old engaged in sexually explicit conduct.

8-4.27 Findings-Intent; effective date

This act is necessary for the immediate preservation of the tribal family, public peace, health and safety, and to support tribal sovereignty, and shall take effect on the date the Spokane Tribal Council adopts this Section by Resolution. The intent is based upon unique tribal needs and cultural considerations. It is recognized that the incidence of sexual exploitation ordinarily fosters trauma in other aspects of the lives of sexual abuse victims, thereby disabling and delaying victims from reporting sexual offenses. Cultural factors involving the sense of privacy exacerbate the ability of many native victims to disclose intimate matters, particularly those of aggravated character. Given the inter-generational prevalence of sexual offense, there is a unique tribal need to allow effective reporting of sexual offenses with the Spokane Tribe of Indians territory.

8-4.28 Statute of Limitations for Sexual Offenses

- (a) Prosecutions for sexual offenses shall not be commenced after the periods prescribed in this section:
 - (1) ten years after commission of the offense; or
 - (2) ten years after the recovery of repressed memories of childhood sexual abuse, whichever time period is greater.
- (b) The periods of limitation prescribed in subsection (a) of this section do not run during any time when the person charged is not usually and publicly a resident within the territory of the Spokane Tribe of Indians Nation.

8-4.29 Sentencing Goals

Sentencing delivered under this chapter is specifically intended to promote public safety and facilitate healing within our families and communities. The following goals shall be considered in sentencing:

- (a) Providing safety for the victims and for other potential victims shall be the highest priority considered in sentencing;
- (b) Sex offender evaluation and treatment (when indicated) shall be the second priority in sentencing;
- (c) Restitution to the victim or his family, fines and/or time in jail imposed in sentencing provide the offender an opportunity to take public responsibility for his offenses. They also make a statement to the community as to the seriousness of the crime; and
- (d) Significant suspended sentences can provide an incentive for the offender to complete Court ordered rehabilitative treatment and restitution.

8-4.30 Sentencing Schedule for Sexual Offenses

- (a) The sentence for a Class A offense shall be imprisonment in jail for the maximum time allowed under the current federal law; and a minimum fine of \$2,500 and the maximum fine not to exceed the then maximum fine allowed under federal law; completion of a Sexual Deviancy Evaluation and any treatment, if recommended, is mandatory.
- (b) The sentence for a Class B offense shall be imprisonment for not less than 365 days and not more than 730days in jail; and a minimum fine of \$1,500 and a maximum fine of \$3,000.
- (c) The sentence for a Class C offense shall be imprisonment for not less than 120 days but not more than 365 days in jail; and a minimum fine of \$500 and a maximum fine of \$2,000.

Section 8-5 Assisting Suicide

8-5.01 Assisting Suicide. Any person who shall purposely or recklessly aid another to commit suicide shall be guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 6 months or ordered to pay a fine of not to exceed \$500, or both the jail sentence and fine, and costs.

Section 8-6 Criminal Libel

8-6.01 Criminal Libel. Any person who shall maliciously publish by means of any writing, sign, picture, effigy, or other representation, which shall include radio and television broadcasting, any falsehood intending to expose another person to hatred, contempt, or ridicule shall be deemed guilty of criminal libel and upon conviction thereof shall be sentenced to a period of confinement not to exceed 90 days or ordered to pay a fine of \$300, or both jail sentence and fine, and costs.

Section 8-7 Criminal Slander

8-7.01 Criminal Slander. Any person who shall maliciously utter any falsehood to a third party designed and intended to bring another person into disrepute, hatred, contempt, or ridicule shall be deemed guilty of criminal slander and upon conviction thereof shall be sentenced to a period of confinement not to exceed 90 days or ordered to pay a fine of \$300, or both jail sentence and fine, and costs.

Section 8-8 Offenses Against Tribal Elders

8-8.01 Offenses Against Tribal Elders-Minimum Sentence and Fine.

- (a) Anyone convicted of any offense under this chapter against an enrolled member of the Spokane Tribe of Indians who is 60 years or older shall be sentenced to no less than 30 days in jail and fined no less than \$500.
- (b) No deferral, reduction, suspension, parole or probation of the sentence shall be permitted.

Section 8-9 Electronic Harassment

8-9.01 Electronic Harassment.

- (a) A person is guilty of the offense of electronic harassment if the person communicates by telephone or other electronic device and:
 - (1) Willfully uses profane, vulgar, lewd, or lascivious language that a reasonable person would find offensive; or
 - (2) Telephones or communicates electronically with another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing or embarrassing any person at the called number; or
 - (3) Threatens to inflict bodily harm or death to any person, or physical injury to the property of any person, or for any other purpose unlawful under the code, and the threat is made in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out; or
 - (4) Knowingly permits any telephone or electronic device under the person's control to be used for any purposes prohibited by this section.
- (b) A violation of this section shall be punishable by a fine of not more than \$5000.00 or imprisonment of not more than one year, or both.

Section 8-11 Criminal Homicide

8-11.01 Criminal Homicide

- (a) A person commits criminal homicide if, without justification or excuse, the person intentionally, knowingly, through omission, recklessly, through procurement or with criminal negligence causes the death at any time of another human being.
 - (1) "Human being" means a person who has been born and was alive at the time of the criminal act.
- (b) Any person who commits the act described in (a) shall be guilty of criminal homicide, unless:
 - (1) Committed by accident or misfortune in doing any lawful act by lawful means, without criminal negligence, or without any unlawful intent; or
 - (2) Committed in the lawful defense of the accused, or his or her husband, wife, parent, child, brother, or sister, or of any other person in his presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to do some great personal injury to the accused or to any such person, and there is imminent danger of such design being accomplished.

- (c) Sentencing- the Court shall consider all the facts and circumstances of the conviction while deciding the sentence.
 - (1) The minimum sentence for a conviction of criminal homicide is 1 year in jail and a \$5000 fine.
 - (2) The maximum sentence for a conviction of criminal homicide is the maximum punishment allowed under federal law at the time of the conviction and any of the following;
 - (A) The Court may recommend to the Spokane Tribal Business Council disenrollment of the convicted member; and
 - (B) Banishment of the convicted individual from the Reservation and all Tribal properties.

Section 8-12 Robbery

8-12.01 Robbery

- (a) A person commits robbery when he unlawfully takes personal property from the person of another or in his presence against his will by the use or threatened use of immediate force, violence, or fear of injury to that person or his property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.
- (b) Sentencing- the Court shall consider all the facts and circumstances of the conviction while deciding the sentence.
 - (1) The minimum sentence for a conviction of robbery is 6 months in jail and a \$500 fine.
 - (2) The maximum sentence for a conviction of robbery is the maximum punishment allowed under federal law at the time of the conviction and any of the following.

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GENERAL MATTERS

SECTION 1.01 TITLE

This chapter of the Spokane Law and Order Code shall be known as the Spokane Tribal Sex Offender Registration Code.

SECTION 1.02 PURPOSE

The intent of this Chapter is to implement the federal Sex Offender Registration and Notification Act (SORNA) (Title I of Public Law 109-248) (42 U.S.C 16901 et. seq.) and shall be interpreted liberally to comply with the terms and conditions of SORNA as presently written or hereafter amended.

SECTION 1.03 CREATION OF REGISTRIES

- A. Sex Offender Registry. There is hereby established a sex offender registry program, which the Spokane Tribal Police shall maintain and operate pursuant to the provisions of this Chapter.
- B. Public Sex Offender Registry Website. There is hereby established a public sex offender registry website, at www.SpokaneTribe.com which the Director of Spokane Tribal Information Technology shall maintain and operate pursuant to the provisions of the Chapter.

TERMINOLOGY AND REGISTERABLE OFFENSES

SECTION 2.01 DEFINITIONS

The Definitions below apply to this Chapter only.

- A. Convicted. An adult sex offender is "convicted" for the purposes of this Chapter if the sex offender has been subjected to penal consequences based on the conviction, however the conviction may be styled.

A juvenile offender is "convicted" for purposes of this Chapter if the juvenile offender is either:

1. Prosecuted and found guilty as an adult for a sex offense; or
 2. Is adjudicated delinquent as a juvenile for a sex offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in either (a) or (b) of section 2241 of title 18, United States Code), or was an attempt or conspiracy to commit such an offense.
- B. Foreign Convictions. A foreign conviction is one obtained outside of the United States.
 - C. Employee. The term "employee" as used in this Chapter includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation. Volunteers of a tribal agency or organization are included within the definition of employee for registration purposes.
 - D. Immediate. "Immediate" and "Immediately" mean within 3 business days.
 - E. Imprisonment. The term "imprisonment" refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state "prison" as well as in a federal,

military, foreign, BIA, private or contract facility, or a local or tribal "jail". Persons under "house arrest" following conviction of a covered sex offense are required to register pursuant to the provisions of this Chapter during their period of "house arrest".

- F. Jurisdiction. The term "jurisdiction" as used in this Chapter refers to the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and any Indian Tribe that elected to function as a SORNA registration and notification jurisdiction pursuant to PL 109-248 Section 127 (42 U.S.C § 16927).
- G. Minor. The term "minor" means an individual who has not attained the age of 18 years.
- H. Resides. The term "reside" or "resides" means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives or sleeps..
- I. Sex Offense. The term "sex offense" as used in this Chapter includes those contained in 42 U.S.C § 16911 (5) (as amended) and those offenses enumerated in Section 2.02 of this Chapter or any other registerable offense under tribal law.
- J. An offense involving consensual sexual conduct is not a sex offense for the purposes of this Chapter if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.
- K. Sex Offender. A person convicted of a sex offense is a "sex offender".
- L. Sexual Act. The term "sexual act" means:
 - 1. contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration however slight;
 - 2. contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
 - 3. the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
 - 4. the intentional touching, not through the clothing, of the genitalia of another person that has not attained the age of 18 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- M. Sexual Contact. The intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of another person.
- N. Student. A "student" is a person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, or an institution of higher education.
- O. SORNA. The Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006 P.L. 109-248), 42 U.S.C § 16911 *et. seq.*, as amended.
- P. Sex Offender Registry. The term "sex offender registry" means the registry of sex offenders, and a notification program, maintained by the Spokane Tribal Police.

- Q. National Sex Offender Registry (NSOR). The national database maintained by the Federal Bureau of Investigation pursuant to 42 U.S.C § 16919.
- R. SMART Office. The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which was established within the United States Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C § 16945.
- S. Dru Sjodin National Sex Offender Public Website (NSOPW). The public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. § 16920.
- T. "Tier I Sex Offender". A "tier I sex offender", or a "sex offender" designated as "tier I", is one that has been convicted of a "tier I" sex offense as defined in section 3.01.
- U. "Tier II Sex Offender". A "tier II sex offender", or a "sex offender" designated as "tier II", is one that has been either convicted of a "tier II" sex offense as defined in section 3.02, or who is subject to the recidivist provisions of 3.02 (A).
- V. "Tier III Sex Offender". A "tier III sex offender", or a "sex offender" designated as "tier III", is one that has been either convicted of a "tier III" sex offense as defined in section 3.03, or who is subject to the recidivist provisions of 3.03 (A).

SECTION 2.02 REGISTERABLE OFFENSES

Individuals who reside within the exterior boundaries of the reservation or otherwise reside on property owned by the tribe in fee or trust regardless of location, are employed within the exterior boundaries of the reservation or on property owned by the tribe in fee or trust regardless of location, or who attend school within the exterior boundaries of the reservation or on property owned by the tribe in fee or trust regardless of location, that have been convicted of any of the following offenses, or convicted of an attempt or conspiracy to commit any of the following offenses, are subject to the requirements of this Chapter:

- A. Tribal offenses. A conviction for, or an attempt to conspiracy to commit any of the following.
 1. RSLOC 8-4.01 (Attempted Rape).
 2. RSLOC 8-4.05 (Rape, 1st degree).
 3. RSLOC 8-4.06 (Rape 2nd degree).
 4. RSLOC 8-4.07 (Rape 3rd degree).
 5. RSLOC 8-4.08 (Rape of a Child, 1st degree).
 6. RSLOC 8-4.09 (Rape of a Child, 2nd degree).
 7. RSLOC 8-4.10 (Rape of a Child, 3rd degree).
 8. RSLOC 8-4.11 (Child Molestation, 1st degree).
 9. RSLOC 8-4.12 (Child Molestation, 2nd degree).
 10. RSLOC 8-4.13 (Child Molestation 3rd degree).
 11. RSLOC 8-4.14 (Sexual Misconduct with a Minor, 1st degree).
 12. RSLOC 8-4.15 (Sexual Misconduct with a Minor, 2nd degree).

13. RSLOC 8-4.17 (Incest, 1st degree).
 14. RSLOC 8-4.18 (Incest, 2nd degree).
 15. RSLOC 8-4.19 (Indecent Liberties).
 16. RSLOC 8-4.20 (Sexual Exploitation of a Minor).
 17. RSLOC 8-4.21 (Depiction of a Minor in Sexually Explicit Conduct).
- B. Federal Offenses. A conviction for, or an attempt or conspiracy to commit any of the following, and any other offense hereafter included in the definition of "sex offense" at 42 U.S.C §16911 (5): Including any offenses prosecuted under the Assimilative Crimes Act (18 U.S.C §1152 OR § 1153).
1. 18 U.S.C. § 1591 (sex trafficking of children).
 2. 18 U.S.C. § 1801 (video voyeurism of a minor).
 3. 18 U.S.C. § 2241 (aggravated sexual abuse).
 4. 18 U.S.C. § 2242 (sexual abuse).
 5. 18 U.S.C. § 2243 (sexual abuse of a minor or ward).
 6. 18 U.S.C. § 2244 (abusive sexual contact).
 7. 18 U.S.C. § 2245 (offenses resulting in death).
 8. 18 U.S.C. § 2251 (sexual exploitation of children).
 9. 18 U.S.C. § 2251A (selling or buying of children).
 10. 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor).
 11. 18 U.S.C. § 2252A (material containing child pornography).
 12. 18 U.S.C. § 2252B (misleading domain names on the internet).
 13. 18 U.S.C. § 2252C (misleading words or digital images on the internet).
 14. 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the U.S).
 15. 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity).
 16. 18 U.S.C. § 2422 (coercion and enticement of a minor for illegal sexual activity).
 17. 18 U.S.C. § 2423 (Transportation of Minors for Illegal Sexual Activity, Travel With the Intent to Engage in Illicit Sexual Conduct with a Minor, Engaging in Illicit Sexual Conduct in Foreign Places).
 18. 18 U.S.C. § 2424 (failure to futility factual statement about an alien individual).
 19. 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct).
- C. Foreign Offenses. Any conviction for a sex offense involving any conduct listed in this Section that was obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, or under the

laws of any foreign country when the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

- D. Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a) (8) (C) (I) of Public Law 105-119 (codified at 10 U.S.C. 951 note).
- E. Jurisdiction Offenses. Any sex offense committed in any jurisdiction, including the jurisdiction of the Spokane Tribe of Indians, that involves:
 - 1. Any conduct that by its nature is a sex offense against a minor.
 - 2. Any type or degree of genital, oral, or anal penetration.
 - 3. Any sexual touching of or sexual contact with a person's body, either directly or through the clothing.
 - 4. Criminal sexual conduct that involves physical contact with a minor or the use of the internet to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense.
 - 5. False imprisonment of a minor.
 - 6. Kidnapping of a minor.
 - 7. Possession, production, or distribution of child pornography.
 - 8. Solicitation of a minor to practice prostitution.
 - 9. Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct.
 - 10. Use of a minor in a sexual performance.
 - 11. Any offense similar to those outlined in:
 - a. 18 U.S.C. § 1591 (sexual trafficking by force, fraud, or coercion).
 - b. 18 U.S.C. § 1801 (video voyeurism of a minor).
 - c. 18 U.S.C. § 2241 (aggravated sexual abuse).
 - d. 18 U.S.C. § 2242 (sexual abuse).
 - e. 18 U.S.C. § 2244 (abusive sexual conduct).
 - f. 18 U.S.C. § 2242 (b) (coercing a minor to engage in prostitution), or
 - g. 18 U.S.C. § 2423 (a) (transporting a minor to engage in illicit conduct).

TIERING OF OFFENSES

SECTION 3.01 TIER I OFFENSES

- A. Sex Offenses. A "Tier I" offense includes any sex offense or an attempt or conspiracy to commit such an offense for which a person has been convicted that is not a "Tier II" or "Tier III" offense.
- B. Offenses Involving Minors. A "Tier I" offense also includes any offense for which a person has been convicted by any jurisdiction, local government, or qualifying foreign country pursuant to Section 2.02(C) that involves the false imprisonment of a minor, video voyeurism of a minor, or possession or receipt of child pornography.
- C. Certain Federal Offenses. Conviction for any of the following federal offenses or an attempt or conspiracy to commit such an offense shall be considered a conviction for a "Tier I" offense:
 1. 18 U.S.C. § 1801 (video voyeurism of a minor).
 2. 18 U.S.C. § 2252 (receipt of possession of child pornography).
 3. 18 U.S.C. § 2252A (receipt or possession of child pornography).
 4. 18 U.S.C. § 2252B (misleading domain names on the internet).
 5. 18 U.S.C. § 2252C (misleading words or digital images on the internet).
 6. 18 U.S.C. § 2422 (a) (coercion to engage in prostitution).
 7. 18 U.S.C. § 2423 (b) (travel with the intent to engage in illicit conduct).
 8. 18 U.S.C. § 2423 (c) (engaging in illicit conduct in foreign places).
 9. 18 U.S.C. § 2423 (d) (arranging, inducing, procuring or facilitating the travel in interstate commerce of an adult for the purpose of engaging in illicit conduct for financial gain).
 10. 18 U.S.C. § 2424 (failure to file factual statement about an alien individual), or
 11. 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct).

[12.] Certain Military Offenses. Any military offense specified by the Secretary of Defense under section 115 (a)(8)(C)(I) of Public Law 105-119 (codified at 10 U.S.C § 950 note) that is similar to those offenses outlined in Section 3.01 (A), (B), or (C) shall be considered a "Tier I" offense.

SECTION 3.02 TIER II OFFENSES

- A. Recidivism and Felonies. Unless otherwise covered by Section 3.03, any sex offense or an attempt or conspiracy to commit such an offense for which the offender has been convicted that is not the first sex offense for which the offender has been convicted and that is punishable by more than one year in jail is considered a "Tier II" offense.
- B. Offenses Involving Minors. A "Tier II" offense includes any sex offense against a minor for which a person has been convicted, or an attempt or conspiracy to commit such an offense that involves:
 1. The use of minors in prostitution, including solicitations,
 2. Enticing a minor to engage in criminal sexual activity.
 3. a non-forcible Sexual Act with a minor 16 or 17 years old.
 4. Sexual contact with a minor 13 years of age or older, whether directly or indirectly through the clothing, that involves the intimate parts of the body.

5. The use of a minor in a sexual performance, or
 6. The production or distribution of child pornography.
- C. Certain Federal Offenses. Conviction for any of the following federal offenses or an attempt or conspiracy to commit such an offense shall be considered a conviction for a "Tier II" offense:
1. 18 U.S.C. § 1591 (sex trafficking by force, fraud, or coercion).
 2. 18 U.S.C. § 2423 (d) (arranging, inducing, procuring or facilitating the travel in interstate commerce of a minor for the purpose of engaging in illicit conduct for financial gain).
 3. 18 U.S.C. § 2244 (abusive sexual contact, where the victim is 13 years of age or older).
 4. 18 U.S.C. § 2251 (sexual exploitation of children).
 5. 18 U.S.C. § 2251A (selling or buying of children).
 6. 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor).
 7. 18 U.S.C. § 2252A (production or distribution of material containing child pornography).
 8. 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the United States).
 9. 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity).
 10. 18 U.S.C. § 2422(b) (coercing a minor to engage in prostitution).
 11. 18 U.S.C. § 2423(a) (transporting a minor to engage in illicit conduct).
- D. Certain Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note) that is similar to those offenses outlined in Section 3.02(A), (B), or (C) shall be considered a "Tier II" offense.

SECTION 3.03 TIER III OFFENSES

- A. Recidivism and Felonies. Any sex offense or an attempt or conspiracy to commit such an offense for which the offender has been convicted that is punishable by more than one year in jail where the offender has at least one prior conviction for a Tier II sex offense, or has previously become a Tier II sex offender, is a "Tier III" offense.
- B. General Offenses. A "Tier III" offense includes any sex offense, for which a person has been convicted, or an attempt or conspiracy to commit such an offense that involves:
1. Non-parental kidnapping of a minor,
 2. A sexual act with another by force or threat,
 3. A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate, or,
 4. Sexual contact with a minor 12 years of age or younger including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing.

- C. Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered conviction for a "Tier III" offense:
 - 1. 18 U.S.C. § 2241 (aggravated sexual abuse).
 - 2. 18 U.S.C. § 2242 (sexual abuse).
 - 3. 18 U.S.C. § 2243 (sexual abuse of a minor or ward).
 - 4. Where the victim is 12 years of age or younger, 18 U.S.C. § 2244 (abusive sexual contact).
- D. Certain Military Offenses. Any military offense specified by the Secretary of Defense under section 115 (a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note) that is similar to those offenses outlined in Section 3.03(A), (B), or (C) shall be considered a "Tier III" offense.

REQUIRED INFORMATION

SECTION 4.01 GENERAL REQUIREMENTS

- A. Duties. A sex offender covered by this Chapter who is required to register with the Tribe pursuant to Section 5 shall provide all of the information detailed in this section to the Spokane Tribal Police, and the Spokane Tribal Police shall obtain all of the information detailed in this section from covered sex offenders who are required to register with the Tribe in accordance with this Chapter and shall implement any relevant policies and procedures.
- B. Digitization. All information obtained under this Chapter shall be, at a minimum, maintained by the Spokane Tribal Police in a digitized format.
- C. Electronic Database. A sex offender registry shall be maintained in an electronic database by the Spokane Tribal Police and shall be in a form capable of electronic transmission.

SECTION 4.02 CRIMINAL HISTORY

- A. Criminal History. The Spokane Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's criminal history:
 - 1. The date of all arrests.
 - 2. The date of all convictions.
 - 3. The sex offender's status of parole, probation, or supervised release.
 - 4. The sex offender's registration status, and
 - 5. Any outstanding arrest warrants.

SECTION 4.03 DATE OF BIRTH

- A. Date of Birth. The Spokane Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's date of birth:
 - 1. The sex offender's actual date of birth, and
 - 2. Any other date of birth used by the sex offender.

SECTION 4.04 DNA SAMPLE

- A. DNA. If the sex offender's DNA is not already contained in the Combined DNA Index System (CODIS), the sex offender shall provide the Spokane Tribal Police or designee a sample of his DNA.
- B. CODIS. Any DNA sample obtained from the sex offender shall be submitted to the Federal Bureau of Investigation Laboratory for submission in CODIS.

SECTION 4.05 DRIVER'S LICENSES, IDENTIFICATION CARDS, PASSPORTS, AND IMMIGRATION DOCUMENTS

- A. Driver's License. A covered sex offender shall provide all of the sex offender's valid driver's licenses issued by any jurisdiction and the Spokane Tribal Police or designee shall make a photocopy of any such licenses.
- B. Identification Cards. A covered sex offender shall provide all of the sex offender's identification cards including the sex offender's tribal enrollment card issued by any jurisdiction and the Spokane Tribal Police or designee shall make a photocopy of any such identification cards. Passports. A covered sex offender shall provide any passports used by the sex offender, and the Spokane Tribal Police or designee shall make a photocopy of any such passports. Immigration Documents. A covered sex offender shall provide any and all immigration documents used by the sex offender, and the Spokane Tribal Police or designee shall make a photocopy of any such documents.

SECTION 4.06 EMPLOYMENT INFORMATION

- A. Employment. The Spokane Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's employment, to include any and all places where the sex offender is employed in any means including volunteer and unpaid positions:
 - 1. The name of the sex offender's employer.
 - 2. The address of the sex offender's employer, and
 - 3. Similar information related to any transient or day labor employment.

SECTION 4.07 FINGER AND PALM PRINTS

- A. Finger and Palm Prints. The Spokane Tribal Police or designee shall obtain, and a covered sex offender shall provide, both finger prints, which must be submitted to IAFIS, and palm prints, which must be submitted to the Federal Bureau of Investigation.

SECTION 4.08 INTERNET IDENTIFIERS

- A. Internet Names. The Spokane Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's internet related activity:
 - 1. Any and all email addresses used by the sex offender.
 - 2. Any and all Instant Message addresses and identifiers.
 - 3. Any and all other designations or monikers used for self-identification in internet communications or postings, and any and all designations used by the sex offender for the purpose of routing or self-identification in internet communications or postings, including but not limited to social network identification, twitter accounts, and video posting site identifications.

SECTION 4.09 NAME

- A. Name. The Spokane Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's name:

1. The sex offender's full primary given name.
2. Any and all nicknames, aliases, and pseudonyms regardless of the context in which it is used, and
3. Any and all ethnic or tribal names by which the sex offender is commonly known. This does not include any religious or sacred names not otherwise commonly known.

SECTION 4.10 PHONE NUMBERS

- A. Phone Numbers. The Spokane Tribal Police or designee shall obtain, and covered sex offender shall provide, any and all telephone numbers and any other designations used by sex offenders for purposes of routing or self-identification in telephonic communications including but not limited to:
1. Any and all cellular telephone numbers.
 2. Any and all land line telephone numbers.
 3. Any and all Voice over IP (VOIP) telephone numbers.

SECTION 4.11 PICTURE

- A. Photograph. A covered sex offender shall permit his photograph to be taken by the Spokane Tribal Police or designee:
1. Every 90 days for Tier III sex offenders
 2. Every 180 days for Tier II sex offenders, and
 3. Every year for Tier I sex offenders.
- B. Update Requirements: Unless the appearance of a sex offender has not changed significantly a digitized photograph shall be collected at each appearance indicated in Section 4.11 A.

SECTION 4.12 PHYSICAL DESCRIPTION

- A. Physical Description. The Spokane Tribal Police or designee shall obtain, and a covered sex offender shall provide, an accurate description of the sex offender as follows:
1. A physical description.
 2. A general description of the sex offender's physical appearance or characteristics, and
 3. Any identifying marks, such as, but not limited to, scars, moles, birthmarks, or tattoos.

SECTION 4.13 PROFESSIONAL LICENSING INFORMATION

- A. Professional Licenses. The Spokane Tribal Police or designee shall obtain, and a covered sex offender shall provide, the licensing of the sex offender that authorizes the sex offender to engage in an occupation or carry out a trade or business.

SECTION 4.14 RESIDENCE ADDRESS

- A. Address. The Spokane Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's residence:
1. The address of each residence at which the sex offender resides or will reside, and

2. Any location or description that identifies where the sex offender habitually resides regardless of whether it pertains to a permanent residence or location otherwise identifiable by a street or address..

SECTION 4.15 SCHOOL

A. School Location. The Spokane Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's school:

1. The address of each school where the sex offender is or will be a student, and
2. The name of each school the sex offender is or will be a student.

SECTION 4.16 SOCIAL SECURITY NUMBER

A. Social Security. The Spokane Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information:

1. A valid social security number for the sex offender, and
2. Any social security number the sex offender has used in the past, valid or otherwise.

SECTION 4.17 TEMPORARY LODGING

A. Lodging Information. The Spokane Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information when the sex offender will be absent from his residence for seven (7) days or more:

1. Identifying information of the temporary lodging locations including addresses and names, and
2. The dates the sex offender will be staying at each temporary lodging location.
3. The registered sex offender shall provide the information in Section 4.17 (1) and (2) no later than five (5) days before his scheduled travel. The information shall be provided in person.

SECTION 4.18 INTERNATIONAL TRAVEL

A. Travel Abroad. Sex offenders must inform their residence jurisdictions 21 days in advance if they intend to travel outside of the United States. Jurisdiction must notify the U.S Marshals Service and immediately notify and other jurisdiction where the sex offender is either registered, or is required to register, of that updated information. Update also must be made to NCIC/NSOR.

SECTION 4.19 OFFENSE INFORMATION

A. Offense Information. The Spokane Tribal Police or designee shall obtain the text of each provision of law defining the criminal offense(s) for which the sex offender is registered.

SECTION 4.20 VEHICLE INFORMATION

A. Detailed Information. The Spokane Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to all vehicles owned or operated by the sex offender for work or personal use including land vehicles, aircraft, and watercraft:

1. License plate numbers.
2. Registration numbers or identifiers.
3. General description of the vehicle to include color, make, model, and year, and

4. Any permanent or frequent location where any covered vehicle is kept.

SECTION 4.21 FREQUENCY, DURATION AND REDUCTION

- A. Frequency. A sex offender who is required to register shall, at a minimum, appear in person at the Spokane Tribal Police Department for purposes of verification and keeping their registration current in accordance with the following time frames:
1. For "Tier I" offenders, once every year for 15 years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.
 2. For "Tier II" offenders, once every 180 days for 25 years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense..
 3. For "Tier III" offenders, once every 90 days for the rest of their lives.
- B. Reduction of Registration Periods. A sex offender may have the period of registration reduced as follows:
1. A Tier I offender may have the period of registration reduced to 10 years if the offender has maintained a clean record for 10 consecutive years;
 2. A Tier III offender may have the period of registration reduced to 25 years if the offender was adjudicated delinquent of an offense as a juvenile that required Tier III registration and the offender has maintained a clean record for 25 consecutive years.
- C. Clean Record. For purposes of Chapter 4.20(B) a person has a clean record if the person:
1. Has not been convicted of any new sex offenses.
 2. Has successfully completed, without revocation, any period of supervised release, probation, or parole, and
 3. Has successfully completed an appropriate sex offender treatment program certified by the tribe, another jurisdiction, or by the Attorney General of the United States.

SECTION 4.22 REQUIREMENTS FOR IN PERSON APPEARANCES

- A. Photographs. At each in person verification, the sex offender shall permit the Spokane Tribal Police to take a photograph of the offender.
- B. Review of Information. At each in person verification the sex offender shall review existing information for accuracy..
- C. Notification. If any new information or change in information is obtained at an in person verification, the Spokane Tribal Police shall immediately notify all other jurisdictions in which the sex offender is required to register of the information or change in information.
- D. If any new information or change in information is obtained at an in person verification, the Spokane Tribal Police shall immediately update the public website, if applicable, and update information in NCIC/NSOR.

SECTION 4.23 SEX OFFENDER ACKNOWLEDGEMENT FORM

- A. The sex offender shall read, or have read to them, and sign a form stating that the duty to register has been explained to them by the Spokane Tribal Police and that the sex offender understands the registration requirement.
 - 1. The form shall be signed and dated by the Spokane Tribal Police personnel registering the sex offender.
- B. The Spokane Tribal Police shall immediately upload the acknowledgement form into the Spokane Tribal Police maintained sex offender registry.

REGISTRATION

SECTION 5.01 WHERE REGISTRATION IS REQUIRED

- A. Jurisdiction of Conviction. A sex offender must initially register with the Spokane Tribal Police if the sex offender was convicted in Spokane Tribal Court of a covered sex offense regardless of the offender's actual or intended residency.
- B. Jurisdiction or Incarceration. A sex offender must register with the Spokane Tribal Police if the offender is incarcerated by the Spokane Tribe of Indians while completing any sentence for a covered sex offense, regardless of whether it is the same jurisdiction as the jurisdiction of conviction or residence.
- C. Jurisdiction of Residence. A sex offender must register with the Spokane Tribal Police if the offender resides within lands subject to the jurisdiction of the Spokane Tribe of Indians.
- D. Jurisdiction of Employment. A sex offender must register with the Spokane Tribal Police if the offender is employed by the Spokane Tribe of Indians in any capacity or otherwise is employed within lands subject to the jurisdiction of the tribe.
- E. Jurisdiction of School Attendance. A sex offender must register with the Spokane Tribal Police if the offender is a student in any capacity within lands subject to the jurisdiction of the Spokane Tribe of Indians.

SECTION 5.02 TIMING OF REGISTRATION

- A. Timing. A sex offender required to register with the Tribe under this Chapter shall do so in the following timeframe:
 - 1. If convicted for a covered sex offense and incarcerated, the sex offender must register before being released from incarceration;
 - 2. If convicted for a covered sex offense but not incarcerated, within 3 business days of sentencing for the registration offense, and
 - 3. Within 3 business days of establishing a residence, commencing employment, or becoming a student on lands subject to the jurisdiction of the tribe, a sex offender must appear in person to register with Spokane Tribal Police.
- B. Duties of Spokane Tribal Police. The Spokane Tribal Police shall have policies and procedures in place to ensure the following:
 - 1. That any sex offender convicted in Spokane Tribal Court for a covered sex offense completes their initial registration with the tribe,

2. That the sex offender reads, or has read to them, and signs a form stating that the duty to register has been explained to them and that the sex offender understands the registration requirement,
3. That the sex offender is registered, and added to the public website if applicable and
4. That upon entry of the sex offender's information into the registry, that information is immediately forwarded to all other jurisdictions in which the sex offender is required to register due to the sex offender's residency, employment, or student status.
5. That all information is entered and updated in NCIC/NSOR.

SECTION 5.03 RETROACTIVE REGISTRATION

- A. Retroactive Registration. The Spokane Tribal Police shall have in place policies and procedures to ensure the following three categories of sex offenders are subject to the registration and updating requirements of this Chapter.
 1. Sex offenders incarcerated or under the supervision of the Tribe, whether for a covered sex offense or other crime.
 2. Sex offenders already registered or subject to a pre-existing sex offender registration requirement, and
 3. Sex offenders reentering the justice system due to conviction for any crime.
- B. Timing of Recapture. The Spokane Tribal Police shall ensure recapture of the sex offenders mentioned in Section 5.03(A) within the following timeframe to be calculated from the date of passage of this Chapter:
 1. For Tier I sex offenders, 1 year.
 2. For Tier II sex offenders, 180 days, and
 3. For Tier III sex offenders, 90 days.

SECTION 5.04 KEEPING REGISTRATION CURRENT

- A. Jurisdiction of Residency. All sex offenders who reside in lands subject to the jurisdiction of the Tribe who are required to register in this jurisdiction shall immediately appear in person at the Spokane Tribal Police to update any changes to their name, residence (including termination of residency), employment, or school attendance. All sex offenders required to register in this jurisdiction shall immediately inform the Spokane Tribal Police in person of any changes to their temporary lodging information, and of any changes to their vehicle information, internet identifiers, or telephone numbers. In the event of a change in temporary lodging, of over 7 days the sex offender shall immediately notify the registry official of the residence jurisdiction and the Spokane Tribal Police shall notify the jurisdiction in which the sex offender will be temporary staying.
- B. Jurisdiction of School Attendance. All sex offenders who are students in any capacity within lands subject to the jurisdiction of the Tribe, regardless of location, who change their school, or otherwise terminate schooling, shall immediately appear in person at the Spokane Tribal Police to update that information. The Spokane Tribal Police shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, is immediately notified of the change.

- C. Jurisdiction of Employment. All sex offenders who are employed by the tribe in any capacity or otherwise are employed within lands subject to the jurisdiction of the tribe regardless of location that change their employment, or otherwise terminate their employment, shall immediately appear in person at the Spokane Tribal Police to update that information. The Spokane Tribal Police shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, is immediately notified of the change.

SECTION 5.05 FAILURE TO APPEAR FOR REGISTRATION AND ABSCONDING

- A. Failure to Appear. In the event a sex offender fails to register with the tribe as required by this code, the Spokane Tribal Police or designee shall immediately inform the jurisdiction that provided notification that the sex offender was to commence residency, employment, or school attendance with the tribe that the sex offender failed to appear for registration.

- B. Absconded Sex Offenders. If the Spokane Tribal Police or designee receives information that a sex offender has absconded the Spokane Tribal Police shall made an effort to determine if the sex offender has actually absconded.

1. In the event no determination can be made, the Spokane Tribal Police or designee shall ensure all appropriate law enforcement agencies are notified.

2. If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, they shall be informed that the sex offender has failed to appear and register.

3. If an absconded sex offender cannot be located then the Spokane Tribal Police shall take the following steps:

a. Update the registry/public website to reflect the sex offender has absconded or is otherwise not capable of being located,

b. Notify the U.S. Marshals Service,

c. Seek a warrant for the sex offender's arrest. The U.S. Marshals Service or FBI may be contacted in an attempt to obtain a federal warrant for the sex offender's arrest.

d. Update the NCIC/NSOR to reflect the sex offender's status as an absconder, or is otherwise not capable of being located, and

e. Enter the sex offender into the National Crime Information Center Wanted Person File.

- C. Failure to Register. In the event a sex offender who is required to register due to their residence, employment or school attendance status fails to do so or otherwise violates a registration requirement of this code, the Spokane Tribal Police shall take all appropriate follow-up measures including those outlined in Section 5.05(B). The Spokane Tribal Police shall first make an effort to determine if the sex offender actually resides, is employed or attending school in lands subject to the Tribe's jurisdiction.

PUBLIC SEX OFFENDER REGISTRY WEBSITE

SECTION 6.01 WEBSITE

- A. Website. The Director of Spokane Tribal Information Technology shall use and maintain a public sex offender registry website, hereinafter the "Spokane Tribal Sex Offender Registry Website."

- B. Links. The Spokane Tribal Sex Offender Registry Website shall include links to sex offender safety and education resources.
- C. Instructions. The Spokane Tribal Sex Offender Registry Website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.
- D. Warnings. The Spokane Tribal Sex Offender Registry Website shall include a warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties.
- E. Search Capabilities. The Spokane Tribal Sex Offender Registry Website shall have the capability of conducting searches by (1) name; (2) county, city, and/or town; and, (3) zip code and/or geographic radius.
- F. Dru Sjodin National Sex Offender Public Website. The Tribe shall include in the design of its registry website all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General of the United States.

SECTION 6.02 REQUIRED AND PROHIBITED INFORMATION

- A. Required Information. The following information shall be made available to the public on the Spokane Tribal Sex Offender Registry Website:
 1. Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded,
 2. All sex offenses for which the sex offender has been convicted,
 3. The sex offense(s) for which the offender is currently registered,
 4. The address of the sex offender's employer(s),
 5. The name of the sex offender including all aliases,
 6. A current photograph of the sex offender,
 7. A physical description of the sex offender,
 8. The residential address and, if relevant, a description of a habitual residence of the sex offender,
 9. All addresses of schools attended by the sex offender, and
 10. The sex offender's vehicle license plate number along with a description of the vehicle.
- B. Prohibited Information. The following information shall not be available to the public on the sex offender registry website:
 1. Any arrest that did not result in conviction,
 2. The sex offender's social security number,
 3. Any travel and immigration documents,
 4. The identity of the victim, and

5. Internet identifiers (as defined in 42 U.S.C. § 16911).
- C. Witness Protection. For sex offenders who are under a witness protection program, the Spokane Tribal Police may honor the request of the United States Marshals Service or other agency responsible for witness protection by not including the original identity of the offender on the publicly accessible sex offender registry website.

SECTION 6.03 COMMUNITY NOTIFICATION

- A. Law Enforcement Notification. Whenever a sex offender registers or updates his or her information with the Tribe, the Spokane Tribal Police shall:
 1. Monitor and utilize the SORNA Exchange Portal for inter-jurisdictional change of residence, employment or student status.
 2. Immediately update NCIC/NSOR.
 3. Immediately notify any agency, department, or program within the Tribe that is responsible for criminal investigation, prosecution, child welfare or sex offender supervision functions, including but not limited to, police, whether BIA, tribal, or FBI, tribal prosecutors, and tribal probation.
 4. Immediately notify any and all other registration jurisdictions where the sex offender is registered due to the sex offender's residency, school attendance, or employment.
 5. Immediately notify National Child Protection Act agencies, which includes any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a) when a sex offender registers or updates registration.
 6. Enter or update information posted on the Spokane Tribal Sex Offender Registry Website.
- B. Community Notification. The Director of Spokane Tribal Information Technology shall ensure there is an automated community notification process in place that ensures the following:
 1. Upon a sex offender's registration or update of information with the Tribe, the Tribe's public sex offender registry website is immediately updated.
 2. The Tribe's public sex offender registry has a function that enables the general public to request an email notice that will notify them when a sex offender commences residence, employment, or school attendance with the Tribe, within a specified zip code, or within a certain geographic radius. This email notice shall include the sex offender's identity so that the public can access the public registry for the new information.

IMMUNITY

SECTION 7.00

- A. No waiver of immunity. Nothing under this Chapter shall be construed as a waiver of sovereign immunity of the Spokane Tribe of Indians, its departments, agencies, employees, or agents.
- B. Good faith. Any person acting under good faith of this Title shall be immune from any civil liability arising out of such actions.

CRIMES AND CIVIL SANCTIONS

SECTION 8.00

- A. Criminal Penalty. Each violation of a provision of this code by an Indian shall be considered a crime and subject to a period of incarceration of no more than one year and/or a fine of not more than \$5000.
- B. Civil Penalty. Each violation of a provision of this code by a non-Indian shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of forfeitures, civil contempt, and fines of up to \$5000.
- C. Harboring a Sex Offender
 - 1. A person commits the offense of Harboring a Sex Offender if they:
 - a. Knowingly harbors or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of this Chapter;
 - b. Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, non compliance with the requirements of this Chapter; or
 - c. Provides information to law enforcement agency regarding a sex offender which the person knows to be false.

CHAPTER 9 - OFFENSES INVOLVING CHILDREN

Section 9-1 Desertion and Non-Support of Children

9-1.01 Desertion and Non-Support of Children.

- (a) Any person who shall desert, and without lawful excuse, refuse or neglect to provide for the support or maintenance of a child of such person, including an illegitimate child of such person adjudicated to be the parent thereof, or children in the lawful custody of such person shall be deemed guilty of an offense and upon conviction shall be sentenced to a period of confinement in the Tribal jail not to exceed 90 days or ordered to pay a fine of not to exceed \$300, or both jail sentence and fine, and costs.
- (b) In the event a fine shall be utilized for the maintenance, care and support of such child under the direction and supervision of the Tribal Judge.

Section 9-2 Return of Offenders to Other Requesting Courts

9-2.01 Return of Offenders to Other Requesting Courts. Upon the formal request of any other duly authorized Tribal, State or Federal Court, to return to the jurisdiction of that Court a person by it convicted of failure to support dependent persons, the Court shall cause that person, if within its jurisdiction, to be apprehended, and, if it determines that probable cause exists supporting the charges, shall cause said person to be delivered to the authorities of the requesting Court.

Section 9-3 Contributing to the Delinquency of a Child

9-3.01 Contributing to the Delinquency of a Child. Any person over the age of 17 years who shall willfully by any act or omission encourage, cause or contribute to the delinquency of a child as defined by this Code shall be guilty of an offense and upon conviction thereof, shall be sentenced to a period of confinement not to exceed 90 days or ordered to pay fine of not to exceed \$300 or both the jail sentence and fine, and costs.

Section 9-4 Failure to Send Children to School

9-4.01 Failure to Send Children to School. Any person who, without good cause, neglect or refuses to send his children, or children in his lawful custody, who have not reached age 16, or completed the 8th grade, whichever is first, to school, shall be guilty of an offense and upon conviction thereof, shall be sentenced to a period of confinement not to exceed 90 days or ordered to pay fine of not to exceed \$300 or both the jail sentence and fine, and costs.

Section 9-5 Child Abuse

9-5.01 Child Abuse. Any person who shall willfully and maliciously commit acts of violence and abuse upon any child as defined by this Code shall be deemed guilty of an offense and upon conviction shall be sentenced to a period of confinement in the Tribal jail not to exceed 6 months or ordered to pay a fine of \$500 or both the jail sentence and fine, and costs.

9-6.01 Deleted.

9-7.01 Deleted.

Section 9-8 Curfew

9-8.01 Curfew. Any person who shall, without good cause, allow his children or any children in his custody and care who are under the age of 14 years to be on the streets, highways or other public places within the Spokane Reservation between the hours of 11:00 p.m. and 6:00 a.m., or if they be over the age of 14 years but under the age of 16 years, between the hours of 12:00 midnight and 6:00 a.m., or if they be over the age of 16 years but under the age of 18 years between the hours of 1:00 a.m. and 6:00 a.m. inclusive, on any day preceding a school day, shall be guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 30 days or ordered to pay a fine of not to exceed \$100 or both the jail sentence and fine, and costs; *provided, that* this section shall not apply to children who are accompanied

by a parent or in circumstances where such child is involved in a school function or Tribal ceremonial function.

Section 9-9 Abandoned Ice Boxes or Other Containers Accessible to Children

9-9.01 Abandoned Ice Boxes or Other Containers Accessible to Children. Any person who abandons or discards, in any place accessible to children, refrigerator, ice box, ice chest, or other container of a capacity of 1-1/2 cubic feet or more, which has an attached lid or door which may be opened or fastened shut by means of an attached latch, or who, being the owner, lessee, or manager of a premises knowingly permits such abandoned containers, not in active use, to remain there shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement in the Tribal jail not to exceed 30 days or ordered to pay a fine of not to exceed \$100 or both jail sentence and fine, and costs.

Section 9-10 Purchase, Possession, Consumption and Misrepresentation

9-10.01 Purchase, Possession, Consumption, and Misrepresentation.

- (a) It shall be unlawful for any person under age 21 to purchase, attempt to purchase, possess or control, consume, or exhibit the effects of having consumed alcohol or liquor on the Spokane Reservation.
- (b) It shall be unlawful for any person to represent them self as being 21 in order to attempt to purchase alcohol or liquor at any business on the Spokane Reservation.
- (c) Any person who violates this provision may be sentenced to up to 90 days in jail and/or a fine up to \$1,000.
- (d) The Court shall order any person convicted under this provision to:
 - (1) serve a mandatory minimum of 5 days on house arrest, or in confinement, for the first offense, with a mandatory minimum fine of \$150;
 - (2) serve a minimum of 5 days in confinement, with an increased fine of \$250, for each additional offense, to a maximum of 30 days confinement and a fine of \$1,000;
 - (3) obtain an alcohol and drug evaluation, and to comply with treatment requirements;
 - (4) comply with all conditions of probation, including completing community service requirements in place of fine payments.
- (e) The Court shall order custodial parents or legal guardians of persons, under the age of 18, who are convicted under this section to reimburse the Spokane Tribe for all costs of confinement.

9-10.02 Deleted.

9-10.03 Providing Alcohol to a Minor or Allowing a Minor to Consume Alcohol.

- (a) Except as provided in subsection (e) of this section, any person over the age of 18 who knowingly provides or furnishes alcohol or liquor to a person under age 21, or who knowingly permits a person under age 21 to consume alcohol or liquor shall be guilty of an offense.
- (b) The Court may order any person age 18 and over who is convicted under this section to serve not more than 180 days in confinement and/or to pay a fine of \$1,000, with a minimum sentence of 5 days confinement, and a \$150 fine per minor furnished or permitted to consume alcohol.
- (c) The Court may order any person under age 18 who is convicted under this section to serve not more than 90 days in confinement and/or to pay a fine of \$1,000, with a minimum sentence of 5 days confinement and a \$150 fine per minor furnished or permitted to consume alcohol.
- (d) The minimum sentence in subsections (b) and (c) must be served in confinement, with work or labor credit permitted. The fines may be worked off by performing community services.
- (e) It shall be a defense to the crime of providing alcohol to a minor that the alcohol was provided as follows:
 - (1) by a parent or other person as part of a religious practice; or
 - (2) by a physician or doctor as a part of a medical procedure;and if the amount provided is minimal and the minor is not then allowed to enter any public place or vehicle unescorted by a parent or guardian.

9-10.05 Mandatory Sentence and Fine. **Deleted**

CHAPTER 10 - OFFENSES AGAINST PROPERTY

Section 10-1 Petty Theft

10-1.01 Petty Theft. Any person who shall take personal property of another person having a value of less than \$100, with intent to steal, shall be deemed guilty of petty theft, and upon conviction thereof shall be sentenced to a period of confinement not to exceed 60 days or ordered to pay a fine of, not to exceed \$200, or both jail sentence and fine, and costs.

10-1.02 Grand Theft. Any person who shall take personal property of another person having a value of more than \$100, with intent to steal, shall be deemed guilty of grand theft and upon conviction thereof shall be sentenced to a period of confinement not to exceed 6 months or ordered to pay a fine of not to exceed \$500, or both jail sentence and fine, and costs.

10-1.03 Burglary.

- (a) Any person, with intent to commit a crime against a person or property therein, who enters or remains unlawfully in a building other than a vehicle shall be guilty of burglary.
- (b) Every person who is convicted of burglary shall be punished by confinement for not less than 4 days nor more than 6 months and ordered to pay a fine of not less than \$100 nor more than \$500.
- (c) On a second or subsequent conviction of burglary within a two-year period, such person shall be sentenced to a period of confinement of not less than 30 days nor more than 6 months and ordered to pay a fine of not less than \$250 nor more than \$500.
- (d) In any prosecution for burglary, any person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein, unless such entering or remaining shall be explained by evidence satisfactory to the trier of fact to have been made without such criminal intent.
- (e) Every person who in the commission of a burglary shall commit any other crime may be punished therefore as well as for the burglary and may be prosecuted for each crime separately.

Section 10-2 Embezzlement

10-2.01 Embezzlement. Any person who shall, having lawful custody of property not his own, appropriate the same to his own use with intent to deprive the owner thereof, shall be deemed guilty of embezzlement and upon conviction thereof shall be sentenced to a period of confinement not to exceed 6 months or ordered to pay a fine of not to exceed \$500, or both jail sentence and fine, and costs.

Section 10-3 Fraud

10-3.01 Fraud. Any person who shall by willful misrepresentation or deceit, or by false interpreting, or by the use of false weights or measures, obtain any money or other property, shall be deemed guilty of fraud and upon conviction thereof shall be sentenced to a period of confinement not to exceed 6 months or ordered to pay a fine of \$500, or both jail sentence and fine, and costs.

Section 10-4 Forgery

10-4.01 Forgery. Any person who shall, with intent to defraud, falsely sign, execute, or alter any written instrument shall be deemed guilty of forgery and upon conviction thereof shall be sentenced to a period of confinement not to exceed 6 months or ordered to pay a fine of \$500, or both jail sentence and fine, and costs.

Section 10-5 Extortion

10-5.01 Extortion. Any person who shall willfully by threatened use of unlawful force or by making false charges against another person or by threat to expose any secret, or to expose or impute to any person any deformity or disgrace or by any other means whatsoever, extort or attempt to extort money, goods, property, or anything else of value, shall be guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 6 months or ordered to pay a fine of not to exceed \$500, or both jail sentence and fine, and costs.

Section 10-6 Receiving Stolen Property

10-6.01 Receiving Stolen Property. Any person who shall receive, conceal or possess or aid in receiving, concealing or possessing of any property which he knows to be stolen, embezzled, or obtained by fraud, false pretenses, death, robbery or burglary shall be guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 6 months or ordered to pay a fine of not to exceed \$500, or both jail sentence and fine, and costs.

Section 10-7 Malicious Destruction of Property

10-7.01 Malicious Destruction of Property.

- (a) Any person who shall maliciously disturb, deface, injure or destroy any tangible property not belonging to him shall be deemed guilty of an offense and upon conviction shall be sentenced to a period of confinement not to exceed 90 days or ordered to pay a fine of not to exceed \$300, with a mandatory minimum fine, however, of \$100, or both jail sentence and fine, and costs.
- (b) The parent or parents of a minor child under the age of 18 years who is living with the parents or parents and who shall willfully or maliciously destroy property, real or personal or mixed, shall be liable to the owner of such property in a civil action in Tribal Court for damages in an amount not to exceed \$1,000.
- (c) This section shall in no way limit the amount of recovery against the parent or parents for their own negligence.
- (d) The Spokane Tribe will pay a reward of \$150 to anyone providing information leading to the arrest and conviction of any person or persons responsible for breaking and entering, theft or destruction of any property whatsoever belonging to the Tribe.

Section 10-8 Criminal Trespass to Land

10-8.01 Criminal Trespass to Land.

- (a) Any person who enters upon the land or any part thereof of another, after receiving, immediately prior to such entry, notice from the owner or occupant to depart, shall be guilty of an offense and shall be sentenced to a period of confinement not to exceed 10 days or ordered to pay a fine of not to exceed \$100, or both jail sentence and fine, and costs.
- (b) A person shall have received notice from the owner or occupant within the meaning of this section if he has been notified personally, either orally or in writing, or if a printed or written notice forbidding such entry has been conspicuously posted or exhibited at the main entrance to such land or the forbidden part thereof.
- (c) In cases involving immediate danger to life, health, morals or property of the Tribe, or any Tribal members, and where delay would result in irreparable damage, a Judge of the Spokane Tribal Court may order a law enforcement officer to remove bodily a person or persons not entitled to be on such property.

Section 10-9 Criminal Trespass to Buildings

10-9.01 Criminal Trespass to Buildings.

- (a) Any person who shall enter or secretly remain, without the permission of the owner or other person entitled to be in possession and under circumstances not amounting to burglary, or any person who enters and upon demand refuses to leave, a dwelling house of another, shall be guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 6 months or ordered to pay a fine of not to exceed \$500, or both the jail sentence and fine, plus costs.
- (b) For purpose of this section, a dwelling house of another is defined to include as well as the house any building or other structure which may be used for the protection of persons, animals or property regardless of whether said structures are actually inhabited or not, such structures to include tepees, tents, trailers, camping devices, animal caches and including any structure erected for ceremonial or display purposes.

- (c) In cases involving immediate danger to life, health, morals or property of the Tribe, or any Tribal members, and where delay would result in irreparable damage, a Judge of the Spokane Tribal Court may order a law enforcement officer to remove bodily a person or persons not entitled to be on such property.

Section 10-10 Fence Destruction

10-10.01 Fence Destruction. Any person who shall willfully destroy, or in any manner render ineffective, a fence belonging to another person or the Spokane Tribe shall be guilty of an offense and upon conviction shall be sentenced to a period of confinement not to exceed 60 days or ordered to pay a fine of not to exceed \$200, or both jail sentence and fine, and costs, including restitution for any property damaged by said act.

Section 10-11 Destruction to Signs

10-11.01 Destruction of Signs. Any person who shall maliciously pull down or deface any sign of the Spokane Tribe, state, federal government or any advertisement authorized by law shall be guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 30 days or ordered to pay a fine of not to exceed \$100 or both jail sentence and fine, and costs, and may be required to make restitution for damage caused by such acts.

Section 10-12 Disposing of Property of an Estate

10-12.01 Disposing of Property of an Estate. Any person who, without proper authorization, sells, exchanges, or otherwise disposes of any property of an estate before the heirs have been designated through court action or otherwise shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 90 days or ordered to pay a fine of not to exceed \$300, or both jail sentence and fine, and costs, and may be ordered to make restitution of such property or the proceeds thereof to the proper parties.

Section 10-13 Unauthorized Use of Property

10-13.01 Unauthorized Use of Property. Any person who shall use, without proper authorization, any personal property not belonging to him, including automobiles, and other propelled vehicles, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 90 days or ordered to pay a fine of not to exceed \$300, or both jail sentence and fine, and costs, and such individual may be ordered to make restitution for any damage caused by said act.

Section 10-14 Failure to Report or Control Fire

10-14.01 Failure to Report or Control Fire. Any person, knowing that a fire is endangering life or property, who fails to take prompt and reasonable action to give a fire alarm to any individual, agency or organization having the duty to deal with such emergency or fails to take reasonable measures to put out or control the fire when there is no significant danger to himself, shall be deemed guilty of an offense and, upon conviction thereof, shall be sentenced to a period of confinement not to exceed 30 days or to pay a fine of not more than \$150, or both jail sentence and fine, and costs.

Section 10-15 Throwing Away Burning Materials-Starting Prohibited Fires-Permitting Fire to Spread

10-15.01 Throwing Away Burning Materials-Starting Prohibited Fires-Permitting Fire to Spread. Any person who shall:

- (a) Throw away any lighted or burning tobacco, cigarettes, matches, or other lighted materials,
- (b) Kindle or start a fire on land owned or controlled by him, or who permits or allows other persons to do so, when such a fire is prohibited by this Code,
- (c) Kindle or cause any fire to be kindled other than in a building within a receptacle designed for such fire, and building within a receptacle designed for such fire, and leave said fire without totally extinguishing the same or permit said fire to burn or spread beyond his control, shall be deemed guilty of an offense and, upon conviction thereof, shall be sentenced to a period of confinement not to exceed 5 days, or to pay a fine not to exceed \$25, or both fine and costs.

Section 10-16 Closed Season - Starting Fire Without Permit

10-16.01 Closed Season-Starting Fire Without Permit.

- (a) No person shall kindle or cause or permit any fire to be kindled on the Spokane Reservation, at any place, other than in a building within a receptacle designed for such fire or burning material, during any period in which the Superintendent of the Spokane Agency shall have prohibited such fires without first obtaining a written permit to do so from the Superintendent.
- (b) The permittee shall comply with all of the terms and conditions of such permit.
- (c) Any person violating this section shall, upon conviction, be sentenced to confinement not to exceed 30 days or to pay a fine not to exceed \$250, or both jail sentence and fine, and costs.
- (d) Each day's burning in violation of this section shall be considered a separate offense.
- (e) The parent or parents of a minor child under the age of 18 years who is living with the parent or parents and who shall willfully or maliciously start any fire in violation of this section shall be liable to the property owner in a civil action in Tribal Court for damages in an amount not to exceed \$1,000.
- (f) This section shall in no way limit the amount of recovery against the parent or parents for their own negligence.
- (g) The Spokane Tribe will pay a reward of \$150 to anyone providing information leading to the arrest and conviction of any person or persons responsible for starting a fire on Tribal property in violation of this section.

Section 10-17 Setting Fire to Wooded Area

10-17.01 Setting Fire to Wooded Areas. Any person who shall willfully set on fire any wooded or grassland area of the Spokane Reservation shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 6 months or ordered to pay a fine of not to exceed \$500 or both jail sentence and fine, and costs; provided, that this section shall not apply to those persons who have obtained a Tribal burning permit and have demonstrated efforts on their part of maintaining control of said fire.

CHAPTER 11 - OFFENSES INVOLVING ANIMALS

Section 11-1 Cruelty to Animals

11-1.01 Cruelty to Animals. Any person who shall torture, torment, deprive of necessary sustenance, maliciously mutilate, cruelly kill, or otherwise inflict unnecessary suffering or pain upon any animal which is in his custody or who causes or procures the same shall be guilty of an offense and shall be sentenced to a period of confinement not to exceed 90 days or ordered to pay a fine of not to exceed \$300, or both jail sentence and fine, and costs.

Section 11-2 Illegal Movement of Livestock on Ranges

11-2.01 Illegal Movement of Livestock on Ranges. It shall be an offense to drive livestock from a range within the Spokane Indian Reservation where such livestock are accustomed to range without the knowledge and approval of the owner of such livestock and upon conviction thereof such individual shall be sentenced to a period of confinement in the Tribal jail not to exceed 90 days or ordered to pay a fine of not to exceed \$300, or both jail sentence and fine, and costs.

Section 11-3 Misbranding of Livestock

11-3.01 Misbranding of Livestock. Any person who willfully misbrands or alters a brand or identification mark on any livestock owned by another person shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 6 months or ordered to pay a fine of not to exceed \$500 or both jail sentence and fine, and costs plus restitution to the owner of such animals or the equivalent value thereof in cash.

Section 11-4 Abandonment of Cats and Dogs

11-4.01 Abandonment of Cats and Dogs. Any person who shall willfully abandon small domesticated animals, which shall include but not be limited to, dogs and cats, within the boundaries of the Spokane Reservation or who causes or procures the same shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 30 days or ordered to pay a fine of not to exceed \$100, or both jail sentence and fine, and costs.

Section 11-5 Unattended Livestock

11-5.01 Unattended Livestock. Any person who shall knowingly allow livestock, which shall include but not be limited to, cattle and horses, owned by him or in his custody and care to wander loose and unattended within the boundaries of the Spokane Reservation shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 30 days or ordered to pay a fine of not to exceed \$100 or both jail sentence and fine, and costs.

CHAPTER 12 - OFFENSES INVOLVING CONDUCT

Section 12-1 Disorderly Conduct

12-1.01 Disorderly Conduct. Any person who shall engage in fighting or other violent behavior in a public place; or who shall be disruptive of any public place; or who, because of unreasonable noise, abusive language to any person present, or because of his creation of an offensive or physically hazardous condition, disrupts any public or religious assembly; or who shall appear upon any public road or street, or in any or upon any public place or conveyance, in an indecent, drunken, or maudlin manner shall be deemed guilty of an offense; and upon conviction thereof shall be sentenced to a period of confinement not to exceed 30 days, or ordered to pay a fine not to exceed \$100, or both jail sentence and fine, and costs.

Section 12-2 Maintaining a Public Nuisance

12-2.01 Maintaining a Public Nuisance. Any person who, through his personal conduct, or who permits his property to deteriorate into such a condition as to injure or endanger the safety, health, comfort or property of his neighbor or who shall conduct or hold any public dance, games or contests and allow such activities to become of such a condition as to injure or endanger the safety, health, morals, comfort or property of the public in general shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to a period of confinement not to exceed 60 days or ordered to pay a fine of not to exceed \$200, or both jail sentence and fine and costs, or, at the discretion of the trial Judge, may be ordered to abate or correct the nuisance or offensive condition of his property and a violation of such order or orders shall itself constitute an offense punishable by identical penalties.

Legislative History-Adopted 07/05/06, Resolu. 2006-478

Section 12-3 Unlawful Assembly

12-3.01 Unlawful Assembly.

(a) Whenever 3 or more persons:

(1) Assemble with the intent:

A. to commit any unlawful act by force; or

B. to carry out any purpose in such manner as to disturb the public peace; or

(2) Being assembled, shall attempt to threaten any act which creates a present danger or imminent violence, breach of the peace, or injury to persons or property, or the commission of any unlawful act by force, such assembly is unlawful, and every person participating therein by his presence, aid or instigation, shall be deemed guilty of an offense and, upon conviction, shall be sentenced to a period of confinement not to exceed 90 days or to pay a fine not to exceed \$300, or both jail sentence and fine, and costs.

(b) Every person who shall remain present at the place of an unlawful assembly after having been warned to disburse by a Court or Indian Police, unless such person is a Tribal official or is acting to assist such official at his request, to disburse the assembly to protect persons and property, or to arrest offenders, shall be deemed guilty of an offense and, upon conviction, shall be sentenced to confinement for a period not to exceed 10 days, or to pay a fine not to exceed \$450, or both jail sentence and fine, and costs.

Section 12-4 False Alarm

12-4.01 False Alarms. Any person who shall knowingly cause the transmission of any false emergency alarm to, or within, any individual, agency or organization impressed with the duty of dealing with emergencies involving danger to life and property shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 30 days or ordered to pay a fine of not to exceed \$100, or both jail sentence and fine, and costs.

Section 12-5 Weapons Discharge

12-5.01 Weapons Discharge. Any person who shall willfully discharge any firearm or other deadly weapon, or throw any deadly missile in a public place, or in any place where any person might be

endangered thereby, although no injury results, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to a period of confinement not to exceed 30 days or ordered to pay a fine of not to exceed \$100, or both jail sentence and fine, and costs.

Section 12-6 Concealed Weapons

12-6.01 Concealed Weapons. Any person who shall go about in a public place armed with a deadly weapon concealed upon his person, or, with any firearm if the person is a non-member of the Tribe and not a resident of the Spokane Reservation, unless he shall have a permit signed by a Judge of the Spokane Tribal Court, shall be deemed guilty of an offense and shall be sentenced to a period of confinement not to exceed 60 days or ordered to pay a fine of not to exceed \$200, or both jail sentence and fine, and costs; and the weapon so carried may be confiscated and disposed of by order of the Spokane Tribal Court.

Section 12-7 Possession of Deadly and Dangerous Weapons

12-7.01 Possession of Deadly and Dangerous Weapons.

- (a) Any person other than authorized law enforcement personnel who shall enter the Tribal premises known as the Spokane Tribal Fairgrounds during the annual Tribal Fair carrying on his person or on or in his vehicle any firearm or other dangerous weapon shall be deemed guilty of an offense and shall be sentenced to a period of confinement not to exceed 60 days or ordered to pay a fine of not to exceed \$200, or both jail sentence and fine, and costs; and the weapons so carried may be confiscated and disposed of by order of the Spokane Tribal Court.
- (b) A "dangerous weapon" is any firearm, dagger, numchuck, sword, brass knuckles, knife or other cutting or stabbing instrument, club or any other weapon capable of producing serious bodily harm.

Section 12-8 Aiding and Abetting in the Commission of an Offense

12-8.01 Aiding and Abetting in the Commission of an Offense.

- (a) A person is guilty of a crime as a principal whether that person is present or absent at the commission of the crime, if he assists in such crime or he directly or indirectly hires, commands, or otherwise procures another to commit a crime.
- (b) In order for a person to aid or abet by his presence, he must be ready to assist or assist the perpetrator of the crime by his presence.

CHAPTER 13 - OFFENSES INVOLVING MORAL TURPITUDE

Section 13-1 Gambling

13-1.01 Gambling. Any person who shall violate any law, rule or regulation adopted by the Spokane Tribal Council for the control or regulation of gambling or traditional Indian games on the Spokane Reservation shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 30 days or ordered to pay a fine of not to exceed \$100 or both jail sentence and fine and costs.

Section 13-2 Prostitution

13-2.01 Prostitution. Any person who shall engage in sexual acts as a means of livelihood or who shall knowingly keep, maintain, rent or lease any house, room or tent or other place utilized for such activity or who shall procure any person to engage in such activity, or live off of the earnings of any person engaged in such activity, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 6 months or ordered to pay a fine of not to exceed \$500, or both jail sentence and fine, and costs.

Section 13-4 Huffing

13-4.01 Huffing. Any person who intentionally smells, breathes, or otherwise inhales the fumes of any type of substance, including:

- (a) motor fuel, or any solvent, material substance, chemical, or combination thereof,
- (b) having the property to release toxic vapors,
- (c) in order to cause or induce:
 - (1) symptoms of intoxication,
 - (2) elation,
 - (3) euphoria, or
 - (4) exhilaration

shall be guilty of a crime, and upon conviction, shall be sentenced to confinement for a period of not more than 90 days and a fine of not more than \$1,000.

Section 13-5 Control of Marijuana and Drugs

13-5.01 Control of Marijuana and Drugs.

(a) Definitions:

- (1) "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 there from), fiber, oil, or cake, or the sterilized seed of the plant that is incapable of germination.
- (2) "Drug" means
 - A. substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement to 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 or any function of the body of man or animals; and
 - D. substances intended for use as a component of any article specified in clause (1), (2), or (3) of this subsection. It does not include devices or their components, parts, or accessories. Those drugs specifically listed in Schedules I through V of Chapter 69.50 of the RCW are intended to be controlled by this Chapter.
- (3) "Drug paraphernalia" means all equipment, products, and materials of any kind which

are used, intended for use, 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 marijuana or drugs. 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 marijuana or drugs or from which marijuana or drugs can be derived;
- B. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing marijuana or drugs;
- C. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is marijuana or drugs;
- D. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of marijuana or drugs;
- E. Scales and balances used, intended for use, or designed for use in weighing or measuring marijuana or drugs;
- F. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting marijuana or drugs;
- 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 marijuana or drugs;
- I. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of marijuana or drugs;
- J. Containers and other objects used, intended for use, or designed for use in storing or concealing marijuana or drugs;
- K. Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in injecting drugs into the human body;
- L. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, 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.

(b) In determining whether an object is drug paraphernalia under this section, the court should consider, in addition to all other logically relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any Tribal, state or federal law relating to marijuana or drugs;

- (3) The proximity of the object, in time and space, to a direct violation of this chapter;
 - (4) The proximity of the object to marijuana or drugs;
 - (5) The existence of any residue of marijuana or drugs on the object;
 - (6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom 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;
 - (7) Instructions, oral or written, provided with the object concerning its use;
 - (8) Descriptive materials accompanying the object which explain or depict its use;
 - (9) National and local advertising concerning its use;
 - (10) The manner in which the object is displayed for sale;
 - (11) 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;
 - (12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
 - (13) The existence and scope of legitimate uses for the object in the community; and
 - (14) Expert testimony concerning its use.
- (c) Any person who shall plant, grow, cultivate, keep, have possession of or use marijuana, including marijuana used for medical purposes, or any drugs as defined above, or have possession of paraphernalia as defined above, shall be guilty of an offense and upon the first conviction shall be sentenced to confinement for a period of not more than 90 days, and to pay a fine of not more than \$3,000, provided, however, that for the first offense there shall be a minimum sentence to confinement of 5 days and a minimum fine of \$500.
- (1) For the second offense the minimum sentence shall be 15 days confinement and a \$2,000 fine.
 - (2) For a third offense, and for any subsequent offense, the minimum sentence shall be 30 days confinement and a \$3,000 fine.
- (d) Any person who shall keep for sale or sell, barter or give marijuana, including marijuana for medical purposes, or any such drug as defined above to any person, shall be guilty of an offense and upon conviction thereof shall be sentenced to confinement for a period of not more than 1 year and to pay a fine of not more than \$5,000; provided, however, that for the first offense there shall be a minimum sentence to confinement of 30 days and a minimum fine of \$3,000.
- (1) For the second offense the minimum sentence shall be 60 days confinement and a \$4,000 fine.
 - (2) For a third offense, and for any subsequent offense, the minimum sentence shall be 90 days confinement and a \$5,000 fine.
- (e) The minimum sentences specified above are mandatory.
- (1) Each sentence shall include both the confinement and the fine and neither may be suspended or reduced.
 - (2) Work release programs shall be available only for first offenders.

CHAPTER 14 - OFFENSES INVOLVING TRIBAL GOVERNMENT

14-1.01 Bribery. Any person who shall promise, offer, or give; or cause to be promised, offered, or given; any money, property, services or other gain or advantage to any officer, employee, or representative of any Tribal organization, or to any person acting for or on behalf of any Tribal organization with corrupt intent to influence such individual in the discharge of the official duties for which the person is responsible; and any person who shall accept, solicit, or attempt to solicit, money, property, services, or other gains or advantages, as above defined, shall be deemed guilty of an offense, and upon conviction thereof shall be sentenced to a period of confinement not to exceed 6 months or ordered to pay a fine of not to exceed \$500 or both jail sentence and fine, and costs.

14-2.01 Perjury. Any person who shall willfully and deliberately in any judicial proceeding in the Spokane Tribal Court falsely swear or interpret, or shall make a sworn statement or affidavit knowing the same to be untrue, or shall induce or procure another person to do so, or any Indian who shall make any false affidavit for Tribal enrollment purposes or for other Tribal purposes shall be deemed guilty of perjury and upon conviction thereof, shall be sentenced to a period of confinement not to exceed 30 days or ordered to pay a fine of not to exceed \$100 or both jail sentence and fine, and costs.

14-3.01 False Arrest. Any person who shall willfully and knowingly make or cause to be made, the unlawful arrest, detention or imprisonment of another person shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to a period of confinement not to exceed 6 months or to pay a fine of not to exceed \$500, or both jail sentence and fine, and costs.

14-4.01 Resisting Arrest.

- (a) Any person who shall willfully and knowingly, by force or violence, resist a lawful arrest and detention of himself shall be guilty of resisting lawful arrest.
- (b) Any person who shall flee after observing the presence of law enforcement officer when he has reasonable grounds to believe that he is about to be arrested is also guilty of resisting arrest.
- (c) Upon conviction thereof, he shall be sentenced to confinement for not more than 90 days but not less than 2 days and to pay a fine of not more than \$300 but not less than \$50.

14-4.03 Obstruction of Justice.

- (a) A person shall be guilty of obstruction who, under circumstances not amounting to an assault, as defined in this Code, shall:
 - (1) make a verbal or written statement to a Law Enforcement Officer or public servant, knowing the statement to be false, and intending the Officer or public servant to act on the statement; or
 - (2) knowingly hinder, delay, or obstruct any Law Enforcement Officer or public servant in the discharge of the official duties of the Officer or public official; or
 - (3) knowingly interfere with the lawful execution of any lawful process or mandate of any Law Enforcement Officer or public servant by:
 - A. harboring or concealing any person; or
 - B. warning such person(s) of impending discovery or apprehension; or
 - C. providing a person with money, transportation or other method to avoid discovery or apprehension; or
 - D. deception or threat that prevents a Law Enforcement Officer or public official from discovering or apprehending such person or persons, adults or juvenile.
- (b) Every person who is found guilty of obstruction of justice shall be sentenced to confinement of not more than 90 days and to pay a fine of not more than \$300.

14-4.05 Mandatory Sentence and Fine. The minimum sentences specified in Sections 14-4.01 and 14-4.03 are mandatory.

- (a) Each sentence shall include both the confinement and the fine, and neither shall be suspended or reduced.

14-5.01 Refusing to Aid an Officer. Any person who shall neglect or refuse, when called upon by any Tribal policeman or other law enforcement officer whose authority extends to the Spokane Reservation, to assist in the arrest of any person charged with or convicted of any offense, or in securing such offender to the

nearest place or confinement shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 30 days or ordered to pay a fine of \$100, or both jail sentence and fine, and costs.

14-6.01 Escape. Any person who being in lawful custody, for any offense, shall escape or attempt to escape or who shall permit or assist or attempt to permit or assist another person to escape from lawful custody shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 6 months or ordered to pay a fine of not to exceed \$500, or both jail sentence and fine, and costs.

14-7.01 Disobedience to Lawful Orders of Court. Any person who shall willfully disobey any order, subpoena, warrant or command duly issued, made or given by the Spokane Tribal Court or any officer thereof, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 90 days or ordered to pay a fine of not to exceed \$300, or both jail sentence and fine, and costs.

14-8.01 Misappropriation or Conversion of Tribal Property.

- (a) Any person who embezzles, steals, or misappropriates tangible or intangible property belonging to the Spokane Tribe of Indians, to a Spokane Tribal Enterprise, or to any Spokane Tribal Organization, to their own use or to the use of another, shall be guilty of a crime.
 - (1) "Misappropriate" shall mean the improper or illegal taking of funds or property lawfully held.
- (b) Any person who, without authority, sells, conveys, or disposes of for personal gain, or for the gain of another, tangible or intangible property belonging to the Spokane Tribe of Indians, to a Spokane Tribal Enterprise, or to any Spokane Tribal Organization, shall be guilty of a crime.
- (c) Any person who knowingly converts tangible or intangible property belonging to the Spokane Tribe of Indians, to a Spokane Tribal Enterprise, or to any Spokane Tribal Organization, to their use or the use of another, shall be guilty of a crime.
 - (1) "Convert" means the improper or unauthorized use of property.
- (d) Any person convicted of a violation of this provision shall be sentenced to a period of confinement not to exceed 6 months and/or ordered to pay a fine not to exceed \$500, plus costs of prosecution and restitution.

14-9.01 Unlawful Garbage Disposal. Any person who shall dispose of any garbage, litter or waste anywhere within the exterior boundaries of the Spokane Reservation except in public waste dumping areas so designated by the Spokane Tribal Council or any person who shall leave uncovered animal carcasses or who shall dispose of or dismantle automobiles in said designated public dumping areas or other unauthorized areas shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 30 days or ordered to pay a fine of not to exceed \$100, or both jail sentence and fine, and costs.

14-10.01 Highway Littering. Any person who shall discard litter of any type from any vehicle, whether moving or stationary, while using the roads and highways within the exterior boundaries of the Spokane Reservation shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 30 days or ordered to pay a fine of not to exceed \$100, or both jail sentence and fine, and costs.

14-11.01 Recreation Area Littering. Any person who maliciously breaks any article made of glass by any method within any recreational area, including the shorelines and bottoms of lakes and streams within the exterior boundaries of the Spokane Reservation shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to a period of confinement not to exceed 60 days or ordered to pay a fine of not to exceed \$200, or both jail sentence and fine, plus costs, provided, that any expense entailed by the Tribe in remedying a condition created by such act shall be assessed against such individual in addition to the other penalties.

14-12.01 Fraudulent Bounty Claims. Any person who shall accept a bounty payment from the Spokane Tribe for such predatory animals as have been designated for bounty payments by the Spokane Tribal Council knowing that such animal was taken from outside the exterior boundaries of the Spokane Reservation shall

be deemed guilty of an offense and upon conviction thereof, shall be ordered to pay a mandatory fine of \$100.

14-13.01 Liquor Violations. **Deleted**

14-14.01 Fish and Game Violations.

- (a) Any person who shall violate any law, rule or regulation adopted by the Spokane Tribal Council for the protection or conservation of fish and game of the Reservation shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 60 days or ordered to pay a fine of not to exceed \$200, or both fine and jail sentence, and costs.
- (b) Upon conviction, such individual may by order of the Court, lose all hunting and fishing rights for a period not to exceed 1 year.
- (c) Equipment used in the commission of such offense to a maximum value of \$500 may be confiscated and disposed of by order of the Spokane Tribal Court.

14-15.01 Misuse of Tribal Identification Cards. Any person who willfully and knowingly uses his Tribal identification card for a purpose for which such card is not intended or who loans his Tribal identification card to another person for the purpose of misrepresenting age, identity or to obtain any Tribal privilege, such person is not entitled to and any person who shall use such identification card belonging to another shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to a period of confinement not to exceed 30 days or ordered to pay a fine of not to exceed \$100, or both jail sentence and fine, and costs.

14-16.01 Abuse of Office.

- (a) Any person who shall act or purport to act for the Spokane Tribe in an official capacity, and who knowingly shall use such official or purported official capacity to commit any of the following shall be guilty of an offense:
 - (1) Influence, or attempt to influence, a public servant to violate the public servant's known legal duty or to violate any Tribal or federal law; or
 - (2) Compel or coerce, or use threats of coercion, or employ promises or threats of discipline or termination of the employment of any Tribal employee, to influence, or to attempt to influence, an enrolled Tribal member to vote or not to vote in a particular manner; or
 - (3) Subject any person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights without lawful authority; or
 - (4) Without lawful authority, deny, or impede any person in the exercise or enjoyment of any right, privilege, power, or immunity granted to them under color of law; or
 - (5) Intentionally subject another to sexual harassment; or
 - (6) Discriminate in any manner not permitted by employment preferences on the basis of race, creed, color, sex, age, handicapped status, or national origin.
- (b) No public servant may request or receive, and no person may offer to a public servant, anything of value, benefit, or promise anything of value or benefit, that is conditioned upon or given in exchange for promised performance of an official act or failure to perform an official act. Any person who knowingly violates the provisions of this subsection shall be guilty of an offense.
- (c) Any public servant who commits an act relating to their office or employment that constitutes an unauthorized exercise of their official functions or duties, knowing that such act is unauthorized or is being committed in an unauthorized manner, or knowingly refrains from performing a duty that is imposed upon them by law, shall be guilty of an offense.
- (d) No public servant, whether currently employed or who, after resignation, discharge, termination, or retirement, knowingly shall release, divulge, or distribute, without permission of the Tribal Council, any information gained in the performance of a Tribal governmental function, unless the release, divulging, or distribution is part of the official duties of the public servant. Any public servant who releases, divulges, or distributes any information they obtained as a public servant, including both confidential and routine Tribal matters, except as part of the official

duties of the public servant, shall be guilty of an offense.

(e) Definitions:

- (1) "Official act" means any act that is performed as a governmental function.
- (2) "Public servant" means any Tribal officer, or officer of a Tribal enterprise or corporation, or employee of the Tribe or a Tribal enterprise or corporation, including Tribal Council members, other elected or appointed Tribal officials, or Tribal enterprise Board members; and any person contracted by the Tribe, including, by example, Tribal Judges, Tribal Attorneys, BIA employees performing Tribal functions, and any other Tribal employee or person contracted by the Tribe, who is performing a Tribal governmental function.
- (3) "Things of value" or "benefit" means any money, property, commercial interests, or anything else evidencing economic gain, or any advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he or she may be interested or connected, but not gain or advantage promised generally to a group of individuals or to a class of individuals or voters as a part of the person's employment or public service.

- (f) Any violation of this statute shall be an act of dishonesty. Anyone convicted of violating this statute shall be removed from office or from public service, and shall be sentenced to a period of confinement not to exceed 360 days in jail and / or a fine of \$5,000.

Legislative History-Amended 3/07/06, Resolu. 2005-225; Readopted 8/01/06, Resolu. 2006-524.

Section 14-17 Unauthorized Cutting of Tribal Timber

14-17.01 Unauthorized Cutting of Tribal Timber. Any person who shall cut any standing green timber, including Christmas trees, upon Tribal lands without first obtaining authorization from the Spokane Tribal Council shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 90 days or ordered to pay a fine of not to exceed \$300, and costs, and the Court may order that financial restitution be made by the offender to the Spokane Tribe to compensate for any damages sustained.

14-17.02 Unauthorized Cutting and Gathering of Firewood.

- (a) Any person who shall cut and/or gather firewood on the Spokane Indian Reservation, for resale or removal from the Reservation for any reason, shall first obtain a permit from the Tribal authority.
 - (1) Such a permit shall be good for a maximum of 10 cords per year.
 - (2) Only those persons whose name appears on the permit shall cut or gather wood under this permit. Any wood cut and/or gathered to be taken off the Reservation shall be inspected and recorded by the proper authority, as designated by the Tribal Council.
- (b) Any violator of this provision shall be subject to a civil fine of a maximum of \$500, a loss of their wood, and a forfeiture of their permit.

Section 14-18 Destruction of Public Property

14-18.01 Destruction of Public Property. Any person who mischievously or maliciously defaces or destroys any public property located within the exterior boundaries of the Spokane Reservation, such property including all property of the Spokane Tribe and of the United States government, shall be guilty of an offense and upon conviction thereof, shall be sentenced to a period of confinement not to exceed 30 days or ordered to pay a fine of not to exceed \$100, or both jail sentence and fine, and costs.

Section 14-19 Prohibited Practices of Tribal Officials

14-19.01 Prohibited Practices of Tribal Officials. No person serving in an official capacity for the Spokane Tribe shall use his position to procure special privileges or exemptions for himself, his spouse, child, parent, or relation by blood to the second degree and any violation of this prohibition shall be deemed an offense punishable by a period of confinement not to exceed 30 days or a fine of not to exceed \$100, or both jail sentence and fine, and costs.

Section 14-20 Destruction of Landmarks or Navigational Aids

14-20.01 Destruction of Landmarks or Navigational Aids. Any person who shall willfully remove, move, alter, deface or destroy any boundary marker, navigation marker or other water or landmark installed by the Spokane Tribe or the United States government within the limits of the Spokane Reservation shall be deemed guilty of an offense and upon conviction shall be sentenced to a period of confinement not to exceed 3 months or ordered to pay a fine of not to exceed \$300, or both jail sentence and fine, and costs, and may be ordered by the Court to make financial restitution to the Spokane Tribe as compensation for any damage caused by such actions.

Section 14-21 Intimidation

14-21.01 Intimidation.

- (a) A person is guilty of intimidation if the person:
- (1) Murders, attempts to murder, or assaults another person to prevent:
 - A. the person's attendance or testimony in any official proceeding; or
 - B. the production of a record, document, or other object in any official proceeding.
 - (2) Threatens to use physical force, or induces another to threaten to use physical force, against any person or the property of any person with the intent:
 - A. to influence, delay, or prevent the testimony of any person in an official proceeding; or
 - B. to prevent the production of a record, document, or other object in any official proceeding; or
 - C. to testify falsely or, without right or privilege to do so, to withhold any testimony; or
 - D. to withhold from a law enforcement agency or public official, including any judicial officer, information that the person has:
 - i. relating to the commission or possible commission of a criminal offense; or
 - ii. relating to a violation of conditions of probation, parole, or release pending judicial proceedings.
 - (3) Threatens to use physical force or harm in any manner against any public official or voter with the intent:
 - A. to influence or curtail the exercise of discretion by the public official or voter, or
 - B. to influence the public official to violate any public duty that has been entrusted to the public official.
- (b) Any person found guilty of intimidation shall be sentenced to a period of confinement of not less than 90 days in jail and not more than one year in jail, and to pay a fine of not less than \$1,000 and not more than \$5000, or both jail sentence and fine, and costs.
- (1) No portion of the fine or jail sentence may be served on house arrest, community labor or community service.
 - (2) Any person who murders, attempts to murder, or assaults another person in violation of this provision shall be prosecuted for the act of intimidation and for the murder, attempted murder, or assault.

Section 14-22 Desecration of Graves

14-22.01 Desecration of Graves. Any person who shall willfully or knowingly desecrate in any manner any grave or burial ground or deface, alter or destroy any Indian painting or marks or remove, alter or destroy any Indian artifact located within the exterior boundaries of the Spokane Reservation shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to a period of confinement not to exceed 6 months or ordered to pay a fine of not to exceed \$500, or both jail sentence and fine, and costs.

Section 14-23 Attempts

14-23.01 Attempts. Any person committing an act with the intent to commit any offense defined by this Code, intending to but failing to accomplish such offense, shall be deemed guilty of attempt, and unless otherwise specified in this Chapter, upon conviction shall be punished by a fine and/or jail sentence not to exceed, as a maximum, ½ the maximum provided herein for the offense itself.

Section 14-24 Destruction of Evidence

14-24.01 Destruction of Evidence. Any person who shall willfully and knowingly destroy, conceal or withhold, with intent to prevent such from being used, any evidence that could be used in the trial of a case shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 90 days or ordered to pay a fine of not to exceed \$300, or both jail sentence and fine, and costs.

Section 14-25 Desecration of Flag

14-25.01 Desecration of Flag. Any person who shall publicly deface, alter, mutilate, defile or desecrate in any manner, including display in an unorthodox fashion, an official flag, color or design of the United States, the State of Washington, or of the Spokane Tribe shall be sentenced to a period of confinement not to exceed 10 days or ordered to pay a fine of not to exceed \$300, or both jail sentence and fine, and costs.

Section 14-26 Violation of Tribal Code or Resolution

14-26.01 Violation of Tribal Code or Resolution. Any Indian who violates any Code or Resolution approved and promulgated by the Spokane Tribal Council which is designated to preserve the peace and welfare of the Tribe shall be deemed guilty of an offense and upon conviction thereof shall be sentenced as provided in the Code or Resolution, provided that any non-Indian who violates any Code or Resolution approved and promulgated by the Spokane Tribe shall be subject only to the imposition of monetary civil penalties contained in any Code, and/or the initiation and completion of exclusion proceedings as set out in Chapter 21 of this Code and/or any court order issued in conformity with such Code to correct the violation of such Code, and/or such other civil remedies that are appropriate.

Section 14-27 Punishment for Violation Where Omitted

14-27.01 Punishment for Violation Where Omitted. Where an act or omission is made or deemed an offense under this Code, or by other Codes or by Resolution of the Spokane Tribal Council, but no specific penalty is imposed, upon conviction thereof, such guilty individual shall be sentenced to a period of confinement in the Tribal jail not to exceed 90 days or ordered to pay a fine of not to exceed \$300, or both jail sentence and fine and costs.

Section 14-28 Discretion of Court

14-28.01 Discretion of Court.

- (a) A Judge of the Spokane Tribal Court shall have the discretion to impose a sentence or judgment that may include confinement, payment of fines ad costs, community service, restitution, forfeiture, and conditions of probation.
- (b) The Judge may:
 - (1) convert confinement to labor, pursuant to the RSLOC § 16-1.01;
 - (2) schedule confinement to conform to an inmate's work, family, or treatment schedule;
 - (3) convert fines to labor, pursuant to the RSLOC § 16-1.02;
 - (4) permit performance of community service in the place of confinement or payment of fines;
 - (5) order the defendant to pay restitution in an amount that will reimburse the victim for any physical loss or damages;
 - (6) order that property used in the commission of the crime, and owned by the defendant, be forfeited for the sale, use, or destruction by the Tribe or other law enforcement agency; and
 - (7) establish conditions of probation relevant to the facts of the case.
- (c) Community service shall be confined to service:
 - (1) solely for the benefit of the Tribe or a Tribal enterprise;
 - (2) under the direction or supervision of a probation officer;
 - (3) credit given solely for work satisfactorily completed.

Section 14-29 Operation of Snow Vehicles by Non-Indians

14-29.01 Operation of Snow Vehicles by Non-Indians.

- (a) Non-Indians residing within the boundaries of the Spokane Reservation shall be allowed to operate snowmobiles on the Reservation provided they comply with regulations set forth herein and applicable laws of the State of Washington.

- (b) Non-Indians who are not permanent residents of the Reservation shall not be allowed to operate snowmobiles within the Reservation except by written consent of the Spokane Tribal Council or authorized representative.
- (c) The issuance of such consent shall be at the discretion of the Council and is not to be construed as invitation by the Council.
- (d) The penalty for violating this subsection shall be a fine of not to exceed \$250 or a jail sentence of 30 days, or both the jail sentence and fine.

CHAPTER 15 - TRAFFIC VIOLATIONS

Section 15-1 Traffic Violations Generally

15-1.01 Purpose. The purposes of this Chapter are to ensure that:

- (a) The public roadways within the Reservation are safe and that operators of motor vehicles have reasonable rules and standards which govern their driving in order to protect the health and safety of Tribal members and other persons on the Spokane Indian Reservation;
- (b) Those persons who violate the rules of conduct of this Chapter while operating a motor vehicle are deterred from violating rules in the future; and,
- (c) Those persons who violate the rules of conduct of this Chapter pay the expenses incurred by the Spokane Tribe in enforcing this Chapter.

15-1.02 Findings.

- (a) Hundreds of motorists traverse the Spokane Indian Reservation on a daily basis.
- (b) This high volume of traffic necessarily has a direct effect on the health and welfare of Spokane Tribal members and all persons on the Spokane Indian Reservation.
- (c) Regulation of those traveling through Spokane Tribal territory is historically and traditionally based.
 - (1) For example, such travelers traditionally were approached and confronted about their purpose for entering Tribal territory.
 - (2) If their purpose was deemed a threat to the health and welfare of the Spokane people, and therefore "unlawful," they were either escorted out of the territory or were otherwise dealt with accordingly.
- (d) Due to changes in travel mode by way of motor vehicles, the Tribe's traditional regulation of travel has shifted its focus from the purpose of the travel to the method of the travel.
- (e) This code embodies the Tribe's traditional values to address contemporary needs.
- (f) A civil traffic code enforced by the appropriate law enforcement authority that is applicable to all motorists who operate vehicles within the Spokane Indian Reservation will play a direct role in ensuring that vehicles are operated within the Reservation in a safe manner and will accordingly protect Tribal members and all residents of, and persons traveling on, the Spokane Indian Reservation.

15-1.03 Jurisdiction. The Spokane Tribe shall exercise the maximum personal, subject matter, and territorial jurisdiction permissible by law over the highways and roadways within the exterior boundaries of the Spokane Indian Reservation and on the lands under the jurisdiction of the Spokane Tribe.

Legislative History-Enacted 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

15-1.04 Explanation of Privilege. The operation of a vehicle on the Spokane Indian Reservation is a privilege that may be granted, denied, suspended, or revoked by the Spokane Tribe.

15-1.05 Enforcement.

- (a) The provisions of this Chapter shall be enforced by all duly commissioned police officers.
- (b) Any enforcement officer commissioned by the Tribe shall, upon request, produce evidence of his or her commission.

15-1.06 Violations. Violations of this Chapter, both civil and criminal, shall be heard in the Tribal Court for the Spokane Tribe of Indians, and any fines levied as a result of convictions upon such violations shall be paid to the Tribal Court.

15-1.07 Means of Exercising Jurisdiction. In exercising its jurisdiction over traffic infractions, if a process is not specified under this Chapter, the Tribal Court may adopt any suitable process consistent with the purposes of this Chapter and in harmony with the spirit of due process and Spokane Tribal law.

15-1.08 Occupational Driver's license.

- (a) Any Indian whose driver's license has been suspended by the Spokane Tribal Court or the State of Washington may request from the Tribal Court an occupational driver's license.

- (b) Such person is eligible if:
 - (1) that person's license was not revoked or suspended for a vehicular homicide or a vehicular assault;
 - (2) the applicant is engaged in an occupation or trade or Court-ordered service that makes it essential that the applicant operate a motor vehicle to continue in the occupation or trade or comply with the Court-ordered service; and,
 - (3) the applicant has filed proof that the applicant has an automobile liability policy that covers injury to persons and property.
- (c) If the Court decides that an occupational driver's license is to be issued, the Court shall describe the type of occupation or services permitted, the hours of the day the person may drive to and from work or the service provider's office (which may not exceed 12 hours in any 1 day); the days of the week during which the license may be used, and, the general routes over which the person may travel.
- (d) These restrictions shall be prepared in written form by the Court, which document shall be carried in the vehicle at all times and presented to a law enforcement officer upon request.
- (e) There shall be a reasonable fee for issuance of an occupational driver's license.
- (f) Any violation of the restrictions by the holder of the occupational license shall be a violation of
- (g) 15-13.06, Operating a Motor Vehicle While Privilege is Suspended or Revoked.

15-1.09 Prior Traffic Code Repealed. Effective the date of enactment, this Chapter repeals and supersedes all prior traffic Codes, codes or laws of the Spokane Tribe.

Section 15-2 Civil Traffic Infractions Definitions

15-2.01 Definitions.

- (a) Words in this Chapter shall have the meaning given to them in this Chapter unless the context clearly indicates another meaning.
- (b) If the meaning of a word is not clear, the Court shall construe the meaning of the word in harmony with the purposes of this Chapter.
- (c) All definitions set forth in this Section are also applicable to Section 15-13, Criminal Traffic Infractions.
 - (1) **[RESERVED]**
 - (2) **[RESERVED]**
 - (3) "Actual physical control" means any person who is seated in the driver's seat of a motor vehicle or is in a position to regulate the vehicle's.
Legislative History-Enacted 4/7/00, Resolu. 2000-179; Amended 7/05/06, Resolu. 2006-478; Readopted 8/01/06, Resolu. 2006-524.
 - (4) "Alley" means a way or passage used primarily as a means of access to the rear of a residence, a business establishment, and other buildings that is not designed for general travel.
 - (5) "Authorized emergency vehicle" means any vehicle used by a fire department, Tribal or federal law enforcement department, sheriff's office, Washington State Patrol, municipal law enforcement department, or ambulance service for legitimate emergency purposes.
 - (6) "Crest of a grade" means the highest point on an ascending roadway.
 - (7) "Driver or operator" means any person who is the operator of a vehicle or is in actual physical control of a vehicle.
 - (8) "Driveway" means a way or passage used for travel of vehicles by persons possessing the right to occupy the place or passage but not by others.
 - (9) "Enforcement officer" means every person commissioned by the Spokane Tribal Council to serve as a Spokane Enforcement Officer and officers commissioned by the United States.

- (10) "Highways" means all streets, roads, and highways within the territorial jurisdiction of the Spokane Indian Tribe maintained or built by the Tribe, State of Washington, county, or U.S. Government.
- (11) "Laned road" means a roadway which is divided into clearly marked lanes for vehicular travel.
- (12) "Motorcycle" means every motor vehicle having a seat for the use of the rider and designed to travel on not more than 3 wheels in contact with the ground, excluding mopeds and farm vehicles.
- (13) "Motor vehicle" means a self-propelled vehicle designed for operation upon land utilizing a motor as the means of propulsion.
- (14) "Off-road vehicle" means any motorized vehicle when used for recreational travel on trails or cross country travel on land, snow, ice, marsh, swampland, or other natural terrain, but not on roadways.
- (15) "Owner" means a person who has lawful right of possession of a vehicle, not merely permission to use the vehicle.
- (16) "Park or parking" means to stop and keep standing a vehicle for a time other than for the purpose of temporarily loading or unloading.
- (17) "Revoke" means invalidation of a person's privilege to drive for a period of at least 1 year until reissued.
- (18) "Right-of-way" means the privilege of the immediate use of a roadway.
- (19) "Roadway" means a way or passage designed or ordinarily used for vehicular travel and roads and bridges subject to federal oversight.
- (20) "Stand or standing" means the halting of a vehicle, other than temporarily to load or unload.
- (21) "Stop" means to halt a vehicle even momentarily except when directed to do so by a traffic sign.
- (22) "Suspended" means invalidation of a person's privilege to drive for less than 1 year until reinstated.
- (23) "Traffic" means pedestrians, ridden or herded animals, and vehicular conveyances either singly or together, while using a roadway for purpose of travel.
- (24) "Vehicle right-of-way" means the right of 1 vehicle to proceed in a manner in preference to another vehicle.
- (25) "Tribal Court" and "Court" mean the Spokane Tribal Court.
- (26) "Tribe" means the Spokane Tribe of Indians.
- (27) "Reservation" means all lands and water areas within the exterior boundaries of the Spokane Reservation established by Executive Order, January 18, 1881, and any extensions thereof, and all Spokane Tribal and allotted Indian lands outside the exterior boundaries of the Spokane Indian Reservation.

Section 15-3 Civil Traffic Infraction Procedure

15-3.01 Notice of Infraction-Issuance by Enforcement Officer. An enforcement officer has the authority to issue a notice of civil traffic infraction:

- (a) When the infraction occurs in the enforcement officer's presence;
- (b) When an enforcement officer investigating the scene of an accident has reasonable cause to believe a civil traffic infraction has been committed; or
- (c) When an enforcement officer discovers an unattended vehicle parked, stopped, or standing, contrary to this Chapter.

15-3.02 Notice of Infraction - Issuance by the Tribal Court. The Tribal Court may issue a notice of civil traffic infraction upon receipt of a written statement of an enforcement officer that there is probable cause to believe that an infraction has been committed.

15-3.03 Notice of Traffic Infraction-Determination Final Unless Contested-Form. A notice of traffic infraction represents prima facie evidence that an infraction has been committed. The determination will be final unless contested as provided in this Chapter.

- (a) The form for the notice of traffic infraction shall include the following:

- (1) A statement that the notice represents a determination that a traffic infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this Chapter;
- (2) A statement that a traffic infraction is a non-criminal offense for which imprisonment may not be imposed as a sanction; that the penalty for a traffic infraction may include the suspension or revocation of a person's privilege to operate a motor vehicle on the Reservation;
- (3) A statement of the specific traffic infraction for which the notice was issued;
- (4) A statement of the monetary fine established for the traffic infraction;
- (5) A statement of the options provided in this Chapter for responding to the notice and the procedures necessary to exercise these options;
- (6) A statement that at any hearing to contest the determination the Tribe has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may request the Court to subpoena witnesses, including the officer who issued the notice of infraction;
- (7) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction the person will be deemed to have committed the infraction and may not subpoena witnesses;
- (8) A statement that the person must either pay the fine or respond to the notice as provided in this Chapter within 15 days or the person's privilege to operate a motor vehicle within the Reservation may be suspended or revoked;
- (9) A statement that failure to either pay the fine or appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances shall result in a determination that the infraction was committed and the appropriate penalty, which may include suspension or revocation of the person's privilege to operate a motor vehicle within the Reservation;
- (10) A statement that failure to respond to a notice of traffic infraction and/or the non-payment of a fine may result in the person's case being sent to a collection agency, and;
- (11) A statement that the person promises to respond to the notice of infraction in 1 of the ways provided in this Chapter. If the person refuses to sign the infraction, the officer shall write "refused" in place of the person's signature. A person who refuses to sign a citation is presumed to have notice of its contents.

15-3.04 Response to Notice of Infraction-Contesting Determination-Hearing-Failure to Appear.

- (a) Any person who receives a notice of traffic infraction shall respond to such notice as provided in this section within fifteen days of the date of the notice.
- (b) If the person determined to have committed the infraction does not contest the determination, the person shall respond by completing the appropriate portion of the notice of infraction, verifying his/her correct address, and submitting it, either by mail or in person, to the Spokane Tribal Court.
 - (1) A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response.
 - (2) Payment with cash must be made in person.
 - (3) When a response which does not contest the determination is received, an appropriate order shall be entered in the Court's records, and a copy of the order shall be mailed to the person who committed the infraction at the address listed on the citation.
- (c) If the person determined to have committed the infraction wishes to contest the determination, the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the Spokane Tribal Court.
 - (1) The Court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be sooner than 7 days from the date of the notice, except by agreement.
- (d) If the person determined to have committed the infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, the person shall

respond by completing the portion of the notice of infraction requesting a hearing for that purpose, verifying his/her current address, and submitting it, either by mail or in person, to the Spokane Tribal Court.

- (1) The Court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be sooner than 7 days from the date of the notice, except by agreement.
- (e) If any person who is issued a notice of traffic infraction:
- (1) Fails to respond to the notice of traffic infraction as provided in subsection (b) of this section; or
 - (2) Fails to appear at a hearing requested pursuant to subsection (c) or (d) of this section, the Court shall enter an appropriate order assessing the monetary penalty prescribed for the traffic infraction and any other penalty authorized by Spokane Tribal Law.

15-3.05 Hearings - Procedure and Counsel.

- (a) Procedures for the conduct of all hearings provided for in this Chapter, to the extent that they are consistent with the procedures set forth herein, may be established by rules of Court approved by the Tribal Council as may be recommended by the Chief Judge of the Spokane Tribal Court.
- (b) Any person subject to proceedings under this Chapter may be represented by counsel at their own expense.
- (c) The Tribe may be represented by counsel or a prosecutor.

15-3.06 Hearing Contesting the Determination That an Infraction Has Been Committed-Appeal. A hearing held for the purpose of contesting the determination that an infraction has been committed shall be without a jury.

- (a) The Court may consider the notice of traffic infraction and any other written report made under oath submitted by the officer who issued the notice or whose written statement was the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the officer, and has the right to present evidence and examine witnesses present in Court.
- (b) The burden of proof is upon the Tribe to establish the commission of the infraction by a preponderance of the evidence.
- (c) After consideration of the evidence and argument, the Court shall determine whether the infraction was committed.
 - (1) Where it has not been established that the infraction was committed, an order dismissing the notice of infraction shall be entered in the Court's records.
 - (2) Where it has been established that the infraction was committed, an appropriate order shall be entered in the Court's records.
- (d) An appeal from the Court's determination or order shall be to the Spokane Tribal Court of Appeals.
 - (1) The decision of the Spokane Tribal Court shall be upheld by the Court of Appeals unless it is demonstrated that the Tribal Court decision was arbitrary, capricious, an abuse of discretion or was not based upon the law.

15-3.07 Hearing to Explain Mitigating Circumstances.

- (a) A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding.
 - (1) The person may not subpoena witnesses.
 - (2) The determination that an infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.
- (b) After the Court has heard the explanation of the circumstances surrounding the commission of the infraction, the Court may impose a fine/penalty which shall not exceed the amount listed in 15-12.01, Penalties, and an appropriate order shall be entered in the Court's records.
- (c) There may be no appeal from the Court's determination or order.

15-3.08 Order of Court.

- (a) All orders entered by the Court under this sub-Chapter are civil in nature.
- (b) The Court may, in its discretion, waive, reduce, or suspend the fine.
- (c) The Court may also order suspension or revocation of the driver's privilege to operate a vehicle within the jurisdiction of the Tribe.

15-3.09 Suspension.

- (a) The Court may order a driver's privilege to drive within the jurisdiction of the Tribe suspended as part of any penalty ordered under this Section.
- (b) This suspension may be conditioned on the performance or non-performance of certain activities, a clean driving record, and/or the payment of fines, in the discretion of the Court.

15-3.10 Occupational License. When a driver's privilege to drive is suspended or revoked under this Chapter, the Court may, in its discretion, provide for a limited occupational license for that driver as set forth in Section 15-1.08, Occupational Driver's License.

15-3.11 Court Authorized to Send Cases to Collection Agency. The Court shall assign cases involving the non-payment of fines, or delinquent payment of fines, to a collection agency approved by the Spokane Tribal Council.

15-3.12 Court's Contempt Powers. The Court may employ its full contempt powers set forth in Section 1-8.01, Contempt of Court, in cases arising under this Chapter.

Section 15-4 Vehicle Safety Equipment

15-4.01 Vehicle Safety Equipment-Generally. It is a civil traffic infraction for any person to fail to comply with any provision set forth in this Section.

15-4.02 Required Safety Equipment. No person shall drive any motor vehicle on a roadway which does not have the following safety equipment in proper condition and adjustment:

- (a) Bumpers, front and rear.
- (b) Headlights: at least 2 working headlights, with at least 1 on each side of the front of the vehicle.
- (c) Horn.
- (d) Muffler, in good working order to prevent excessive or unusual noise.
- (e) Parking Brakes adequate to hold the vehicle on any grade on which it is operated.
- (f) Service Brakes adequate to control the movement of and to stop and hold such vehicle on any grade incident to its operation.
- (g) Stop Lamps: at least 2 stop lamps on the rear of the vehicle which shall clearly display a red or amber light and which shall be visible upon application of the service brakes.
- (h) Taillights: at least 2 taillights mounted on the rear which shall emit a red light plainly visible from a distance of 1 thousand feet to the rear of the vehicle.
- (i) Windshield: a front windshield in such condition as to permit the driver a clear view.
- (j) Windshield Wipers.

15-4.03 Vehicles to be Equipped with Tires-Safe Condition Defined.

- (a) Every motor vehicle shall be equipped with tires in safe operating condition.
- (b) A tire shall be considered to be unsafe if it has:
 - (1) Any ply or cord exposed either to the naked eye or when cuts or abrasions on the tire are probed;
 - (2) Any bump, bulge or knot, affecting the tire structure;
 - (3) Any break repaired with a boot;
 - (4) Markings on the tire specifying that the tire is not intended for use on a roadway, such as "for racing purposes only";
 - (5) Any condition that reasonably demonstrates that the tire is unsafe.

15-4.04 Multiple-beam Headlights.

- (a) The headlights of all motor vehicles shall be so arranged that the driver may select at will between high and low beams of lights.
- (b) The high beams shall be so aimed and of such intensity as to reveal persons and vehicles at a distance of 450 feet ahead.
- (c) The low beams shall be so aimed and of such intensity to reveal persons and vehicles at a distance of 150 feet ahead.
- (d) On a straight level road, none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

15-4.05 Use of Multiple-beam Headlights. Whenever a motor vehicle is being operated on a roadway and visibility conditions warrant additional light, the driver shall use headlights with a beam sufficient to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to these requirements:

- (a) Whenever a driver of a motor vehicle approaches an oncoming vehicle within 500 feet, such driver shall use low beams.
- (b) Whenever a driver of a motor vehicle approaches another vehicle from the rear within 300 feet, such driver shall use low beams.

15-4.06 Spot Lamps. Whenever a motor vehicle is equipped with spot lamps or other auxiliary lamps, such lamps shall not be of such intensity and adjustment as to strike the eyes of approaching drivers.

15-4.07 Times When Headlights, Taillights are Required to Be On. No person shall drive or move any vehicle on a roadway without headlights and taillights turned on from ½ hour after sunset to ½ hour before sunrise and any time visibility conditions diminish a driver's clear view.

15-4.08 Wheel Projections. No vehicle shall be equipped with wheel nuts, hubcaps, or wheel disks which project outside the body of the vehicle in a manner constituting a hazard to pedestrians and cyclists.

15-4.09 Body Projections. The body, fenders, and bumpers of all vehicles shall be maintained without protrusions which could be hazardous to pedestrians and cyclists.

15-4.10 Flags On Projecting Load.

- (a) No person shall drive or move any vehicle on a roadway, without red signal flags, at least 12 inches square, marking the extremities, whenever the load upon the vehicle extends 4 or more feet beyond the body of the vehicle.
- (b) During hours of darkness, such extremities shall be marked with a red light plainly visible from a distance of at least 500 feet from the sides and rear.
- (c) This light shall be in addition to the red taillights required on every vehicle.

15-4.11 Safety Belt - Use Required.

- (a) Every person operating or riding in a motor vehicle shall wear a safety belt assembly in a properly adjusted and securely fastened manner.
- (b) No person may operate a motor vehicle unless all passengers are either wearing a safety belt assembly or are securely fastened into an approved child restraint device.
- (c) A person violating this section shall be issued a notice of traffic infraction under this Chapter.
- (d) Failure to comply with the requirements of this section does not constitute negligence, nor may failure to wear a safety belt assembly be admissible as evidence of negligence in any civil action for damages.
- (e) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of this Chapter or some other offense.
- (f) This section does not apply to an operator or passenger who possesses written verification from a licensed physician that the operator or passenger is unable to wear a safety belt for physical or medical reasons.

- (g) This section only applies to motor vehicles that meet the manual seat belt safety standards as set forth in Federal Motor Vehicles Safety Standard 208. This section does not apply to a vehicle's occupant for whom no safety belt is available when all designated seating positions as required by Federal Motor Vehicles Safety Standard 208 are occupied.

15-4.12 Child Passenger Restraints Required.

- (a) Whenever a child who is less than 5 years of age is being transported in a motor vehicle, the child shall be properly restrained in a child restraint system that complies with the standards of the United States Department of Transportation and that is secured in the vehicle in accordance with the instruction of the manufacturer of the child restraint system.
- (b) A person violating subsection (a) of this section may be issued a notice of traffic infraction under this Chapter.
- (c) If the person to whom the notice of infraction was issued presents proof of subsequent acquisition of an approved child passenger restraint system within 7 days to the Tribal Court, the Tribal Court may dismiss the notice of traffic infraction.
- (d) Failure to comply with the requirements of this section shall not constitute negligence by a parent or legal guardian; nor shall failure to use a child restraint system be admissible as evidence of negligence in any civil action for damages.
- (e) This section does not apply to:
 - (1) For-hire vehicles,
 - (2) Vehicles designed to transport sixteen or less passengers, including the drivers, operated by auto transportation companies, and
 - (3) Vehicles providing customer shuttle service between parking, hotel facilities, casinos, and bingo halls.
- (f) Enforcement of this section by law enforcement officers may be accomplished as a primary action when the law enforcement officer has a reasonable belief that the unrestrained child is less than 5 years of age.

15-4.13 Motorcycle Safety Equipment. No person shall drive or move any motorcycle which does not have the following safety equipment in proper condition and adjustment:

- (a) Brakes which operate on the front and rear wheels.
- (b) Headlight: at least 1.
- (c) Stop Lamps: at least 1 stop lamp which shall clearly display a red or amber light and which shall be visible upon application of the service brakes.
- (d) Taillight: at least 1.
- (e) Mirrors on the left and right sides of the motorcycle which shall be so located as to give the driver a complete view of the highway for a distance of at least 200 to the rear of the motorcycle or motor driven cycle; provided, that mirrors shall not be required on any motorcycle or motor driven cycle over 25 years old originally manufactured without mirrors and which has been restored to its original condition and which is being ridden to or from or otherwise in conjunction with an antique or classic motorcycle contest; provided further, that no mirror is required on any motorcycle manufactured prior to January 1, 1931.
- (f) Helmet worn on the head and equipped with either a neck or chin strap which shall be fastened securely while the motorcycle or motor-driven cycle is in motion.

15-4.14 Motorcycles-Headlight and Taillights to Be On. Every motorcycle shall have its headlight and taillight on whenever such vehicle is in motion on any roadway.

15-4.15 Motorcycles-Exhaust System. No person shall modify the exhaust system of a motorcycle in any manner or fail to maintain the exhaust system so as to amplify or increase the noise above the level emitted by the muffler originally installed on the motorcycle.

15-4.16 Motorcycles-Eye Protection. No person shall drive or ride as a passenger on any motorcycle on any roadway without wearing glasses or goggles or a face shield which protects the eyes.

15-4.17 Moving Vehicle in Unsafe Condition. It is a civil traffic infraction to drive or move any vehicle which is in such unsafe condition as to endanger any person.

15-4.18 Bicycle Equipment. Every bicycle when in use during the hours of darkness, defined as any time from ½ hour after sunset to ½ hour before sunrise, shall be equipped with a lamp on the front which shall emit a white light visible for at least 500 feet to the front and with a red reflector on the rear.

Section 15-5 Rules of the Road

15-5.01 Rules of the Road-Generally.

- (a) It shall be a civil traffic infraction for any person to fail to comply with any of the provisions set forth in this Chapter.
- (b) If a vehicular accident occurs in conjunction with a violation of Sections 15-4.12, Child Passenger Restraints, 15-10.07, Passing School Bus, or 15-10.14, Leaving Children Unattended in Vehicle, the penalty as listed in Section 15-12.01, Penalties, shall be doubled.

15-5.02 Drivers to Be Licensed. No person shall operate a vehicle within the Reservation without first being issued valid operator's license by the Spokane Tribe, any state of the United States or Canada.

15-5.03 Notification of Change in Address or Name.

- (a) Whenever any person, after applying for and receiving a driver's license or identification card, moves from the address named in the application or on the license or identification card issued to him or her or when the name of the licensee or holder of an identification card is changed by marriage or otherwise, the person shall, within 10 days thereafter, notify the appropriate licensing agency or agency that issued the identification card in writing on an appropriate form of his or her old and new address or of such former and new names and the number of any license held by him or her.
- (b) If any person fails to comply with this section, in addition to any monetary penalty imposed pursuant to this Chapter, any notice regarding the cancellation, suspension, revocation, probation, or non-renewal of the driver's license, driving privilege, or identification card mailed to the address of the licensee or identification card holder is effective notwithstanding the licensee's or identification card holder's failure to receive the notice.

15-5.04 Operator's License on Person. No person shall operate a vehicle within the jurisdiction of the Tribe without possessing on their person or in the vehicle operated a valid operator's license issued to him or her by the Spokane Tribe, any state of the United States or Canada.

15-5.05 Learner's Permit. No person under the age of sixteen years of age shall operate a vehicle within the Reservation except in full compliance with all requirements of a valid state or Tribal learner's permit.

15-5.06 Motorcycle Endorsement Required. No person shall drive a motorcycle or a motor-driven cycle, except a moped, unless such person has a valid driver's license duly issued by the Spokane Tribe, any state of the United States or Canada to enable the holder to drive such vehicles, nor may a person drive a motorcycle or motor-driven cycle of a larger engine displacement than that authorized by the special endorsement.

15-5.07 Vehicle License Required.

- (a) It is unlawful for a person to operate any vehicle on any roadway on the Reservation without first having obtained and having in full force and effect a current and proper vehicle license displayed. Failure to make an initial registration before operation in the public roadways within the Reservation is a civil offense, and any person found liable thereof shall be fined. Failure to renew an expired registration before operation on the public roadways within the Tribe's territorial jurisdiction is a traffic infraction.
- (b) These provisions shall not apply:
 - (1) To farm vehicle(s) if operated within a radius of fifteen miles of the farm where principally used or garaged, farm tractors and farm implements including trailers designed as cook or bunk houses used exclusively for animal herding temporarily operating or drawn upon the public roadways, and trailers used exclusively to transport

farm implements from 1 farm to another during daylight hours or at night when such equipment has lights that comply with the law;

- (2) To spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation, and nurse rigs or equipment auxiliary to the use of and designed or modified for the fueling, repairing or loading of spray and fertilizer applicator rigs and not used, designed or modified primarily for the purpose of transportation; or
- (3) To forklifts operated during daylight hours on public highways.

15-5.08 Liability Insurance or Other Financial Responsibility Required.

- (a) No person may operate a motor vehicle on roads within the territorial jurisdiction of the Tribe unless the person is insured under an acceptable motor vehicle liability policy, is self-insured, is covered by an acceptable certificate of deposit, or is covered by an acceptable liability bond. "Acceptable" means, for the purposes of this section:
 - (1) An insurance policy or bond issued by an insurance company or surety company authorized to do business within the exterior boundaries of the Spokane Indian Reservation or within the State of Washington which, in the case of an accident resulting in bodily injury or death, is subject to a limit of not less than twenty-five thousand dollars due to bodily injury or death of 1 person in any 1 accident, exclusive of interest and costs and, subject to said limit for 1 person, to a limit of not less than fifty thousand dollars due to bodily injury or death of 2 or more persons in any 1 accident, and, if the accident has resulted in injury to, or destruction of, property of others, to a limit of not less than \$10,000 dollars.
 - (2) An amount consistent with the laws of the State of Washington (currently RCW 46.29.090, Requirements as to policy or bond; RCW 46.29.550, Money or securities as proof, or, RCW 46.29.630, Self-insurers), or;
 - (3) If a person drives a motor vehicle that is required to be registered in another state or country that requires drivers and owners of vehicles to maintain insurance or financial responsibility, then in an amount required by said state or country.
- (b) Written proof of financial responsibility for motor vehicle operation as set forth in subsection (a) of this section must be provided at the request of a law enforcement officer who stops the driver of a vehicle.
- (c) When asked to do so by a law enforcement officer who stops the driver of a vehicle, the driver's failure to produce proof of insurance creates a rebuttable presumption that the driver does not have motor vehicle insurance.
- (d) Failure to provide proof of motor vehicle insurance is a traffic infraction and is subject to the penalties set forth in this Chapter.
- (e) If a driver cited for a violation of subsection (a) of this section appears in person before the Tribal Court and provides written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (a) of this section, the citation shall be dismissed. In lieu of personal appearance, a person cited for a violation of subsection (a) of this section may, before the date scheduled for the person's appearance before the Court, submit by mail to the Court written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (a) of this section, in which case the citation shall be dismissed without cost, except that the Court may assess Court administrative costs at the time of dismissal.
- (f) The provisions of this section shall not apply to operation of a motorcycle, a motor-driven cycle, or a moped.

15-5.09 Vehicle License Registration Certificate Required.

- (a) A certificate of vehicle license registration issued by the Tribe, any state of the United States, Canada or Mexico, to be valid, must have endorsed thereon the signature of the registered owner (if a firm or corporation, the signature of 1 of its officers or duly authorized agent) and must be carried in the vehicle for which it is issued.

- (b) It shall be unlawful for any person to operate or have in his possession a vehicle without carrying thereon such a certificate of vehicle license registration.
- (c) Any person in charge of such vehicle shall, upon demand of a law enforcement officer, permit inspection of such certificate of vehicle license registration.

15-5.10 Revocation of License for Refusal to Submit to Breath or Blood Test.

- (a) Any person who operates a motor vehicle on the Spokane Indian Reservation is deemed to have given consent to a test or tests of their breath or blood for the purpose of determining the alcoholic or drug content of their breath or blood if arrested for any offense when at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs.
- (b) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within the Reservation while under the influence of intoxicating liquor.
- (c) The officer shall warn the driver that the privilege to drive will be revoked or suspended if the driver refuses to submit to the test, and that such refusal to take the test may be used as evidence in a criminal trial.
 - (1) The period of suspension for refusing a test the first time is 6 months, and the second time within 2 years is a 1-year suspension.
 - (2) The period of suspension for refusing a breath test if convicted of Vehicular Manslaughter is 10 years and if convicted of Vehicular Assault is 5 years.
- (d) However, in those instances where:
 - (1) The person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample; or
 - (2) as a result of a traffic accident the person is being treated for a medical condition in a hospital, clinic, doctor's office, or other similar facility in which a breath testing instrument is not present; a blood test shall be administered only by a physician, a registered nurse, or a qualified technician.
- (e) Except as provided in this subsection, the test administered shall be of the breath only.
- (f) If an individual is unconscious or is under arrest for the crime of vehicular homicide or vehicular assault, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs, which arrest results from an accident in which another person has been injured and there is a reasonable likelihood that such other person may die as a result of injuries sustained in the accident, a breath or blood test may be administered without the consent of the individual so arrested.
- (g) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (a) of this section, to have received the warnings required under subsection (c) of this section and the test or tests may be administered.
- (h) If, following the driver's arrest and warnings, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of the driver's breath or blood, no test shall be given except as authorized under subsection (e) or (f) of this section.
- (i) The Tribal Court, upon the receipt of a sworn report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this Reservation while under the influence of intoxicating liquor or drugs and that the person had refused to submit to the test or tests upon the request of the law enforcement officer after being informed that refusal would result in the suspension or revocation of the person's privilege to drive on the Spokane Indian Reservation, shall revoke the person's license or permit to drive or any non-resident operating privilege.
- (j) Upon revoking the license, permit, or privilege to drive, the Tribal Court shall immediately notify the person involved in writing by personal service or by certified mail of its decision and the

grounds therefore, and of the person's right to a hearing, specifying the steps that must be taken to obtain a hearing.

- (1) Within 15 days after the notice has been given, the person may, in writing, request a formal hearing.
 - (2) For the purposes of this section, the scope of such hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this Reservation while under the influence of intoxicating liquor, whether the person was placed under arrest, and whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the suspension or revocation of the person's privilege to drive on the Reservation.
 - (3) The Court shall order that the suspension or revocation be rescinded or sustained.
 - (4) Any decision by the Tribal Court to revoke a person's driving privilege on the Spokane Indian Reservation shall be stayed and shall not take effect while a formal hearing is pending as provided in this subsection or during the pendency of a subsequent appeal to the Spokane Tribal Court of Appeals so long as there is no conviction for a moving violation or no finding that the person has committed a traffic infraction that is a moving violation during the pendency of the hearing and appeal.
- (k) If the suspension or revocation is sustained after such a hearing, the person whose license, privilege, or permit is suspended or revoked has the right to file a petition in the Spokane Tribal Court of Appeals to review the final order of suspension or revocation.

15-5.11 Yield to Emergency Vehicles. The driver of every vehicle shall yield the right-of-way by pulling over to the far right of the road and stopping upon immediate approach of an authorized emergency or law enforcement vehicle making lawful use of sirens and visual signals.

15-5.12 Following Fire Vehicle Prohibited. The driver of any vehicle other than 1 of official business shall not follow any official fire vehicle traveling in response to a fire alarm, closer than 500 feet.

15-5.13 Crossing Fire Hose. No person shall drive or move a vehicle over any unprotected fire hose without consent of the fire official in command.

15-5.14 Emergency Vehicles Exempted from Speed Limits - Due Care Required.

- (a) The speeds designated in this Chapter shall not apply to authorized emergency vehicles when operated in emergencies.
- (b) Nothing in this Chapter shall relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using a roadway.

15-5.15 Motorcycles - Operation on Laned Roads.

- (a) All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in a way that deprives a motorcycle of the full use of a lane.
- (b) The operator of a motorcycle shall not overtake and pass in the same lane as is occupied by the vehicle being overtaken.
- (c) The operator of a motorcycle shall not overtake and pass a vehicle while any oncoming vehicles are adjacent to the vehicle being overtaken.
- (d) Motorcycles shall not be operated more than 2 abreast in a lane.
- (e) Subsections (b) and (c) shall not apply to enforcement officers in the performance of their official duties.
- (f) It is unlawful for any person to transport a child under the age of 5 on a motorcycle or motor-driven cycle.

15-5.16 Motorcycles - Riding on the Permanent Seat Only.

- (a) A person operating a motorcycle shall ride only upon the permanent and regular seat attached to the motorcycle and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than 1 person.

(b) A passenger shall ride only upon a seat designated for that purpose.

15-5.17 Motorcycles - Foot pegs. A motorcycle must be equipped with foot pegs for each person the motorcycle is designated to carry.

15-5.18 Motorcycles - Both Feet Not to Be On the Same Side. No person shall ride a motorcycle in a position where both feet are placed on the same side of the motorcycle.

15-5.19 Motorcycles-Clinging to Other Vehicles. No person riding upon a motorcycle shall attach him or herself or the motorcycle to any other vehicle on a roadway.

15-5.20 Motorcycles - Temporary Suspension of Rules for Public Demonstrations. The law enforcement supervisor may suspend certain provisions of this Chapter relating to operation of motorcycles for the purpose of allowing public demonstrations of motorcycle operation.

Section 15-6 Off-road Vehicles

15-6.01 Off-road Vehicles. It shall be unlawful for any person to drive a vehicle except on existing roadways anywhere within the jurisdiction of the Tribe unless the person has prior permission of the landowner.
Legislative History-Enacted 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

Section 15-7 Pedestrians

15-7.01 Pedestrians-Drivers to Exercise Care. Every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall exercise proper precaution upon seeing any child or incapacitated person upon a roadway.

Section 15-8 Property Damage - Materials on the Road

15-8.01 Throwing Glass or Other Materials on Road Prohibited.

- (a) No person shall throw or deposit upon or adjacent to any roadway any glass, nails, tacks, wire, cans, bottles, or any other objects likely to injure any person, animal or vehicle upon or near such roadway.
- (b) Any person removing a wrecked or damaged vehicle from a roadway shall remove any glass or other injurious object or substance dropped from the vehicle onto the roadway, provided such removal does not interfere with or jeopardize an on-going law enforcement investigation.

15-8.02 Permitting Escape of Load and Other Materials. Any person operating a vehicle from which any glass or other objects have fallen or escaped which could endanger travel upon the roadway shall immediately remove all such glass or objects from the roadway.

15-8.03 Interference with Signs and Signals. No person shall deface, injure, or remove any official traffic signs or signals.

Section 15-9 Speed Limits - Due Care Required

15-9.01 Speed Limit. No person shall drive a vehicle in excess of the posted speed limits within the jurisdiction of the Tribe or as designated by this Chapter for the particular district or location on a roadway.

15-9.02 Residential Speed Limit. In residential areas which are not posted, no person shall drive a vehicle in excess of 25 miles per hour.

15-9.03 Due Care Required.

- (a) No person shall drive a vehicle or a bicycle upon a roadway in a manner or at a speed greater than is reasonable and prudent, having due regard for the traffic, surface, and width of the roadway and the hazards at intersections and any other conditions then existing.
- (b) Nor shall any person drive in a manner or at a speed which is greater than will permit the driver to exercise proper control of the vehicle or bicycle and to decrease speed or to stop as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the roadway in compliance with legal requirements and with the duty of drivers and other persons using the roadway to exercise due care.

15-9.04 Speed Limits-Changes by the Spokane Tribal Council. The Spokane Tribal Council may determine whether the maximum speed limits within the Tribe's jurisdiction are greater or less than is reasonable and

safe under the conditions of a particular road or section of road and may declare a reasonable and safe maximum speed limit and cause same to be posted.

Section 15-10 Vehicle Travel - Rules of the Road

15-10.01 Drive on the Right Side of the Road. Every vehicle shall be driven on the right side of the roadway except as follows:

- (a) When overtaking and passing another vehicle proceeding in the same direction;
- (b) When a roadway is not sufficiently wide;
- (c) When an obstruction exists making it necessary to drive to the left of center; provided that any person so doing shall yield the right-of-way to oncoming traffic.

15-10.02 Turning, Stopping, Moving Right or Left-Signals Required.

- (a) No person shall turn a vehicle or move right or left upon a road unless such movement can be made with reasonable safety and unless the proper hand or lighted turn signal is given.
- (b) Whenever the signal is given by means of the hand and arm, the driver shall indicate the driver's intention to:
 - (1) turn to the left by extending the left hand and arm horizontally from and beyond the left side of the vehicle,
 - (2) turn to the right by extending the left hand and arm upward and beyond the left side of the vehicle, and
 - (3) stop or suddenly decrease speed by extending the left hand and arm downward from and beyond the left side of the vehicle.
- (c) The signal herein required is to be given before turning to the right or the left, whether by means of the hand and arm or by means of an approved mechanical or electrical device.

15-10.03 Turning at Intersections. The driver of a vehicle intending to turn at an intersection shall do so as follows:

- (a) Approach for a right turn shall be made in the lane for traffic nearest to the right-hand side of the roadway and the right turn shall be made as closely as practicable to the right-hand curb or edge of the roadway.
- (b) Approach for a left turn shall be made in the lane for traffic to the right and nearest to the centerline of the roadway and the left turn shall be made by passing to the right of such center line where it enters the intersection, and upon leaving the intersection by passing to the right of the center line of the roadway then entered; provided, that the provisions of this subsection shall not apply to passenger vehicles actually engaged in loading or unloading passengers at an intersection prior to making a left turn.

15-10.04 Right-of-way-Vehicle Turning Left. The driver of a vehicle intending to turn left into an alley, driveway, or other road shall yield the right-of-way to any vehicle approaching from the opposite direction.

15-10.05 Right-of-Way-Yielding for Road Construction. The driver of a vehicle shall yield the right-of-way to any authorized vehicle or pedestrian engaged in work upon a road.

15-10.06 Overtaking and Passing. The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction:

- (a) A driver may overtake and pass another vehicle only while traveling on the left side of the road and shall not again drive on the right side of road until safely clear of the overtaken vehicle;
- (b) A driver may overtake and pass another vehicle only when the left side of the road is clearly visible and free of oncoming traffic for a sufficient distance ahead to avoid interfering with the flow of oncoming traffic;
- (c) No vehicle shall be driven on the left side of the road when approaching or upon the crest of a grade or a curve in the road where the driver's view is obstructed;
- (d) No driver shall at any time drive on the left side of the road where signs or markings are in place to define a no-passing zone; and,
- (e) A driver shall overtake and pass another vehicle in a safe manner.

15-10.07 Passing School Bus.

- (a) The driver of a vehicle approaching a school bus from either direction shall stop the vehicle before reaching the school bus when the school bus displays a visual signal to stop.
- (b) The driver shall not proceed until such visual signal is withdrawn.

15-10.08 Following Too Closely. The driver of a vehicle shall not follow another vehicle more closely than is reasonable for the speed and travel conditions.

15-10.09 "U" Turns. The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction unless such movement can be made safely, without interfering with other traffic.

15-10.10 Backing. A driver shall not back a vehicle unless such movement can be made safely and without interfering with the other traffic.

15-10.11 Traffic Signs, Signals and Markings. The driver of any vehicle and every bicyclist shall obey the instructions of any official traffic sign, signal and marking placed within the jurisdiction of the Tribe, unless otherwise directed by an enforcement officer, or flagger, or emergency response personnel.

15-10.12 Stopping, Standing or Parking on Road.

- (a) No person shall stop, park, or leave standing any vehicle so as to interfere with traffic on the traveled portion of the road.
- (b) This prohibition shall not apply to the driver of any vehicle which is disabled to the extent that it is impossible to avoid temporarily leaving the vehicle in such position.
- (c) The driver shall arrange for prompt removal of the vehicle.

15-10.13 Stopping, Standing or Parking Prohibited in Certain Places. No person shall stop, park, or leave standing any vehicle, in front of any driveway except momentarily to pick up or discharge a passenger at any place where official signs or markings prohibit stopping, standing, or parking.

15-10.14 Leaving Children Unattended in Vehicle. No person shall leave children under the age of 12 years unattended in a vehicle.

15-10.15 Obstructing the Driver's View. No person shall drive a vehicle when it is so loaded as to obstruct the driver's view to the front and sides of the vehicle or as to interfere with the driver's control over the vehicle.

15-10.16 Alcoholic Beverages – Prohibited. Deleted

15-10.17 Negligent Driving, Second Degree.

- (a) A person is guilty of negligent driving in the second degree if, under circumstances not constituting negligent driving in the first degree, he or she operates a motor vehicle on the Reservation in a manner that is both negligent and endangers or is likely to endanger any person or property.
- (b) Negligent driving in the second degree is a traffic infraction, the penalty for which is a fine of not less than \$150.
- (c) For the purposes of this section "negligent" means the failure to exercise ordinary care, and is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do something that a reasonably careful person would do under the same or similar circumstances.
- (d) Any act prohibited by this section that also constitutes a crime under any other law of the Spokane Tribe may be the basis for prosecution under such other law notwithstanding that it may also be the basis for prosecution under this section.

Section 15-11 Suspension of Driving Privileges & Reporting Stolen Vehicles

15-11.01 Suspension of Driving Privileges of Minor in Consumption.

- (a) Any Indian minor who has been adjudicated of the offense of Minor in Consumption shall have his privilege to drive on the Reservation suspended for a period of 1 year.
- (b) For a second offense, said minor shall have his privilege to drive on the Reservation suspended for 2 years.

- (c) Any further offenses shall result in suspension of driving privileges on the Reservation until age 21.

15-11.02 Driver's Duty to Report. It shall be the duty of any person involved in a collision with an attended or unattended vehicle or property, as soon as practicable following the collision, to notify law enforcement of such collision.

15-11.03 Record of Traffic Charges. The Court shall keep or cause to be kept a record of every notice of civil traffic infraction or other traffic charge filed with the Court and shall keep a record of every official action the Court takes in relation to a civil traffic infraction or other traffic charge.

15-11.04 Persons Under Influence of Intoxicating Liquor or Drugs-Evidence-Tests-Information Concerning Tests.

- (a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.08, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.
- (b) The breath analysis shall be based upon grams of alcohol per 2 hundred 10 liters of breath. The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.
- (c) Analysis of the person's blood or breath to be considered valid under the provisions of this section or Section 15-13.01, Driving While Under the Influence of Intoxicating Liquor or Drugs, shall have been performed according to generally accepted methods and by an individual possessing appropriate training and skills.
- (d) When a blood test is administered, the withdrawal of blood for the purpose of determining its alcohol or drug content may be performed only by a physician, a registered nurse, or a qualified technician. This limitation shall not apply to the taking of breath specimens.
- (e) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer 1 or more tests in addition to any administered at the direction of a law enforcement officer.
- (1) The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.
- (f) Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or her or his or her attorney.

Section 15-12 Fine Schedule

15-12.01 Penalties. The following schedule of fines applies to the civil traffic infractions enumerated in this Chapter:

<u>SLOC</u>	<u>INFRACTION</u>	<u>FINE</u>
15-4.02	Required safety equipment	66
15-4.03	Vehicles to be equipped with tires	66
15-4.04	Multiple-beam headlights	66
15-4.05	Use of multiple-beam headlights	66
15-4.06	Spot lamps	66
15-4.07	Times when headlights, taillights are required to be on	66
15-4.08	Wheel projections	66
15-4.09	Body projections	66
15-4.10	Flags on projecting load	66
15-4.11	Safety belts - use required	66
15-4.12	Child passenger restraints required	66

15-4.13	Motorcycle safety equipment	66
15-4.14	Motorcycles - headlights and taillights to be on	66
15-4.15	Motorcycles - exhaust system	66
15-4.16	Motorcycles - eye protection	66
15-4.17	Moving vehicles in unsafe condition	66
15-4.18	Bicycle equipment	66
15-5.02	Drivers to be licensed	332
15-5.03	Failure to notify licensing agency regarding name/address change	
15-5.04	Operator license on person	66
15-5.05	Failure to comply with learner's permit	66
15-5.06	Motorcycle endorsement required	66
15-5.07	Vehicle license required	66
15-5.08	Failure to show proof of liability insurance	475
15-5.09	Failure to show registration with signature	66
15-5.10	Failure to Submit to Breath or Blood Test	500
15-5.11	Failure to yield to emergency vehicles	100
15-5.12	Following fire vehicle	100
15-5.13	Crossing fire hose	66
15-5.15	Motorcycles - operation on laned roads	66
15-5.16	Motorcycles - riding on the permanent seat only	66
15-5.17	Motorcycles - foot pegs	66
15-5.18	Motorcycles - both feet not to be on same side	66
15-5.19	Motorcycles - clinging to other vehicles	66
15-6.01	Off-road vehicles	76
15-7.01	Pedestrians - drivers to exercise care	66
15-8.01	Throwing glass or other materials on road prohibited	152
15-8.02	Permitting escape of load and other materials	152
15-8.03	Interference with signs, signals	100
15-9.01	Exceeding speed limit:	
	If Speed Limit is 40 MPH or less:	
	<u>MPH</u>	
	1-5 over	57
	6-10 over	66
	11-15 over	95
	16-20 over	133
	21-25 over	180
	26-30 over	228
	31-35 over	275
	36- over	332
	If Speed Limit is over 40 MPH:	
	<u>MPH</u>	
	1-5 over	38
	6-10 over	57
	11-15 over	85
	16-20 over	114
	21-25 over	142
	26-30 over	180
	31-35 over	228
	36-40 over	275
	Over 40	332
	21 MPH and over the speed limit constitutes Reckless Driving under Section 15-13.05	
15-9.03	Due care required	66
15-10.01	Drive on the right side of the road	66

15-10.02	Turning, stopping, moving – right or left signals required	66
15-10.03	Turning at intersections	66
15-10.04	Right-of-way - vehicle turning left	66
15-10.05	Right-of-way - yielding for road construction	114
15-10.06	Overtaking and passing	66
15-10.07	Passing school bus	152
15-10.08	Following too closely	66
15-10.09	“U” turns	66
15-10.10	Backing	152
15-10.11	Traffic signs, signals and markings	66
15-10.12	Stopping, standing or parking on road	57
15-10.13	Stopping, standing or parking in certain places	47
15-10.14	Leaving children unattended	100
15-10.15	Obstructing the driver’s view	66
15-10.17	Negligent driving second degree	150
15-11.02	Failure to report	66

Section 15-13 Criminal Traffic Infractions

15-13.01 Driving While Under the Influence of Intoxicating Liquor, Drugs or Other Intoxicants.

- (a) A person is guilty of driving while under the influence of intoxicating liquor, any drug or other intoxicant if that person drives a vehicle within the Reservation while:
 - (1) having 0.08 grams or more of alcohol per 2 hundred 10 liters of breath as shown by analysis of the person’s breath;
 - (2) having 0.08 percent or more by weight of alcohol in the person’s blood as shown by analysis of the blood;
 - (3) under the influence of or affected by any, some, or all of the following: intoxicating liquor, any drug or glue or other intoxicating substance; or any combination of such substances.
- (b) The fact that any person charged with a violation of this section is or has been entitled to use of such drug under the laws of the Tribe, or any other jurisdiction, shall not constitute a defense against any charge of violating this section.
- (c) Driving While Under the Influence is punishable by a period of incarceration of not less than 5 days nor more than 30 days; a fine of not less than \$100 and not more than \$300, or both such fine and imprisonment.
- (d) A second or subsequent conviction of the crime of Driving While Under the Influence within 5 years shall be punishable by a period of incarceration of not less than 30 days and not more than 90 days; a fine of not less than \$300 and not more than \$500, or both such fine and imprisonment.

15-13.02 Physical Control of Vehicle Under the Influence.

- (a) Definitions:
 - (1) “Actual physical control” means any person who is seated in the driver’s seat of a motor vehicle or is in a position to regulate the vehicle’s movement;
Legislative History-Amended 07/05/06, Resolu. 2006-478
 - (2) “Moved” means the vehicle has been driven or removed from the roadway and did not leave the roadway as a result of a collision or other force beyond the control of the vehicle’s driver;
 - (3) “Safely off the roadway” for purposes of this provision means that the driver or another person has moved the vehicle from the traveled portion of the roadway, the vehicle is no longer running, and the evidence shows the driver no longer intends to drive back onto the roadway.
- (b) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor, or any drug, if the person has actual physical control of a vehicle within the Reservation:
 - (1) While the person has an alcohol concentration of 0.08 or higher; or

- (2) While the person is under the influence of or affected by intoxicating liquor or any drug;
or
 - (3) While the person is under the combined influence of or affected by intoxicating liquor and any drug.
- (c) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of the Spokane Revised Law and Order Code does not constitute a defense to any charge of violating this section.
- (1) No person may be convicted under this section if, before being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.
 - (2) The Court shall punish a violation of this section in the same manner as violations of the RSLOC Provision 15-13.01.

15-13.05 Reckless Driving.

- (a) Any person who shall drive or operate any motor vehicle in a wanton or willful disregard for the safety or properties of the people of the Reservation shall be deemed guilty of reckless driving.
- (b) Any person who drives 21 miles per hour over the speed limit shall be deemed guilty of reckless driving.
- (c) Reckless driving is punishable by a period of incarceration of not less 2 days in jail and no more than 20 days; a fine of not less than \$150 and no more than \$300, or both such fine and imprisonment.

15-13.07 Negligent Driving In the First Degree.

- (a) Negligent Driving In the First Degree
 - (1) A person is guilty of negligent driving in the first degree if that person operates any motor vehicle on the Reservation in a manner that is both negligent and endangers or is likely to endanger any person or property, and exhibits the effects of having consumed liquor or an intoxicating drug or substance.
 - (2) It is an affirmative defense to negligent driving in the first degree by means of exhibiting the effects of having consumed an intoxicating drug that must be proved by the defendant by a preponderance of the evidence, that the driver has a valid prescription for the drug consumed, and has been consuming it according to the prescription directions and warnings.
 - A. A person found guilty of negligent driving shall be incarcerated for a period not less than 2 days nor more than 15 days; ordered to pay a fine of not less than \$100 nor more than \$250, or both such fine and imprisonment.
- (b) For the purposes of this section:
 - (1) "Negligent" means the failure to exercise ordinary care, and is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do something that a reasonably careful person would do under the same or similar circumstances.
 - (2) "Exhibiting the effects of having consumed liquor" means that a person has the odor of liquor on his or her breath, or exhibits by speech, manner, appearance, behavior, lack of coordination, or otherwise that he or she has consumed liquor, and either:
 - A. Is in possession of or in close proximity to a container that has or recently had liquor in it; or,
 - B. Is shown by other evidence to have recently consumed liquor.
 - (3) "Exhibiting the effects of having consumed an intoxicating drug or substance" means that a person by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that the person has consumed an intoxicating drug or substance and either:
 - A. Is in possession of an intoxicating drug or substance; or
 - B. Is shown by other evidence to have recently consumed an intoxicating drug or substance.
 - (4) "Intoxicating drug" means a controlled substance under the Controlled Substances Act, Title 21 U.S.C. § 801 *et seq.*, for which the driver does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings,

or other illegal drug under federal law which adversely affects a person's ability to operate a motor vehicle.

15-13.09 Hit and Run of Unattended Car or Other Property.

- (a) A person is guilty of hit and run of unattended car or other property within the Reservation when an operator of any vehicle which collides with any other vehicle or other property, which is unattended, fails to immediately stop and either:
 - (1) locate and notify the owner or operator of said vehicle or other property, of his or her name and address or,
 - (2) leave in a conspicuous place in or on the vehicle, or other property, a written notice, giving the name, address and telephone number of the operator and owner of the vehicle striking such vehicle or other property.
- (b) Hit and run of unattended car or other property is punishable by not less than 5 days, nor more than 30 days incarceration; a fine of not more than \$150 nor more than \$350, or both such fine and imprisonment.

15-13.11 Hit and Run of an Attended Vehicle or Other Property.

- (a) A driver is guilty of hit and run of an attended vehicle or other property within the Reservation when the driver is involved in a collision resulting in the apparent injury to or death of any person or damage to property as a proximate result of the collision, fails to immediately stop such vehicle at the scene of such accident or as close thereto as possible, without obstructing traffic more than necessary, forthwith return to, and remain at the scene of such accident until the driver has fulfilled requirements listed in section (b).
- (b) The driver of any vehicle involved in a collision resulting in apparent injury to or death of any person or damage to any vehicle which is driven or attended by another person or damage to other property shall give his or her name, address and vehicle license number and shall exhibit his or her vehicle driver's license to any person struck or injured or the driver or any occupant of, or any person attending, any such vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person or on his or her behalf. In the event that none of the persons specified are in a condition to receive the information to which they otherwise would be entitled under this section, and no police officer is present, the driver of any vehicle involved in such accident after fulfilling all other requirements of this section insofar as possible on his or her part to be performed, shall forthwith report such accident to the police authority and submit thereto the information specified in this section.
- (c) A driver transporting an injured person pursuant to subsection (b) above shall not, absent a showing of gross negligence, be liable for any injuries or damages incurred during the transporting of the injured person.
- (d) A driver incurring the duties as set forth in Section (b) above shall not transport an injured person if the driver is, in any manner, however slight, under the influence of any intoxicating substance described in section 15-3.01.
 - (1) Transporting an injured person, while the driver is under the influence, however slight, of alcohol, drug or other intoxicating substance shall be conclusive evidence of gross negligence.
- (e) Hit and run of an attended vehicle or other property is punishable by imprisonment of not less than 10 days and not more than 60 days; a fine of not less than \$200 and not more than \$500, or both such fine and imprisonment.

15-13.13 Operating a Motor Vehicle While Privilege is Suspended or Revoked.

- (a) A person is guilty of operating a motor vehicle while privilege is suspended or revoked if he or she operates a motor vehicle within the jurisdictional territory of the Spokane Tribe while the privilege to do so has been suspended or revoked by any jurisdiction.

- (b) Operating a motor vehicle while privilege is suspended is punishable by a period of incarceration of not less than 3 days nor more than 30 days; a fine of not less than \$150 nor more than \$300, or both such fine and imprisonment for the first offense;
 - (1) a second or subsequent offense within 3 years is punishable by a period of incarceration of not less than 20 nor more than 45 days; a fine of not less than \$250 nor more than \$400, or both such fine and imprisonment;
 - (2) A third or subsequent conviction within years is punishable by a period of incarceration of not less than 45 nor more than 90 days; a fine of not less than \$350 nor more than \$500, or both such fine and imprisonment.

15-13.15 Attempting to Elude a Law Enforcement Officer.

- (a) A driver is guilty of attempting to elude a law enforcement Officer in the second degree when he/she willfully fails or refuses to immediately bring his or her vehicle to a stop once the driver knows that a law enforcement officer has given him/her a visible or audible signal to bring his/her vehicle to a stop.
- (b) A driver is guilty of attempting to elude in the first degree when he/she willfully fails or refused to immediately bring his/her vehicle to a stop once the driver knows that a law enforcement officer has given him/her a visible or audible signal to bring his/her vehicle to a stop, and who drives his/her vehicle in a manner indicating a wanton or willful disregard for the lives and property of others while attempting to elude a pursuing police vehicle.
- (c) "Immediately," as used in this section, means stopping as soon as it is reasonably possible.
- (d) Eluding a law enforcement officer in the second degree shall be punishable by a minimum of 10 and a maximum of 90 days in jail; a minimum fine of \$250 and a maximum fine of \$400, or both such fine and imprisonment.
- (e) Eluding a law enforcement officer in the first degree shall be punishable by a minimum of 30 and a maximum of 180 days in jail; a minimum fine of \$350 and a maximum fine of \$500, or both such fine and imprisonment.

15-13.17 Prohibited Use of Alcoholic Beverages in Vehicle.

- (a) A person is guilty of prohibited use of alcoholic beverages in a vehicle if:
 - (1) the person is the driver or a passenger in a vehicle that has not been moved safely off the roadway; and
 - (2) the person:
 - A. drinks any alcoholic beverage while in the vehicle; or
 - B. has an open or unsealed receptacle containing an alcoholic beverage in their immediate possession or control in the vehicle; or
 - C. is the driver of a motor vehicle in which an open or unsealed receptacle containing an alcoholic beverage is present, unless the receptacle is kept in the trunk or other area of the vehicle that is not accessible to the occupants while the vehicle is moving.
- (b) "Moved safely off the roadway," for purposes of this provision, means the driver or another person has moved the vehicle from the traveled portion of the roadway, the vehicle is no longer running, and the evidence shows that no person intends to drive back onto the roadway.
- (c) Prohibited use of alcoholic beverages in a vehicle is punishable by incarceration for a period of not less than 3 days and not more than 30 days in jail; a fine of not less than \$100 nor more than \$200, or both such fine and imprisonment.

15-13.19 Vehicular Homicide.

- (a) When the death of any person ensues within 3 years as a proximate result of injury proximately caused by the driving of any vehicle by any person, the driver is guilty of vehicular homicide if the driver was operating a motor vehicle:
 - (1) While under the influence of intoxicating liquor, drug or other substance, as defined by Section 15-3.01; or
 - (2) In a reckless manner; or
 - (3) With disregard for the safety of others.

- (b) Vehicular homicide is punishable by a period of incarceration of 6 months and a fine of \$500 or both such fine and imprisonment.

15-13.21 Vehicular Assault.

- (a) A person is guilty of vehicular assault if he/she operates or drives any vehicle:
 - (1) In a reckless manner, and this conduct is the proximate cause of serious bodily injury to another; or
 - (2) While under the influence of intoxicating liquor or any drug, as defined by section 15-3.01, and this conduct is the proximate cause of serious bodily injury to another.
- (b) "Serious bodily injury" means bodily injury which involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.
- (c) Vehicular assault is punishable by incarceration for 6 months; a fine of \$500, or both such fine and imprisonment.

15-13.23 Suspension or Revocation of Driving Privileges upon the Reservation. The Tribal Court may suspend the driving privileges of any person convicted of 15-13.01, 15-13.02, 15-13.04 or 15-13.05 as follows:

- 15-13.01 2d offense within 3 years a 1-year suspension.
- 15-13.02 3rd offense within 2 years a 2-year suspension.
- 15-13.04 6 months suspension.
- 15-13.05 12 months suspension.
- 15-13.09 suspension for 10 years.
- 15-13.10 suspension for 5 years.

CHAPTER 16 SENTENCES

Section 16-1 Nature of Sentences

16-1.01 Labor Credit on Sentence.

- (a) The Tribal Court, by order, may permit any person who is sentenced to serve time in jail to perform labor for the Tribe.
- (b) The Court shall confine an inmate to the jail except during actual periods of labor.
- (c) An inmate performing labor:
 - (1) Shall be permitted to do so solely for the Tribe or a Tribal entity;
 - (2) Shall be supervised by an individual appointed by the Court;
 - (3) Shall be entitled to 2 days credit on the sentence for each 1 day of labor performed.

Resolu. 2006-298

16-1.02 Labor Credit on Fine.

- (a) The Tribal Court, by order, may permit any person who has been incarcerated for failure to pay a fine, as ordered by the Court:
 - (1) To pay the fine in full and to be released;
 - (2) To perform labor for the benefit of the Spokane Tribe;
 - (3) To remain in jail without performing labor.
- (b) In the event an inmate chooses to perform labor:
 - (1) The Court shall confine the inmate to the jail except during actual periods of labor.
 - (2) The Court shall be given an inmate a credit of \$50 on the fine balance for each day of labor performed.
 - (3) The inmate shall not be entitled to a one-for-one labor credit pursuant to § 16-1.01.
- (c) If the inmate chooses to remain in jail without performing labor, the Court shall credit the inmate \$25 on the fine balance for each day in jail.

Resolu. 2006-298

16-1.03 Limitation on Sentence.

- (a) The Tribal Court shall, under no circumstances impose a jail sentence or a fine or a combination in excess of the provisions set forth in this Code for the offense.
- (b) Any jail sentence shall commence to run from the date of sentence unless the sentence is stayed pending appeal pursuant to Section 1-7.16 of this Code; and in such case, the sentence shall commence to run from the time of the decision by the appellate court.

16-1.04 Restitution. In addition to any other sentence, the Court may require an offender who has inflicted injury upon the person or property of another to make restitution or to compensate the party injured through the surrender of property or the payment of money damages.

16-1.05 Character and Duration of Sentence.

- (a) In determining the character and duration of the sentence which shall be imposed, the Court shall take into consideration the previous conduct of the defendant, the circumstances under which the offense was committed, whether the offense was malicious or willful, and whether the offender has attempted to make amends and shall give due consideration to the extent of the defendant's resources and the needs of his dependents.
- (b) It should be noted that the penalties listed in this Code are in most cases maximum penalties.
- (c) The Judge will be expected to consider all of the circumstances of each case to determine whether a lesser penalty or the maximum is to be imposed.

Section 16-2 Probation

16-2.01 Probation. Where sentence has been imposed upon any person who has not previously been convicted of a felony under Federal or State law within 5 years of the date of his conviction or of any offense under this Code or gross misdemeanor under State or Federal law within 1 year of his conviction, the Spokane Tribal Court may, in its discretion suspend the sentence imposed and allow the offender his freedom on probation, upon his signing a pledge of good conduct during the period of his sentence upon the form provided therefore.

16-2.02 Violation of Pledge. Any person who shall violate his pledge shall be required to serve the original sentence as penalty for the violation of his pledge.

16-2.03 Terms and Conditions of Probation. The Tribal Court shall have the same power to provide for terms and conditions of probation, as do the Superior Courts of the State of Washington.

16-2.04 Probation Officer.

(a) Probation Office - The purpose of the Tribal Probation Office include the protection of the Spokane Indian Reservation community by providing for the acceptance of custody and supervision and rehabilitation of offenders placed on probation by the Tribal Court. The Probation Office shall be a division of the Tribal Court. The Office of Tribal Probation shall consist of one or more Probation Officers and such other personnel as may be deemed necessary by the Tribal Court and approved by Tribal Court.

(b) Eligibility - Upon approval by the Tribal Court, any person holding the title of Probation Officer may have the authority to

- (1) perform law enforcement search and arrest of supervised offenders; and/or
- (2) carry a firearm if they have successfully completed the minimum law enforcement training required of Tribal Police Officers. The Probation Office may employ classes of employees who assist with the duties of the Probation Office, but who do not have law enforcement authority and who are not required to complete law enforcement training.

(c) Law Enforcement Authority - A Probation Officer, in his or her supervision of an offender, possesses all the authority of a Tribal Law Enforcement Officer, including without limitation, the authority:

- (1) To carry firearms, including concealed firearms when necessary;
- (2) To request a Judge of the Tribal Court to issue a warrant for arrest of the supervised offender, or for search and seizure of the offender's person or property, or for such orders as are necessary to carry out the functions of the Probation Office;
- (3) To arrest a supervised offender without a warrant for violation of a condition of probation and commit the offender to incarceration by providing Tribal Police with a statement that the Probation Office has found probable cause to believe the offender has violated the conditions of his or her release pursuant to Section 3-5.01(b); and
- (4) To conduct a search in accordance with the provisions of section 3-6.05, except that a Probation Officer may also conduct a warrantless search of the supervised offender's person or personal effects, or any vehicle or residence that is under the custody and control of the offender, if the supervised offender has consented to such searches in writing as a condition of probation.

(d) Duties and Responsibilities - Probation Officers shall carry out the following duties:

- (1) Supervise a probationer when requested to do so by the Tribal Court, and in accord with the conditions set by the Court in the judgment and sentence;
- (2) Communicate to a probationer the terms conditions and specific guidelines that must be met during the probationary period. Assure that a copy of the conditions of probation is signed and given to him or her;
- (3) Regularly advise and consult with the supervised offender to encourage him or her to improve his or her condition.
- (4) Attend court hearings and prepare necessary written reports to present to the Court in sentencing review hearings, show cause hearings, probation violation hearings. Prepare regular and routine reports to the Court as to defendants' progress with his or her compliance with probation.

- (5) Administer drug and alcohol testing for clients in a professional, confidential and competent manner and keep records to report on the progress of persons supervised.
- (6) Identify and, where necessary, mobilize Tribal or Community programs to which supervised offenders may be assigned for evaluation, treatment, rehabilitation, or for the purpose of performing community service. Collaborate with other Tribal Departments to further jail alternatives and monitor the Court's work crew and/or community service programs.
- (7) Work independently and prioritize caseload and keep supervisor updated as to progress of open cases.
- (8) Abide by the Ethical Code of Conduct for Tribal Court Personnel adopted by Spokane Tribal Court.
- (9) It shall be the goal of the Probation Office to attract and retain experienced, professional probation personnel. The Chief Judge shall establish minimum standards of training which all Probation Officers will be required to meet. Such training shall include not only basic probation officer procedures and techniques, but shall also include training on positive rehabilitative measures with the goal of achieving successful rehabilitation.
- (10) Perform such other duties as assigned by the Chief Judge of the Tribal Court.

16-2.05 Restitution. The Tribal Court shall have the power, in addition to all other powers listed herein, to require a defendant convicted of a crime to make restitution to the party injured by such criminal conduct.

Section 16-4 Deposit and Disposition of Fines

16-4.01 Deposit and Disposition of Fines.

- (a) All money fines imposed for the commission of an offense shall be in the nature of an assessment for the payment of designated Tribal Council expenses.
- (b) Such expenses shall include the payment of the fees provided for in these Codes to jurors and to witnesses answering a subpoena, and the payment of salaries of officers of the Court.
- (c) The fines assessed shall be paid to the Treasury of the Tribal Council funds and recorded upon the accounts.

CHAPTER 17 - FISH, WILDLIFE, and RECREATION CODE

Resolu. 2012-328

17-1.01 Intent, Purpose and Policy.

- (a) Pursuant to the powers in Article VIII of the Spokane Tribe of Indians Constitution, the Spokane Tribe's Business Council adopts the following Chapter of the Law and Order Code to regulate fishing, hunting and recreation that take place within the Tribe's regulatory jurisdiction.
- (b) The Tribal Business Council recognizes the value of the fish, wildlife and recreational resources within all the lands and waters within the Tribe's jurisdiction.
- (c) Fish, wildlife and recreational resources are an irreplaceable asset of the Spokane Tribe.
- (d) Regulation and protection of these assets is the duty of the Tribal Business Council.
- (e) Unregulated use of these resources threatens the political integrity, economic security and health and welfare of the Spokane Tribe.

17-2.01 Definitions. In this Code, unless the context requires another meaning, the following terms shall mean:

- (a) "Aft" means toward the stern or rear of a vessel.
- (b) "Authorized Enforcement Personnel" means call Spokane Tribal Park Rangers, Wildlife Committee Members, Tribal and/or B.I.A. Police.
- (c) "Bilges" means the bulging, rounded part of the vessel's bottom.
- (d) "Bow" means the forepart of the vessel.
- (e) "Spokane Tribal Business Council" means the elected governing body of the Spokane Tribe of Indians of the Spokane Indian Reservation.
- (f) "Closed Season" means all of the time during the entire calendar year excepting the "open season" as specified by this Code or regulation.
- (g) "Cowl" means the revolving cover for the top of the engine or tank.
- (h) "Fish," when used as a noun herein, shall include, but not be limited to: all species of trout, salmon (Salmonidae family), small mouth bass (Micropterus dolomiej) large mouth bass (Micropterus salmoides), walleye (Sander vitreus), yellow perch (Perca flavascens), black crappie (Pomoxis nigromaculatus), burbot (Lota Lota) and any other fish species which exists within the jurisdiction of the Spokane Tribe.
- (i) "Fish," when used as an adjective or verb and its derivatives, "fishing, fished, etc." means any effort made to kill, injure, disturb, capture or catch fish.
- (j) "Forepart" means the front part of a vessel.
- (k) "Fur-bearing Animals" shall include, but not be limited to the following animals: beaver (Castor Canadensis), northern river otter (Lontra Canadensis), muskrat (ondata zibethicus), mink (Mustela vison), American marten (KMartes Americana), long-tailed weasel (Mustela frenata), short-tailed weasel (Mustela ermine), and bobcat (Lynx rufus).

- (l) "Game Animals" shall include, but not be limited to the following animals: black bear (*Ursus americanus*), white-tailed deer (*Odocoileus virginianus*), mule deer (*Odocoileus hemionus*), elk (*Cervus elaphus*), moose (*Alces alces*), gray wolf (*Canis lupus*), snowshoe hare (*Lepus americanus*), mountain cottontail (*Sylvilagus nuttallii*).
- (m) "Gunwale" means the upper edge of the side of a vessel.
- (n) "Harassment" the act of disturbing the natural setting.
- (o) "Hunt" when used as an adjective or verb and its derivative, "hunting, hunted, etc." means the act of pursuing game with the intent to kill, injure, disturb, or capture; whether as an individual or in a group. All persons in a group are deemed to be part of a hunt regardless of the number of weapons.
- (p) "Household" means all persons occupying a single dwelling, whatever the age or relationship of the persons may be.
- (q) "Migratory Game Birds" shall include, but not be limited to the following animals: Anatidae (ducks, geese, and swans), Rallidae (rails, coots, and gallinules), Scolopacidae family (shore birds).
- (r) "Mooring" means the act of securing a vessel, or in the plural, place where vessel is secured.
- (s) "Motorboat" means all vessels propelled by an engine or motor.
- (t) "Non-Member" means a person who is not an enrolled member of the Spokane Tribe whether it be a non-Indian or an Indian enrolled in another Tribe.
- (u) "Nuisance Animals" shall include, but not be limited to the following: skunk (*Mephitis mephitis*), cougar (*Puma concolor*), coyote (*Canis latrans*), badger (*Taxidea taxus*), raccoon (*Procyon lotor*), all species of ground squirrel (*Spermophilus*), northern pocket gopher (*Thomomys talpoides*), bushy-tailed woodrat (*Neotoma cinerea*), feral housecat (*Felis catus*), feral dog (*Canis familiaris*).
- (v) "Open Season" means the time specified by regulation or this Code when it is lawful to hunt or fish.
- (w) "Port" means the left side of a vessel when facing forward.
- (x) "Reservation" means the Spokane Indian Reservation, including lands held in trust for the Spokane Tribe outside the Reservation boundaries, and all waters within the Tribe's jurisdiction.
- (y) "Starboard" means the right side of the vessel looking toward the bow. (z) "Stern" means the rear part of a vessel.
- (z) "Spokane Tribal Business Council" means the elected governing body of the Tribe and maybe referred to in this Code a "Council" or "Tribal Council."
- (aa) "Tribal Member" means any person who is enrolled in the Spokane Tribe of Indians.
- (bb) "Transom" means the beam or bar over the sternpost of a vessel.
- (cc) "Upland Game Birds" shall include, but not be limited to the following birds: chukar (*Alectoris chukar*), blue grouse (*Dendragapus obscurus*), ruffed grouse (*Bonasa umbellus*), California Quail (*Callipepla californica*), ring-necked pheasants (*Phasianus colchicus*), gray partridge (*Perdix perdix*), wild turkey (*Meleagros gallopavo*).

(dd) "Vessel" means any structure used for navigation on water including but not limited to a motorboat, sailboat, raft, canoe, and kayak.

(ee) "Violator" means tortfeasor or in the case where a special penalty is at issue it means defendant.

17-3.01 Wildlife Committee.

- (a) The Tribal Council shall appoint a committee of seven persons to act as the Wildlife Committee.
- (b) The members of the Committee will be appointed for a period of three years maintaining staggered term expiration dates.
- (c) In the absence of the appointment of a Committee by the Tribal Business Council, the Tribal Business Council shall serve as such committee.

17-4.01 Qualifications of Members of the Wildlife Committee.

- (a) Members of the Wildlife Committee must be a Tribal member and residents of the Spokane Reservation, or live within a fifty-(50) mile radius of the Spokane Reservation.
- (b) Members shall be well informed on the subject of fish and game, and have a general interest and understanding of the requirements for its conservation.
- (c) A member of the Committee may be removed from office by the Council at anytime.
- (d) They must not have been convicted of a violation of any law, including, but not limited to, Federal and Tribal, governing fish and wildlife within two years preceding the date of their appointment.

17-5.01 Duties of the Wildlife Committee. The Wildlife Committee shall:

- (a) Research and compile information on the status of wildlife on the Reservation.
- (b) Report the findings of such research as such information is needed by the Council.
- (c) Propose Codes and regulations for the protection, conservation and proper usage of wildlife.
- (d) The Committee shall cooperate with law enforcement officers by keeping such officers informed of rules and Codes and of suspected violators of such rules and Codes.
- (e) Investigate and propose sites for development and improvement of wildlife habitats (e.g., placement of fish screens, flooding of marshes for waterfowl, planting of feed plants, etc.).
- (f) Exercise such powers and duties as are necessary to fully carry out the provisions of this Code, or that are delegated to it by the Tribal Business Council.
- (g) The Wildlife Committee will operate under the by-laws established by tribal resolution

17-6.01 Fish and Hunting Regulations

- (a) The Wildlife Committee shall develop and enact, with the approval of the Tribal Council, regulations to govern hunting and fishing.
- (b) Regulations are published annually by the Wildlife Committee and are made public in local media outlets including the development of pamphlets available at Tribal headquarters.

17-7.01 Establishment of Tribal Park Rangers. The Spokane Tribal Business Council hereby establishes the Office of the Spokane Tribal Park Rangers by adoption of this code which shall have the duties enumerated in this Law and Order Code.

17-7.02 Duties of Authorized Enforcement Personnel. Duties of authorized enforcement personnel shall include:

- (a) Keeping information regarding the existing Tribal and Federal laws regarding wildlife.
- (b) Patrolling the rivers, creeks, streams, other bodies of water forests and fields where and when violators might be expected to be or are suspected of being engaged in unlawful activities.
- (c) Cooperation with Federal and/or State enforcement officers in apprehension of game violators.

- (d) Enforcing all provisions of this Chapter, and any rules and regulations promulgated there under.
- (e) Carrying out any other duties delegated under this Code or by the Tribal Business Council.

17-7.03 General Enforcement Provisions.

(a) Jurisdiction

- (1) Except as otherwise provided in this code, the Spokane Tribal Business Council, authorizes enforcement personnel, and such other Tribal Entities as are designated by Tribal Law, to have absolute, original, and exclusive jurisdiction to regulate and adjudicate all matters pertaining to fish, wildlife and recreation activities within the Tribe's jurisdiction.
- (2) The Spokane Tribal Court shall have exclusive jurisdiction over all violations of this chapter and any regulations adopted pursuant thereto except as this chapter or any other law reserves otherwise.

(b) Civil Complaint

- (1) Except as otherwise provided in this code, all violations relating to this chapter shall apply to any person and shall be considered civil in nature, and be adjudicated in the Spokane Tribal Court.
- (2) A cause of action shall be initiated by the issuance of a summons in the form of a "notice to appear" by Authorized Enforcement Personnel, the Tribal court or the Tribal Attorney, to a violator upon probable cause to believe that a violation of this chapter has occurred.
- (3) A petition or complaint shall be served on the violator and Tribal court, in the name of the Spokane Tribe of Indians, no more than twenty-(20) days from issuance of the summons or notice to appear and shall in short and plain statements state claims for relief.

- (c) Procedure - Except as otherwise provided in this code, the civil procedure of the Spokane Tribe shall govern all questions of procedure arising as a result of the enforcement of this code for violations relating to this chapter.

17-8.01 Representation of the Tribe in Actions Arising Under this Code. The Tribal Attorneys and Authorized Enforcement Personnel or in the case of scheduling or interest, such other counsel for the Tribe as the Tribal Council may designate, shall represent the Tribe in all actions arising under this chapter to which the Tribe is a party.

17-8.02 Trespass.

- (a) Violation of any provision of the Spokane Tribe's Fish and Wildlife Code by non-members shall be considered immediate revocation of permission to enter the Reservation and may render the violator a trespasser.
- (b) It shall be a civil violation for any non-member to trespass on the Spokane Reservation.
- (c) The mandatory civil fine for trespass is \$500.00.

17-8.03 Federal Prosecution.

- (a) Nothing in this Code shall be deemed to preclude the federal prosecution under 18 U.S.C. 1165 of non-members who trespass on the Reservation.
 - (1) This code has been enacted to protect the resources of the Spokane Tribe, and the taking or using of Tribal property or services contrary to the terms of this Code constitutes theft of Tribal assets.
 - (2) Nothing in this Code shall be deemed to preclude federal prosecution of violators under 18 U.S.C. § 1163 for theft of Tribal assets or any other federal law designed to protect Tribal fish, wildlife, water or other natural resources.

(b) Any Authorized Enforcement Personnel may follow the procedure provided the Tribal Business Council to initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided by this Code.

Readopted 8/01/06, Resolu. 2006-524.

17-9.01 Remuneration for Damages To Tribal Assets.

- (a) Fish and Wildlife and Recreation violations in this chapter are deemed to damage the health and welfare, political integrity and economic welfare of the Spokane Tribe of Indians.
- (b) Notwithstanding special or other fines and penalties, any violation, unlawful, or prohibited activity, under this chapter shall be subject to a civil compensatory damage assessment (CCDA) once it is adopted, but until such time the fines designated in this Code shall govern.
- (c) The Tribal Court, authorized Enforcement Personnel and Tribal Attorneys shall prepare, for approval of the Tribal Council a recommended CCDA schedule for each violation of this code or regulation which is a violation.
- (d) Each CCDA shall be compensatory for the damages to Tribal assets including but not limited to remuneration for the following:
 - (1) The cost to the Tribe for protection and regulation of the resource.
 - (2) The cost of restoring the resource.
 - (3) The cost of enforcing the particular violation.
 - (4) The loss of potential revenue to the Tribe.
 - (5) Damages for civil trespass.
 - (6) The cost of prosecution and representation.
- (e) CCDA schedules are presumed to compensate for damages to the Spokane Tribe.
- (f) CCDA schedules or alleged damages may be rebutted at the time of hearing or trial.
- (g) Punitive damages may be assessed in accordance with the civil procedure section of the Spokane Law and Order Code.

17-10.01 Bond.

- (a) If a suspected violator refuses to sign a Notice to Appear, or cannot be identified by the issuing officer, and seizure of the suspected violator's property is necessary to secure the important Tribal interest of guaranteeing the presence within Tribal jurisdiction of sufficient assets of the suspected violator to secure payment of any CCDA, applicable fine, or other damages, and a likelihood that the suspected violator will leave the jurisdiction of the Spokane Tribe and not return; then authorized enforcement personnel may require posting of a bond on site in the field in an equivalent value to each CCDA, applicable fine, or other damages.
- (b) This bond may be posted by cash, check or substituted with a seizure of property in the approximate value to the CCDA(s), applicable fine or other damages in accordance with this chapter.
- (c) The suspected violator shall be issued a notice that advises them as follows:
 - (1) The suspected violator is within the personal and subject matter jurisdiction of the Spokane Tribal Court.
 - (2) That alternative methods of posting a bond exist and that the violator has chosen the method.
 - (3) Failure to appear for the hearing in the Notice to Appear will result in a default judgment and a forfeiture of the bond.
 - (4) Any property seized in lieu of cash can be redeemed by posting a cash bond with the Spokane Tribal Court.
 - (5) The right to a hearing to determine the release of the bond.
 - (6) An itemized accounting of the violations and the CCDAs, applicable fines, and other damages that the bond secures.

17-10.02 Seizure and Disposition of Fish, Wildlife, Gear, and Equipment.

- (a) Seizure in lieu of other bond. Any fish, wildlife, gear, weapons, equipment, or other property the suspected violator possesses may be utilized to post bond in an amount equivalent to the cumulative CCDAs, applicable fees, and other damages for the alleged violations.
- (b) Inventory and Storage. Any gear, weapons, equipment, or other property seized under this section shall be inventoried and stored in a secure place until disposed of by order of the Tribal Court.
 - (1) The owner of the property shall be given a copy of the inventory.
 - (2) Fish and wildlife seized under this section shall be inventoried and sold.
 - (3) The proceeds of the sale shall be placed in a separate account and applied toward the bond.
- (c) Unclaimed Property. Fish, wildlife, weapons, gear or other property seized under this section and for which there is no known owner shall be inventoried and sold as provided below:
 - (1) A notice describing the property and the time and place of seizure shall be posted at prominent locations on the reservation.
 - (2) The notice shall state that persons wishing to claim the property must do so by filing a written claim with the appropriate authorized enforcement personnel within 45 days of the date the notice was posted.
 - (3) Enforcement personnel shall file a copy of the claim with the Tribal Court and shall advise the claimant of his/her right to petition the Court for release of the property.
 - (4) Property for which written claim is filed shall not be disposed of except by order of the Tribal Court.
 - (5) If property seized under this section is not claimed within 45 days of the posting of the notice, the property may be sold for the benefit of the Tribe upon order of the Tribal Court.
- (d) Presumption of Owner's Use. Unattended gear used in violation of the Code and seized under this section shall be presumed to have been placed by its owner in the location where it was seized.
- (e) Petition for Release. Any person who claims ownership of any property seized under this section may file a petition for release of the property with the Tribal Court.
 - (1) The person filing the petition may request an expedited hearing of the petition.
 - (2) The court may order release of the seized property if it finds the petitioner is the lawful owner of the property or has the right to its possession and if the property is not released the petitioner would undergo substantial hardship.
- (f) Disposition of Seized Property:
 - (1) If it is determined by the Tribal court that property shall be released the Court shall order immediate return of the property and the proceeds of the sale in connection with the violation.
 - (2) If a person is found to have violated a provision of this chapter or regulations promulgated under it, the Court may order forfeiture to the Spokane Tribe of any bond. The violator shall be given the opportunity to present evidence to the Court as to why the forfeiture would be inequitable or produce a substantial hardship.
 - A. If the proscribed CCDA(s), applicable fines and other damages are paid in cash, or cash bond is posted by the suspected violator the property shall be returned immediately.
 - B. The Tribe may petition the Tribal Court for forfeiture of any property, seized under this section, that has not been disposed of under 17-7.05(f)(1) and 17-7.05(f)(2).
 - C. Notice of any forfeiture hearing shall be served upon any person claiming rights in the property or posted at prominent locations on the reservation if such persons are unknown.

17-7.10 Bond Forfeiture To Tribe in Lieu of Civil Process. When Authorized enforcement personnel believe an offense can be disposed of without further legal process, they may use discretion, and with the written

agreement of the person to be cited, issue to that person an Agreed notice, petition, and stipulated judgment as follows:

AGREED FORFEITURE FOR FISHING, WILDLIFE OR RECREATION VIOLATIONS
Spokane Tribal Law and Order Code

This notice, petition, and stipulation for entry of judgment is for a violation of the Spokane Tribal Law and Order Code and is issued to: _____

(Name and Address)

for the following violation _____ Date _____.

It is stipulated by the violator that judgment shall be entered against him/her and the judgment shall be satisfied by the forfeiture to the Spokane Tribal Court of a bond to account for damages to the Spokane Tribe of Indians in the amount of \$_____, _____dollars and _____cents, that is paid herewith to the undersigned authorized enforcement personnel.

This may be paid in cash or by check to order of Spokane Tribal Court. The undersigned violator waives their right to appeal.

DATED _____

Signature - Enforcement Personnel

Signature - Violator

Check how paid: ____ Cash to Officer ____ Check to Officer

HUNTING, FISHING, AND TRAPPING

17-11.01 Fish and Wildlife Policy.

- (a) All fish and wildlife found on lands and waters within the jurisdiction of the Spokane Tribe of Indians shall be considered the property of the People of the Spokane Tribe.
- (b) This property can only be taken at such time, and in such a manner, as permitted by Tribal law.

17-11.02 Enrolled Spokane Indian Hunting, Fishing, and Trapping.

- (a) All enrolled Spokane Tribal members shall be allowed to hunt, fish, and trap, unless such hunting, fishing, or trapping is prohibited by rule, regulation, or Code passed by the Tribal Business Council.
- (b) No hunting or fishing licenses shall be required of members of the Spokane Tribe of Indians, unless required by the Spokane Tribal Business Council.

17-11.03 Special Permits.

- (a) The Tribal Council may grant special hunting and fishing permits at its discretion.
- (b) The Tribal Business Council may grant special permits for the collection of scientific specimens at its discretion.

17-11.04 Hunting and Fishing-Spouses and Descendants.

- (a) Non-members who are married to Spokane Tribal members, and first generation children of Spokane Tribal members, are allowed to hunt and fish as permitted by rule, regulation, or Code passed by the Spokane Tribal Business Council.
- (b) They shall, however, obtain a courtesy permit, harvest tags, and current regulations to do so at the Tribal Office in Wellpinit.
- (c) Failure to obtain a courtesy permit or harvest tags is a civil violation of this section and may result in a civil penalty of \$200 per incident.

17-11.05 Hunting and Fishing: Non-members.

- (a) Notwithstanding Section 17-11.04 above, no non-members shall not hunt on the Spokane Reservation or any lands under the Tribe's regulatory jurisdiction.
- (b) However, if the Spokane Tribe negotiates reciprocal hunting and fishing rights with another Tribe, members of that Tribe shall be allowed to hunt and fish in accordance with that agreement.
- (c) Non-members wishing to fish on the following waters under the jurisdiction of the Spokane Tribe must obtain fishing permits which cost and duration shall be determined by Tribal regulation:
 - (1) On the Spokane River from Little Falls Dam down to and including the Spokane Arm of Lake Roosevelt;
 - (2) On Lake Roosevelt directly west of the Spokane Reservation on the Columbia Arm to its West bank;
 - (3) These permits shall not authorize fishing on any other waters under the jurisdiction of the Spokane Tribe.
 - (4) Permits shall be obtained from the Public Safety Building in Wellpinit, uniformed Tribal officers, and other locations designated by the Tribe to sell permits.
- (d) Failure to obtain a permit is a civil violation of this section and may result in a civil penalty of \$200 per incident.

17-11.06 Deer Limit.

- (a) It shall be unlawful for any household, combined, to kill more than six deer during any calendar year.
- (b) In cases of doubt, the Tribal Judge shall determine the members of a given family in accordance to Tribal customs.
- (c) A violation of this section may result in a civil fine of \$500.

17-11.07 Elk and Moose Hunting.

- (a) It shall be unlawful to violate any law, rule, or regulation adopted for the protection of elk or moose, or to kill an elk or moose, except during open season established by rule or Resolution, and while in possession of a valid tag.
- (b) A violation of this section will result in a mandatory civil fine of \$2500.

Revised 07/29/08, Resolu 2008-443; Readopted 8/01/06, Resolu. 2006-524.

17-11.08 Unlawful To Sell Meat or Fish.

- (a) It shall be unlawful to sell any meat of game animals or fish killed, caught, or taken by any person on the Spokane Indian Reservation.
- (b) Game animal meat and fish caught off-reservation sold by non-members shall only occur if a permit is issued by the Spokane Tribal Council which shall charge a reasonable rate for the permit.
- (c) A violation of this section will result in a mandatory civil fine or \$500.

17-11.09 Spotighting.

- (a) It shall be unlawful for anyone to hunt with a spotlight or any other kind of artificial light on the Spokane Resevation, unless approved by Tribal Business Council.
- (b) A violation of this section will result in a mandatory civil fine of \$500.

17-11.10 Closed Season on Fur Bearing Animals.

- (a) Fur-bearing animals, except nuisance animals, shall be harvested by permit only.
- (b) Permits shall be granted by the Wildlife Committee if these species occur in sufficient number to warrant an open season.

- (c) A violation of this section will result in a mandatory civil fine of \$250.

17-11.11 Wild Turkey Season.

- (a) It shall be unlawful to kill wild turkeys at any time, except during open seasons established by the Tribal Business Council.
- (b) A violation of this section will result in a mandatory civil fine of \$250.

17-11.12 Unlawful To Waste Game or Fish.

- (a) It shall be unlawful to unduly waste and abandon useful or edible portions of game and fish, to feed such game to dogs, pigs, etc., or to throw away or dispose of sizeable quantities of fish, game animals or migratory and upland birds.
- (b) A violation of this section will result in a mandatory civil fine or \$500.

17-11.13 Camping and Hunting Groups—Limitations.

- (a) While hunting groups may camp and hunt on the Spokane Reservation, it shall be unlawful for such camping or hunting group to exceed ten adult persons.
- (b) Tribal Enforcement Personnel shall have the authority to reasonably decide what constitutes a camping or hunting party.
- (c) A violation of this section will result in a mandatory civil fine or \$100.

17-11.14 Use of Dogs for Hunting.

- (a) No Spokane Indian, group of Spokane Indians, or non-members shall ever utilize more than four dogs.
- (b) Dogs are not to be considered seize able equipment.
- (c) Dogs can only be used in the hunting of migratory and upland game birds.
- (d) The use of dogs for any other hunting requires a special permit from the Spokane Tribal Business Council.
- (e) A violation of this section will result in a mandatory civil fine of \$200.

17-11.15 Hunting from Snow Vehicles, and Boats.

- (a) It shall be unlawful for any person to operate a snowmobile or equivalent machinery for the purpose of hunting or chasing game animals on the Spokane Reservation.
- (b) It shall also be unlawful to carry firearms on the person or vehicle while operating a snowmobile, except by written permission from the Tribal Council to hunt predatory animals.
- (c) It shall be unlawful to fire a gun from a vessel while under propulsion.
- (d) A violation of this section will result in a mandatory civil fine of \$500.

17-11.16 Possession of Illegal Game or Fish.

- (a) It shall be unlawful for any person to have in their possession any game, bird, or fish that said person knows or should under the circumstances know was killed or taken in violation of any of the provisions of this Code.
- (b) A violation of this section will result in a mandatory civil fine of \$500.

17-11.17 Hunting While Intoxicated.

- (a) It shall be unlawful for any person to hunt while under the influence of drugs or intoxicating liquor.
- (b) A violation of this section will result in a mandatory civil fine of \$200.

17-11.18 Interference with Game Control Signs.

(a) It shall be unlawful for any person to destroy, tear down, shoot at, deface or erase any printed matter or signs placed or posted in the enforcement of Tribal hunting and fishing regulations.

(b) A violation of this section will result in a mandatory civil fine of \$200.

17-11.19 Harassment of Wildlife.

(a) It shall be unlawful to harass any and all wildlife utilizing, motorized vehicles, artificial light, or instruments of disruption.

(b) A violation of this section will result in a mandatory civil fine of \$200.

17-11.20 Permit Needed To Hunt or Take Bald or Golden Eagles.

(a) It shall be unlawful for any person to hunt or take bald or golden eagles within the jurisdiction of the Spokane Tribe unless that person first obtains a special permit from the Spokane Tribal Business Council allowing the permitted individual to move forward in the Federal permitting process for such hunting.

(b) A violation of this section will result in a mandatory civil fine of \$500.

17-11.21 Permit Needed To Take Eagle Nests or Eggs.

(a) It shall be unlawful to take eagle nests or eggs within the jurisdiction of the Spokane Tribe unless that person first obtains a special permit from the Spokane Tribal Business Council allowing the permitted individual to move forward in the Federal permitting process.

(b) The Tribal Council shall issue permits only for extraordinary religious or cultural reasons and then only rarely.

(c) A violation of this section will result in a mandatory civil fine of \$500.

17-12.01 Special Penalties for Violation.

A special penalty, including all costs incurred in pursuing the penalty, shall be assessed, where allowed by law, for violations in accordance with the following schedule:

(a) **For each violation of Section 17-8.05 [sic] (Elk and Moose Hunting Season):**

(1) A minimum mandatory period of 30 days in jail, not to exceed 90 days and a mandatory fine of \$2500 plus the loss of all hunting and fishing rights for a period of three years upon conviction for Tribal members; and

(2) A mandatory civil penalty of \$5000 plus the loss of all hunting and fishing privileges for a period of three years upon first violation and loss of all hunting and fishing privileges in perpetuity for the second violation for spouses and first generation descendants.

(b) **For each violation of Sections 17-11.10 (Fur Bearing Animals) and 17-11.11 (Wild Turkey):**

(1) A period of not more than 90 days in jail or a fine not to exceed \$250 or both for Tribal members; and

(2) A mandatory civil penalty of \$500 upon violation for spouses and first generation descendants.

(c) **For each violation of Sections 17-11.20 and 17-11.21 (Bald Eagle):**

(1) no more than six months in jail and a mandatory fine of \$500. For the first conviction a jail sentence of 30 days is mandatory, for the second conviction, a six month sentence is mandatory.

(d) For all other wildlife violations pursuant to section 17-8 a special penalty shall be assessed in accordance with Chapter 14 section 14 (14-14.01) for each violation.

17-12.02 Accomplice Liability.

All accomplices to any violation of this chapter shall be considered to commit the same violation as the actual violator and shall be liable for the damages or special penalties.

17-13.01 Camping and Picnicking. Tribal permits for camping or picnicking on lands within the jurisdiction of the Spokane Tribe shall be made available for sale to non- members of the Spokane Tribe as follows and prices shall be determined by regulation of the Spokane Tribal Council:

- (a) Said permits shall allow camping and picnicking in shoreline areas designated by the Tribe for camping or picnicking.
- (b) A marine sanitation device is required for all dispersed camping and picnicking.
- (c) Daily permit will allow daylight picnicking or overnight camping for a specified 24-hour period beginning at the time of purchase.
- (d) Tribal member shall be allowed one complementary family guest permit for non-member guest families if and only if the enrolled member is picnicking at an adjacent site.
- (e) A fishing permit shall not act as a camping/picnicking permit nor shall a camping/picnicking permit act as a fishing permit.
- (f) Non-members shall not possess firearms or all-terrain vehicles at any designated camping/picnicking site.
- (g) Failure to obtain the proper permits as required by this section will result in a mandatory civil fine of \$100.

Boating and Water Use Activities

17-14.01 Boating Privilege.

- (a) Boating on waters under the jurisdiction of the Spokane Tribe is considered a privilege and pursuant to that privilege the operator must comply with this Code or be in violation of this code and subject to civil remedies or criminal remedies where allowed.
- (b) Boating on waters under Tribal jurisdiction is deemed consent to Authorized Enforcement Personnel to stop and board any vessel.

17-14.02 Inspections and Observations.

- (a) Authorized Enforcement Personnel may at any time stop and/or board a vessel to examine documents, licenses or permits relating to operation of the vessel, and to inspect such vessel to determine compliance with regulations pertaining to safety equipment and operation.
- (b) Any Authorized Enforcement Personnel who observes a vessel being operated:
 - (1) without sufficient lifesaving or firefighting devices;
 - (2) in an overloaded or unsafe condition;
 - (3) in any other hazardous or unsafe circumstances; or
 - (4) in a manner which violates this or any other Chapter of the Law and Order Code of the Spokane Tribe of Indians, may direct the operator to take immediate and reasonable steps necessary for the safety of those aboard the vessel, including, but not limited to directing the operator to:
 - A. correct a hazardous condition immediately; or
 - B. proceed to a mooring, dock, or anchorage; or
 - C. suspend further use of the boat until a hazardous condition is corrected.

17-14.03 Prohibited Operations.

The following are prohibited in all Spokane Tribal Waters and considered unlawful:

- (a) Operating a vessel, or knowingly allowing another person to operate a vessel, in a reckless or negligent manner, or in a manner so as to endanger a person or property.
- (b) Operating a vessel under the influence of alcohol or controlled substance.
- (c) Failing to observe restrictions established by a regulatory marker.
- (d) Operating a vessel in excess of 5 mph or creating a wake in areas where prohibited.
- (e) Operating a vessel within 100 feet of a diver's marker, or any person in the water.

- (f) Allowing a person to ride on the gunwales, transom, or on the deck over the bow of a vessel propelled by machinery, operating in excess of 5 mph; provided, however, that the provisions shall not apply under the following circumstances:
 - (1) When that porting of the vessel was designed and constructed for the carrying of passengers safely at all speeds.
 - (2) When the vessel is being maneuvered for anchoring, mooring, or casting off moorings.
- (g) Attaching a vessel to or interfering with a marker, navigating buoy or other navigational aid.
- (h) Using trailers to launch or recover vessels, except at designated launching sites.
- (i) Operating a vessel at a speed greater than that which will permit the operator to bring said vessel to stop to avoid injury to persons or property that is unreasonable for the conditions present. The operator of a vessel is responsible for its wake at all times and shall be responsible for damages caused by it.
- (j) Overloading a vessel beyond its safe carrying capacity rating as referenced on the vessel's capacity plate, taking into consideration weather and other normal operating conditions. Capacity plates state the boats maximum weight capacity, maximum person capacity, and for outboard powered boats, the maximum horsepower.
 - (1) Capacity plates are required on all boats less than 20 feet in length constructed on or after November 1, 1972.
 - (2) Exceptions to this requirement are sailboats, canoes, kayaks, and inflatable boats.
- (k) Any violation of 17-14.03(a) will result in a mandatory civil fine of \$100 per incident.
- (l) Any violation of 17-14.03(b) will result in a mandatory civil fine of \$500 per incident.
- (m) Any violation of 17-13.03(c)-(j) will result in a mandatory civil fine of \$100 per incident.

17-14.04 Required Equipment on Water-Going Vessel.

- (a) It shall be unlawful to operate a water going vessel without proper equipment in accordance with this section 17-14 below.
- (b) Any violation of 17-14 will result in a mandatory civil fine of \$100 per incident.

17-14.05 Personal Flotation Devices (P.F.D).

- (a) P.F.D. requirements for vessels under 16 feet: All boats less than 16 feet in length and all canoes and kayaks, must have 1 type I, II, III or IV P.F.D. of a suitable size for each person on board, including any person being towed by a vessel.
- (b) P.F.D. requirements for vessels 16 feet and over: All boats 16 feet or over in length must have 1 type I, II, or III (wearable) P.F.D. of a suitable size for each person on board; including persons being towed by a vessel. Also, 1 type IV (throwable) P.F.D. must be aboard each boat. Canoes and kayaks are not required to have a type IV P.F.D.
- (c) P.F.D. Approval - Access Condition:
 - (1) All P.F.D.'s shall be approved by the U.S. Coast Guard.
 - (2) All P.F.D.'s shall be placed on vessels so as to be readily accessible in case of an emergency. Examples of P.F.D's not readily accessible are those located in a locked locker and those stored under an anchor, anchor line, blankets, or enclosed in the manufacturer's plastic container.
 - (3) All P.F.D.'s shall be in good serviceable condition.
 - (4) Type IV P.F.D.'s shall be immediately available on vessels 16 feet or more in length.
 - (5) All P.F.D.'s shall be suitable size for each person on board.

17-14.06 Fire Extinguishers.

- (a) All motor boats less than 25 feet in length shall be equipped with 1 U.S. Coast Guard approved type B-1 fire extinguisher.

- (b) All motor boats between 25 feet in length and 40 feet in length shall be equipped with at least 2 U.S. Coast Guard approved type B-1 fire extinguisher or 1 U.S. Coast Guard approved type B-11 fire extinguisher.
- (c) All motorboats greater than 40 feet in length shall be equipped with at least 3 U.S. Coast Guard approved type B-1 fire extinguisher; or 1 U.S. Coast Guard approved type B-1 fire extinguisher and 1 U.S. Coast Guard approved type B-11 fire extinguisher.

17-14.07 Additional Safety Equipment.

Every Motorboat:

- (a) 16 feet or over shall be equipped with an efficient whistle or other sound-producing appliance, and;
- (b) Shall have 2 or more ventilators with cowls or the equivalent capable of removing gases from bilges in any compartment containing gasoline engines or gasoline tanks.
 - (1) Motorboats so constructed as to have the greater portion of the bilges under the engine and fuel tanks open and exposed to the natural atmosphere at all times are not required to be fitted with such ventilators.
- (c) Shall have the carburetor of any inboard gasoline engine equipped with a device for arresting backfire. Such device shall be of the type approved by the Commandant, U.S. Coast Guard.
- (d) The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used to muffle the noise of the exhaust in a reasonable manner.

17-14.08 Navigation Lights.

- (a) All non-motorboats afloat from sunset to sunrise or at such times as vision is less than 500 feet shall be equipped with a hand lantern or flashlight showing a white light which shall be temporarily exhibited in sufficient time to prevent a collision.
- (b) All motorboats 25 feet or less in length underway from sunset to sunrise or at such times as vision is less than 500 feet shall be equipped with the following lights:
 - (1) One white light aft to show all around the horizon (32 points in the compass or 360 degrees).
 - (2) One combination light on the forepart of the vessel lower than the white light aft, showing a green light to the starboard and a red light to the port side of the vessel, each showing 10 of the compass or 112.5 degrees.
- (c) All motorboats greater than 25 feet in length underway from sunset to sunrise or at such times that the vision is less than 500 feet shall be equipped with the following lights:
 - (1) One white light as far forward as possible to show an unbroken light 20 points of the compass or 225 degrees with 10 points or 112.5 degrees on each side of the vessel.
 - (2) One white light aft to show all around the horizon (32 points in the compass or 360 degrees) and higher than the white forward light.
 - (3) One red light on the port side and 1 green light on the starboard side showing 10 points on the compass or 360 degrees with a screen installed to prevent lights from being seen across the bow.
 - (4) Every white light required in this section shall be carried on the centerline of the vessel, except that the all-around white light aft on a motorboat of less than 25 feet in length may be carried off the centerline.

17-14.09 Towing of Persons Behind Vessel.

- (a) Any towing of a person by vessel is prohibited, except in designated waters and in accordance with this section.
- (b) A vessel which has in tow a person or persons shall have at least an operator and an observer.
 - (1) The observer shall continuously observe the person or persons being towed and shall display a flag when the towed person is in the water.

- (2) Such flags shall be a bright red or brilliant orange color, measuring at least 12" inches square mounted to a pole not less than 24" inches long and displayed as to be visible from every direction.
- (c) The following is prohibited:
 - (1) Towing between the hours of sunset and sunrise.
 - (2) Towing a person who is not wearing a Coast Guard approved Personal Flotation Device Or within 100 feet of any person in the water, diver's marker.

17-14.10 Age Requirement To Operate Motorboat.

- (a) It shall be unlawful for a person under the age of 16 years to operate a motorboat unless accompanied by a person who is legally capable of operating such motorboat.
- (b) It shall be unlawful for a minor 10 years of age or under to operate or to be permitted to operate a motorboat.
- (c) Violations of this section will result in a mandatory civil fine of \$200 per incident.

17-14.11 Duty of Operator Involved in Collision, Accident, or Other Casualty-Immunity from Liability of Person Rendering Assistance.

- (a) All incidents involving an accident, collision, fire, injury, or other casualty shall be reported to Authorized Enforcement Personnel.
- (b) The operator involved in a collision, or other casualty, to the extent the operator can do so without serious danger to the operators own vessel or persons aboard, shall render all practical and necessary assistance to persons affected by the collision, accident, or casualty to save them from danger caused by the incident.
 - (1) Assistance rendered under this section shall not be evidence of the liability of such operator for the collision, accident, or casualty.
 - (2) The operator shall give his or her name, address, and identification of the operators vessel to any Authorized Enforcement Personnel, any person injured (or their representative), and to the owner of any property damaged.
 - (3) These duties are in addition to any duties otherwise imposed by law.
- (c) Any person who complies with this section or who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident, or other casualty, without objection of the person assisted, shall not be held liable for any civil damages as a result of the rendering of assistance or for any act of omission providing or arranging salvage, towage, medical treatment, or other assistance where the assisting person acts as any reasonable prudent person would have acted under the same or similar circumstances.

17-14.12 Motorboat Crossing.

- (a) When 2 motorboats are crossing so as to involve risk of collision, the vessel which has the other on her starboard side shall yield the right of way to the other.
- (b) When a motorboat and a sailboat are proceeding in such a direction as to involve risk of collision, the motorboat shall yield the right of way to the sailboat, except when the sailing vessel is overtaking the motorboat from behind.
- (c) Whenever, under this chapter, 1 of the 2 vessels is to yield the right of way, the other is to maintain its course and speed.

17-14.13 Overtaking Vessels.

- (a) Notwithstanding anything contained in this chapter, every vessel overtaking another, shall keep out of the way of the overtaken vessel.
- (b) Every vessel coming upon another vessel from any direction more than 2 points aft her beam; that is, in such a position, with reference to the vessel which it is overtaking that at night it would be unable to see the other vessel's sidelights, shall be deemed to be overtaking vessel, and no subsequent alteration of the bearing between the 2 vessels shall make the overtaking vessel a crossing vessel within the meaning of this Code or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

- (c) If the overtaking vessel is uncertain whether she is forward or aft from this direction from the other vessel, she should assume that she is overtaking the vessel and shall yield the right of way.

17-14.14 Right of Way–Fishing Vessel.

- (a) Vessels underway shall yield the right of way to vessels fishing with lines in the water.
- (b) This section shall not give to any vessel or boat engaged in fishing the right of totally obstructing a channel used by vessels other than fishing vessels such that other vessels are denied passage.

17-14.15 Garbage.

- (a) It shall be unlawful for any person, while on any watercraft or any person while on the shores or on any structure extending onto a waterway, to throw or discard into the waters any waste, debris, oil, garbage or other fluids or solid materials which in any manner tend to pollute said water or on the shores.
- (b) Violations of this section will result in a mandatory civil fine of \$200 per incident and may be additionally punished under the Spokane Tribe's Pollution Prevention Code.

17-14.16 Swimming and Bathing.

The following are prohibited:

- (a) Swimming or bathing in locations designated as closed.
- (b) Diving from vessels which are moving.
- (c) Authorized Enforcement Personnel may prohibit the use of flotation devices, glass containers, kites, or incompatible sporting activities within locations designated as swimming beaches.
- (d) The Spokane Tribe of Indians does not provide lifeguards on any Tribal waters.
 - (1) A parent or adult guardian must be present when children under the age of 16 are on the beach or in the water of designated swimming beaches and must supervise the children's activity.
 - (2) Voice and visual contact must be maintained with the child.
- (e) Violations of this section will result in a mandatory civil fine of \$100 per incident.

17-15.01 Severability.

If any provisions of this Chapter or its application to any person or circumstances is held invalid, the remainder of the Chapter or the application of the provision to other persons or circumstances shall not be effected.

CHAPTER 18 - LIVESTOCK, RANGE AND ANIMAL CONTROL

Section 18-1 General

18-1.01 General.

- (a) All grazing of livestock on Tribal and allotted trust lands comprising the Spokane Tribal range, hereafter referred to as "Tribal range" will be in accord with Tribal Codes and the Code of Federal Regulations Title 25, Part 151.
- (b) Tribal range includes all those trust lands in Tribal or allotted ownership which are not enclosed by a legal fence, or removed from Tribal range status by Tribal Code.
- (c) The term livestock includes, but is not limited to, horses, mules, donkeys, cattle, sheep, swine and goats.
- (d) It shall be the responsibility of the user of lands on the Spokane Reservation either owned, leased, or assigned, to protect the land and its produce or crops by a legal fence.
- (e) A legal fence is defined as a tight fence in good repair conforming to ASCS standards as follows:
 - (1) [original code left blank]

Section 18-2 Fence Specifications

18-2.01 Fence Specifications.

- (a) Posts shall be spaced not more than 20 feet apart, firmly set and braced at turns and corners.
- (b) Barbed wire fence shall consist of at least 3 strands of galvanized wire of good quality not less than 12 1/2 gauge or new high tensile high carbon wire not less than 12 1/2 gauge.
- (c) Woven wire fences must have 1 or more strands of barbed wire placed above the woven wire as determined necessary by the Range Committee for proper functioning of the fence.
- (d) Pole or timber fences in heavy snowfall areas where wire fences are impractical shall be constructed of at least 4 rails with posts not over 16 feet apart.

Section 18-3 Trespass

18-3.01 Trespass.

- (a) It shall be unlawful for livestock to be negligently or willfully allowed to graze or run at large on Tribal range, other than the owner's land without an approved authorization granted in accordance with federal regulation CFR Title 25, Part 151, or Tribal regulations.
- (b) In addition to the criminal sanctions outlined in Section 18-11.01, any violation of this provision shall be punished by a civil fine of \$3 per head per day.
- (c) Violators shall be issued a citation listing the violations, amount of the fine, and a date and time for hearing the matter in Tribal Court.
- (d) The citation may be issued by the Tribal Police, an agent of the Tribe, the superintendent or his authorized representative.
- (e) The Spokane Tribe may, at that time or subsequently, impound for sale in conformity with Section 18-8 of this Code that number of livestock necessary to pay the fine.

Section 18-4 Branding

18-4.01 Branding. No livestock will be permitted to use Tribal range unless a registered state brand, or some other identifying mark visible in the field which is recognized on the Reservation, has been placed on each animal that is 8 months old or older.

Section 18-5 Grazing Season

18-5.01 Grazing Season.

- (a) Livestock will not be turned out onto Tribal range until the beginning of grazing season, determined by the Tribal Council.
- (b) Permittees will be notified in writing of the date for turnout.
- (c) The Bureau of Indian Affairs will be responsible for counting of stock, issuing permits and notification of turnout date so the owner has sufficient time to prepare for turnout.
- (d) Stock may be recounted or dye-marked at any time and/or place when deemed necessary by the Spokane Tribal Court or by the Superintendent and/or their representatives.
- (e) Notification of the end of the grazing season shall be made in writing 2 weeks prior to the end of the season. All livestock will be promptly removed from the Tribal range at the end of the grazing season.

Section 18-6 Stallions

18-6.01 Stallions. No stallions of any breed or grade will be allowed on the open range.

Section 18-7 Bulls

18-7.01 Bulls. Only beef-type bulls of Trade 2 minus or better will be allowed on open range unless the permittee(s) of the grazing unit agree otherwise in writing and the unit is enclosed so the bull is confined to that unit.

Section 18-8 Impoundment

18-8.01 Impoundment.

- (a) Livestock which are on open range in violation of this Code provision will be reported to the Spokane Tribal Court, and if the owner is known he or his responsible agent will be instructed personally by oral communication (when reasonably possible) and in writing that he has 24 hours in which to conform, upon a showing by affidavit of such notice to the Tribal Court, a court order shall be issued and served on or mailed to the owner, giving the owner 48 hours to conform to regulations.
- (b) If the court order is not obeyed, the Tribal Court shall enter a finding that the known owner of said livestock has willfully violated this section.
- (c) In cases where the owner is not known, the Spokane Tribe will post in public places on the Reservation a description of the animals, the violations and the action necessary to comply with the regulations.
- (d) If after 7 days following the date of public posting the animals are still in violation, the Tribal Court shall enter a finding that the owner has negligently violated this section.
- (e) Livestock which are negligently or willfully permitted to violate the terms of this Code or any other Resolution or Code of the Spokane Tribal Council concerning control and regulations of livestock shall be subject to impoundment as hereinafter provided.

18-8.02 Impoundment-Persons Authorized. Such livestock may be impounded at any convenient place on the Reservation by either the Superintendent of the Spokane Indian Reservation or his representatives, or any Tribal law enforcement official.

18-8.03 Registration With Court. Within 24 hours after impoundment the person impounding the livestock shall register the same with the presiding Judge of the Spokane Tribal Court at Wellpinit, Washington.

18-8.04 Charges. The following charges shall be made by the Tribal Court and paid by the owner of impounded livestock:

- (a) Roundup Fee: \$10 per head
- (b) Open Range Trespass Fine: \$3 per head per day of trespass.
- (c) Holding Charge: \$2 per head per day until released.

18-8.05 Notice. Upon registration with the presiding Judge of the Spokane Tribal Court, the Judge shall cause a notice of hearing to be served as hereinafter provided, upon the owner of the livestock impounded.

18-8.06 Contents of Notice.

(a) The notice of hearing shall state that the livestock have been impounded, the name of the person impounding them, and the reason therefore, the brand if any, a general description of the place where the trespass or other violation occurred, the present location of the livestock impounded and the keeper thereof, and the schedule of charges in Section 18-8.04 as listed above, and information concerning the hearing in the following form.

(b) Form of Notice

18-8.07 Service of Notice.

(a) If the owner of the livestock impounded is known, the notice of hearing may be personally served or sent by certified mail.

(b) If the owner of the livestock is unknown, the notice shall be served by posting notice in 2 public places on the Reservation at least 7 days prior to the hearing.

18-8.08 Time. The hearing shall be at a time and place indicated in the notice and not less than 5 days after service, or mailing of the notice as provided herein, whichever is later, where the owner is known, unless the owner requests and is granted an earlier date, and not less than 14 days after posting and publication of the notice as provided herein where the owner is unknown.

18-8.09 Failure to Appear. Failure of the owner to appear at the hearing shall be deemed an admission to all material allegations in the notice and the validity of the livestock impoundment.

18-8.10 Hearing. The owner may be represented at the hearing by counsel. If the owner does not appear at the hearing, or after hearing, it appears to the Court, by a preponderance of the evidence, that the impounded livestock were negligently or willfully allowed to trespass on trust land without lease or permit or were otherwise in violation of this Code, the Court shall order the livestock sold 14 days from the date of the hearing to pay all charges accrued as of the date of sale as provided in Section 18-8.04 above unless the owner shall appear prior to the sale date and pay all charges including costs of the hearing accrued to date.

18-8.11 Sale.

(a) If, within the time allotted, the owner(s) of the livestock impounded has not appeared, or is, after hearing in which the validity of the impoundment was sustained, the charges accrued have not been paid to the presiding Judge, he shall order the livestock sold.

(b) Livestock shall be sold at public sale after notice and on such terms and conditions, as the Judge shall require.

18-8.12 Proceeds.

(a) After deducting all costs of sale and court costs, the proceeds of the sale shall be applied to the satisfaction of all accrued impoundment charges applied against such livestock under this Code.

(b) The surplus, if any, shall be transmitted to the owner if known. If unknown, the surplus shall be transmitted to the Tribal Range Improvement Account.

18-8.13 Right to Appeal. Any person aggrieved by the decision of the Tribal Judge shall have the right to appeal such decision.

Section 18-9 Crossing Permit

18-9.01 Crossing Permit.

(a) No non-Indian owned livestock shall be driven upon or across any Indian trust lands without first securing a crossing permit from the Spokane Tribal Council.

(b) A fee per animal per day will be set by the Council of not less than \$1 per animal unless waived.

Section 18-10 Disposal of Diseased or Dead Animals

18-10.01 Disposal of Diseased or Dead Animals.

(a) All animals that die from contagious or infectious disease, or unknown causes, must be burned or have sanitary burial immediately and the carcasses of all animals which die close to water,

trails, or other places where they will be a nuisance must be removed immediately by the owner.

- (b) Livestock owners shall be responsible for notifying the Superintendent or his authorized representatives of any and all infectious diseases in their herd and taking precautionary steps to prevent the spread of such disease.
- (c) Diseased animals or proved carriers shall be subsequently impounded for appropriate treatment or disposal.

Section 18-11 Offenses and Penalties

18-11.01 Offenses and Penalties. Violation of any of the provisions of Section 18-2 through 18-7, inclusive, shall be an offense and upon conviction thereof punishable by a sentence for a period of confinement not to exceed 30 days or a fine not to exceed \$100 or both jail sentence and fine and costs.

Section 18-12 Animal Control Code

18-12.01 Purpose. It is the intent and purpose of the Spokane Tribal Council in enacting this Code to promote the safety, health, and welfare of the people in the Spokane Tribal Community by providing an orderly, efficient and peaceful method of animal control.

18-12.02 Jurisdiction. The Spokane Tribe of Indians enacts this Code to apply to all people and animals within the exterior boundaries of the Spokane Reservation, all Spokane Tribal and allotted Indian lands outside the exterior boundaries of the Reservation, as well as any lands within Spokane Tribal jurisdiction as defined by law.

Section 18-13 Definitions

18-13.01 Definitions. For the purposes of this Code, the following words and phrases shall, unless otherwise indicated, have the following meaning:

- (a) "Running At Large" mean an animal running at large means any animal found on public property or on the property of persons other than the person owning or keeping the animal unless the animal is accompanied by a person exercising control of the animal.
- (b) "Animal Control Authority" mean means any person or entity authorized by the Spokane Tribal Council to perform the functions of this Code.
- (c) "Stray" mean is an animal with no owner's identification upon it and whose owner cannot be ascertained upon reasonable inquiry.
- (d) "Vicious Animal" means any animal that, when unprovoked:
 - (1) inflicts bites on a human being or a domestic animal either on public or private property, or
 - (2) chases or approaches a person or vehicle upon the street, sidewalks or any public grounds and/or any housing site, in an apparent attitude of attack, or any animal with a known propensity, tendency or disposition to attack unprovoked, to cause injury or otherwise to threaten the safety of humans and domestic animals.
- (e) "Owner" means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control or custody of an animal.
- (f) "Animal" means any domesticated or traditionally domesticated animal including but not limited to dogs and cats.
 - (1) "Animal" shall not mean cattle or horses for the purpose of this Code.

Section 18-14 Owners Duty

18-14.01 Owner's Duty. No animal owner shall allow any animal to run at large or stray.

18-14.02 Disturbances. No person shall own, keep or harbor any animal which by loud, continued or frequent noise shall unreasonably annoy, disturb or endanger the health and/or welfare of any person or neighbor.

18-14.03 Vicious Animals-Right to Destroy.

- (a) No person shall own, or possess any vicious animal unless muzzled and/or restrained or confined upon the premises of the owner thereof in such a way as to prevent it from chasing or biting any human being, nor permit such animal or animals to run at large or stray at any time.
- (b) Any Animal Control Authority as defined in this Code shall have the right to destroy any animal engaged in the process of injuring or harassing livestock or other domestic or game animals or threatening or inflicting harm to any person, or inflicting harm serious harm to personal or Tribal property.
- (c) However, a vicious animal engaged in the process of inflicting harm shall be subject to immediate destruction by any person.

Section 18-15 Owner-Responsibility-Duty to Obey

18-15.01 Owner - Responsibility-Duty to Obey. It shall be the duty of any owner of any animal to obey this Code; and it shall be the responsibility of such owner to conform to the requirements of this Code in exercising control of his animals; it shall also be the duty of any owner as defined in this Code to limit the number of animals possessed, harbored or kept in order to maintain a safe and healthy environment upon his premises and/or to promote the safety, health and welfare of the people in the Spokane Tribal Community.

18-15.02 Owner – Liability. Any owner of any animal shall be liable for injuries and/or damages sustained by any person through attack of such animal; and such owner shall also be held liable for harm to personal or Tribal property which results from the actions of his animal.

Section 18-16 Violations-Civil Penalty

18-16.01 Violations-Civil Penalty.

- (a) Any owner of any animal within the definitions of this Code who is found to be in violation of this Code shall, upon the first violation be subject to a civil penalty and shall be warned to exercise proper control of his animal and/or cat.
- (b) Upon second violation of this Code the owner shall receive a civil penalty of no more than \$100 but not less than \$25 and warned that the animal may be subject to destruction.
- (c) Upon a third violation the owner shall be given written notification that such animal may be destroyed in accordance with this Code.

Section 18-17 Destruction of Animals

18-17.01 Destruction of Animals.

- (a) Any Animal Control Authority shall be authorized to contract for the detention and destruction of any animal found in violation of this Code with a certified Animal Control facility in any jurisdiction.
- (b) The Spokane Tribal Court shall, upon 3 days notice to any known owner, have the authority to authorize the destruction of any animal found to be in violation of this Code.
 - (1) The owner shall have the opportunity to show cause at a hearing why the destruction shall not be proper.
 - (2) If an owner of the animal is not known, public notice of the right to hearing shall be given by posting in at least 2 public places on the Spokane Indian Reservation.
 - (3) One such public notice must be within a reasonable distance from the point where the animal was captured.

CHAPTER 19 - CONTROL OF MUSICAL ASSEMBLIES

Section 19-1 General

19-1.01 General. It shall be unlawful for any person, corporation, organization, landowner, or lessor to allow, encourage, organize, promote, conduct, permit, or cause to be advertised an entertainment, amusement or assembly of persons within the Spokane Indian Reservation wherein the primary purpose will be the presentation of outdoor live or recorded musical entertainment which said person, persons, or corporation, organization, landowner or lessor believes, or has reason to believe will attract 100 or more persons, and whether or not a charge or contribution is required for admission, unless a valid Spokane Tribal permit or license has been obtained for the operation of said musical assembly; *provided, however,* that said musical assembly may be advertised by the sponsors and/or organizers thereof only after application for such permit has been made and such permit has been granted.

Section 19-2 Application - Permit

19-2.01 Application-Permit.

- (a) Written applications together with a \$25 application fee, for such musical assemblies shall be made to the Tribal Council through the Executive Secretary of the Spokane Tribe at Wellpinit, Washington, 30 or more days prior to the date upon which such musical assembly is scheduled to be held.
- (b) Written notice of approval or disapproval of said application shall be given to the applicant within 15 days after the application has been filed.
- (c) The application fee shall be retained by the Tribe whether the permit be granted or denied or withdrawn.

Section 19-3 Fee

19-3.01 Fee.

- (a) The basic fee required for each permit granted shall be \$100.
- (b) No permit shall be granted for a period of more than 1 day, expiring at midnight on that day, and no permit shall be granted for consecutive days at the same location.

Section 19-4 Submission of Plan

19-4.01 Submission of Plan.

- (a) The application shall be in writing and include all relevant, pertinent information about the nature and location of the proposed musical assembly.
- (b) Any physical facility to be used shall be described in detail, together with plans and specifications of any proposed construction.
- (c) All facilities shall be in existence and available for inspection by the Tribe, the Bureau of Indian Affairs, the U.S. Public Health Service and other agencies at least 5 days before the event is planned to take place.
- (d) Previously given approval may be withdrawn if the actual facilities fail to meet standards.

Section 19-5 Conditions

19-5.01 Conditions.

- (a) No permit or license shall be issued by the Tribe unless the location thereof is suitable for such an assembly or unless the management of the assembly is equipped to provide at their expense sufficient authorized personnel for the supervision, policing and patrolling of the assembly, its approaches and exits and all areas affected by it.
- (b) No permit shall be granted unless the Tribal Chief of Police certifies to the Tribal Council that adequate provision is contracted for or otherwise provided for traffic and crowd control.
 - (1) In this regard there shall be provided 1 traffic control person and 1 crowd control person for each 200 persons expected or reasonably expected to be in attendance with adequate arrangements to increase the number of such personnel should the crowd exceed anticipated size or other unforeseen traffic and crowd control needs occur.

- (2) The sponsors will pay the expense of either the Tribe or the County for any additional personnel either employs or extra employee time either must pay as a result of the assembly.
- (c) Adequate parking facilities off the public highways, streets or roads shall be made available within or adjacent to the assembly with space for at least 1 vehicle for each 4 persons attending.

Section 19-6 Cash Bond and Indemnifications

19-6.01 Cash Bond and Indemnification.

- (a) No permit shall be issued hereunder unless the applicant has on deposit with the Tribal Office in Wellpinit, Washington, a cash bond as set out below to save and protect the highways, roads, trails, pavements, bridges, road signs, forests, grasslands and any other property on the Reservation from any and all damage that may be caused by vehicles, employees, or participants in such assembly and to be used as necessary, to restore the ground where such assembly is held to a reasonable and sanitary condition and to pay all charges and losses of the Tribe or others for damages to property and facilities as aforesaid, including private property, and further, to cover the cost of any extraordinary or additional law enforcement expense incurred by the Tribe resulting from such activity.
- (b) The amount of cash bond shall be determined as follows:
- (1) For gathering of 1 to 5,000 persons - a \$5,000 cash bond.
 - (2) The cash bond to be raised in increments of \$0.75 for each additional person over 5,000 expected.
 - (3) The deposit or its balance is to be returned when the Tribal Council certifies to the Tribal Executive Secretary that no damage has been done or that the cost of making the above-mentioned repairs was less than the cash bond amount and that the balance should be returned.
- (c) In addition to the above, the applicant or sponsor shall be required to furnish evidence of a liability insurance policy providing for a minimum of \$100,000 bodily injury coverage per person, \$300,000 bodily injury coverage per occurrence, and \$50,000 property damage, naming the Spokane Indian Tribe as an additional insured.

Section 19-7 Hours of Operation

19-7.01 Hours of Operation.

- (a) No such assembly shall be conducted during the hours of 12:01 a.m. and 9:00 a.m. on any day.
- (b) Participants shall be required to have cleared the licensed area and its immediate environs no later than 1:00 a.m. of the day following the licensed event.

Section 19-8 Penalties

19-8.01 Penalties.

- (a) Any person who shall violate or fail to comply with the conditions herein set forth, or who shall counsel, aid or abet such a violation or a failure to comply, shall be deemed guilty of an offense under the Tribal Law and Order Code and upon conviction thereof shall be punished by a fine not to exceed \$300 or by imprisonment.
- (b) Should a person who violates this Code or any of its conditions and requirements not be subject to the jurisdiction of the Tribal Court, it is understood that any applicant by applying for a license or permit under this Code does hereby subject himself to the enforcement by any proper court having jurisdiction over his person or property or civil damages in favor of the Spokane Tribe or its members for any violation any and all civil remedies shall be available to the Tribe in the enforcement of this Code and of the conditions of any permit or license issued pursuant thereto.

Section 19-9 County Jurisdiction

19-9.01 County Jurisdiction.

- (a) No Tribal permit or license shall be issued by the Tribe for such an assembly to be held on non-trust land on the Reservation unless the applicant secures the written approval of the Board of County Commissioners of Stevens County.
- (b) It is hereby declared that the location of such an assembly on non-trust land does not excuse the applicant or sponsor from complying with this Code because any such assembly must of necessity have an effect on neighboring Indian lands and on the Reservation as a whole.

Section 19-10 Severability

19-10.01 Severability. If any provisions of this Code or its application to any person or circumstances is held invalid, the remainder of this Code or the application of its provisions to other persons or circumstances shall not be affected.

CHAPTER 21 - EXCLUSION OF NONMEMBERS FROM THE SPOKANE INDIAN RESERVATION

Section 21-1 Exclusion from Reservation

21-1.01 Exclusion from Reservation. Any person, except a member of the Spokane Tribe, may be excluded from the Spokane Reservation upon the following grounds:

- (a) Commission of an act which is a crime as defined by Tribe, State or Federal Law.
- (b) Conduct of such a nature as to be offensive to the morals of the people of the Spokane Reservation.
- (c) Unauthorized prospecting or unauthorized mining, timber cutting, or other activity causing physical loss or damage to any Tribal natural resource.
- (d) Forcing entry into any Spokane member's home without the consent of the occupant or occupants.
- (e) Committing fraud, confidence games or usury against the people of the Spokane Reservation or inducing them to enter into grossly unfavorable agreements of any nature.
- (f) Defrauding inhabitants of the Reservation of just compensation for labors or services of any nature done at the request of the non-member.
- (g) Breach of peace, repeated acts of violence or repeated threats of violence against the inhabitants of the Reservation.
- (h) Repeated public drunkenness, repeated use of narcotics or any controlled substance, or any sale of narcotics or controlled substances on the Reservation.
- (i) Removing or attempting to remove a minor member of the Spokane Tribe from the Spokane Reservation without proper authority.
- (j) Any violation of the Spokane Tribal Employment Rights Code.
- (k) Assault with a deadly weapon or use of a deadly weapon in the commission of any felony.
- (l) Activities, if allowed to continue, which would result in substantial harm, loss or damage to the Spokane Tribe of Indians, the general public or their property.

Section 21-2 Procedure for Exclusion

21-2.01 Procedure for Exclusion. The Spokane Tribal Court shall have jurisdiction to exclude persons not entitled to reside within the boundaries of the Reservation. The procedure for such exclusion will be as follows:

- (a) Where there appears to be reasonable grounds to believe that serious cause exists to exclude a person or persons from the Spokane Reservation, the Spokane Tribal Council may petition the Tribal Court for an order of exclusion.
- (b) The petition shall state the name of the person to be excluded and the reasons for the proposed exclusion.
- (c) Upon the filing of said petition, the Tribal Judge shall issue a notice notifying the person or persons named in the petition and other interested parties that said named person or persons are to appear before the Court at a designated place and time to show cause why an order excluding him or them from the Reservation should not be issued.
- (d) Said notice shall state the reason for the proposed exclusion.
- (e) Notice shall be served personally upon the person or persons to be excluded in accordance with Section 4-4.02 of the Law and Order Code.
- (f) A hearing shall be held not less than 3 days nor more than 30 days after service of the notice.

21-2.02 Hearing.

- (a) The hearing shall take place at the designated time and place.
- (b) The person to be excluded shall be given an opportunity to present his defense and may be represented by counsel.
- (c) The Spokane Tribe must prove by a preponderance of the evidence that the defendant has committed 1 or more of the acts listed in Section 21-1.01.
- (d) Having so proven, the Court shall exclude the defendant(s) permanently unless the Tribe has petitioned for an exclusion period less than permanent.
- (e) If the defendant does not appear and is in default, the Court shall issue an order of exclusion according to the terms requested by the Tribe.

21-2.03 Appeal. Any person aggrieved by the decision of the Tribal Court shall have the right to appeal as provided in Section 1-7.02 of this Code.

Section 21-3 Procedures for Temporary Removal

21-3.01 Procedures for Temporary Removal.

- (a) When the Spokane Tribal Council has reasonable grounds to believe that the conduct or activity of a person subject to being excluded from the Spokane Reservation threatens to cause imminent and serious danger to the lives, health or morals of the residents of the Spokane Reservation, the Tribal Council may request an immediate temporary removal order at the same time it files for an order of permanent exclusion.
- (b) Upon receipt of an affidavit by the Council stating that it believes an emergency exists, and it is not possible to give notice of an immediate hearing prior to issuance of the order, the Court shall issue a temporary removal order directing law enforcement officers to remove such a person or persons from the Reservation.
- (c) The order for temporary removal shall state that the person or persons excluded have a right to an immediate hearing, and that contact may be made with the court immediately to set such a hearing if one is desired.
- (d) The Court shall set the hearing as soon as possible, but not less than 24 hours from the date of service of the temporary order.
 - (1) In any event, a hearing shall be scheduled within 15 days after the date of service of the temporary order to decide whether the temporary removal order shall be continued pending the hearing on the petition for an order of exclusion.
- (e) The hearing on the temporary removal order shall be by affidavit and argument of counsel unless the Court decides to allow an evidentiary hearing.
- (f) The Tribe shall show by affidavit that 1 of the grounds for exclusion exists, and the nature of the acts or omissions are of such a nature that the lives, health and morals of the residents of the Reservation are threatened.
- (g) If an evidentiary hearing is scheduled, the Court shall continue the temporary removal order pending the evidentiary hearing.

21-3.02 Re-Entering the Reservation. Those excluded by a temporary removal order may re-enter the Reservation, with counsel, to attend all necessary scheduled hearings of the matter, but shall deviate from a direct route to and from the Courthouse only with specific permission of the Court.

Section 21-4 Enforcement

21-4.01 Enforcement.

- (a) Any person excluded from the Spokane Reservation by the Spokane Tribal Court who does not promptly obey the order may be charged with contempt of court as provided in Section 1-8 of this Code.
- (b) Law Enforcement Officers shall also escort excluded persons off the Reservation, if necessary.

21-4.02 Federal Enforcement. The Spokane Tribal Court, at its discretion, may refer an exclusion case to the Superintendent of the Spokane Indian Agency or to the United States Attorney for appropriate action.

Section 21-5 Petition for Relief

21-5.01 Petition for the Tribal Council for Relief.

- (a) Any person(s) excluded under this Chapter must petition the Spokane Tribal Council for permission to re-enter the Reservation.
- (b) The Court shall not have the power to grant permission to re-enter the Reservation.

Section 21-6 Severability

21-6.01 Severability. If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the Chapter or the application of the provisions to other persons or circumstances is not affected.

CHAPTER 22 - PUBLIC GATHERINGS AND OPEN AIR ASSEMBLIES

Section 22-1 Definitions

22-1.01 Public Gatherings" means any assembly or gathering of people within the Spokane Indian Reservation where the general public or a specified group thereof is invited to attend which attracts or is likely to attract more than 25 non-members.

22-1.02 Open Air Assembly" means A public gathering or assembly as defined above but which will be held in the open air and attracts or is likely to attract more than 25 non-members.

22-1.03 Public Safety. For purposes of this Code, public safety is defined as the general safety of the property, persons or health of the Tribe, Tribal members or residents of the Reservation that could be adversely affected by a public gathering or open air assembly as defined above.

Section 22-2 Exemptions

22-2.01 Exemptions. The following types of gatherings or assemblies are exempted from or are not covered by the foregoing definitions:

- (a) Any such gathering in recognized public places such as churches, schools, gymnasiums, auditoriums, Tribal Fair Grounds or buildings and other places already under the control and supervision of Tribal, church, school, county, state, Federal Government, or other public authority.
- (b) Gatherings and assemblies of widely recognized local community or public organizations such as Boy Scouts, 4 H Clubs, farm, agricultural and cattlemen associations or groups, school picnics or activities, athletic teams, school and local church picnics or activities, and any other group or activity for which the Tribal Executive Director, or Tribal Council issues an exemption.

Section 22-3 Permits

22-3.01 Permits.

- (a) It shall be illegal to conduct or be responsible for the conduct of a public gathering of any kind within the Spokane Indian Reservation without the persons responsible for such gathering first having applied for in writing and obtained a permit therefore from the Spokane Tribal Council or persons authorized by said council to issue said permits.
- (b) Such application shall have been made at least 10 days before the date of such gathering.
- (c) The Tribal Chairman and/or the Tribal Executive Director are hereby authorized to receive and process said applications and, if deemed advisable, to issue such permits.
- (d) Any permit issued shall include proper requirements for the conduct of the Public Gathering to protect the public safety and health and protect against traffic and fire hazards.
- (e) The Council or its authorized representative may in its or his discretion charge an appropriate fee to cover the expense of the Tribe in protecting the public safety, may require an appropriate bond guaranteeing compliance with the terms of the permit, may require fire, liability and other insurance coverage and may set up any additional requirements and regulations deemed necessary to achieve the purpose of this Code.

CHAPTER 23 - TRIBAL GAMING CODE

Section 23-1 Definitions

23-1.01 Definitions. Unless a different code meaning is clearly indicated, the terms used in this Code shall have the same meaning as defined in the "Indian Gaming Regulatory Act," Public Law 100 § 497, 102 Stat. 2467 (Oct. 17 1988).

- (a) "Calendar Year" means the period beginning January 1 at 12:00:01 and ending the immediately following December 31 at 12:00 o'clock midnight.
- (b) "Chairman" means the Chairperson of the Spokane Tribal Gaming Commission appointed by the Council as the chief administrator of Spokane gaming.
- (c) "Class I Gaming" means social games played solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, Tribal ceremonies or celebration.
- (d) "Class II Gaming" means:
 - (1) the game of chance commonly known as bingo, whether or not electronic, computer, or other technologic aids are used in connection therewith –
 - A. that is played for prizes, including monetary prizes, with cards bearing numbers or other designations,
 - B. in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and
 - C. in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and
 - (2) card games that are:
 - A. explicitly authorized by laws of the State of Washington, or
 - B. are not explicitly prohibited by the laws of Spokane Tribe of Indians and the State of Washington and are played at any location in the State of Washington, but only if such card games are played in conformity with those laws and regulations, if any, of the State of Washington regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.
 - (3) The term "class II gaming" does not include:
 - A. Any banking cards games, including baccarat, chiming de fer, or blackjack (21), or
 - B. Electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.
 - (4) Notwithstanding any other provision of this section, the term "class II gaming" includes those card games played in the State of Washington, that were actually operated in the State by an Indian Tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian Tribe in the State on or before such date.
- (e) "Class III gaming" means all forms of gaming that are not Class I gaming or Class II gaming.
- (f) "Commission" means the Spokane Tribal Gaming Commission.
- (g) "Commissioner" means 1 of the members of the Spokane Tribal Gaming Commission.
- (h) "Council" means the Spokane Tribal Council.
- (i) [Reserved]
- (j) "Gaming or Gaming Activity" means to deal, operate, carry on, conduct, maintain or expose for play any game played with cards, dice, equipment or any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value,

including, without limiting the generality of the foregoing, faro, monte, roulette, keno, bingo, fan™tan, twenty-one, blackjack, seven-and-a-half, big injun, klondike, craps, poker, chuck-a-luck, Chinese chuck-a-luck (dai shu), wheel of fortune, chem de fur, baccarat, pai gow, beat the banker, panguingui, slot machine, video poker machine, pull tabs, bingo, any banking or percentage game or any other game or device approved by the Commission, but does not include games played with cards in private homes or residences in which no person makes or charges money for operating the game, except as a player.

- (k) [Reserved]
- (l) "Gaming Establishment or Gaming Premises" means any premises where gaming, other than Class I gaming" is operated or conducted, and includes all buildings, improvements, equipment, and facilities used or maintained in connection with such gaming.
- (m) "Gross Revenue" means the total monetary value that would be due to any operator of a gaming activity for any chance taken, for any table fees for card playing, or other fees charged for participation or admittance, as evidenced by required records.
 - (1) The value shall be stated in U.S. currency, before any deductions or allowances for prizes, pay out of winnings, cost of operation, promotional expenses, taxes, labor expenses, equipment or materials used, or any other expenses.
 - (2) In the absence of records, gross revenue shall be the maximum that would be due to an operator from that particular activity if operated at maximum capacity.
- (n) "Indian Land" means:
 - (1) Any lands located within the exterior boundaries of the Spokane Indian Reservation; and
 - (2) Any lands title to which is either held in trust by the United States for the benefit of the Spokane Tribe of Indians, or held by the Spokane Tribe of Indians subject to restriction by the United States against alienation and over which the Spokane Tribe of Indians exercises governmental power; and
 - (3) Any lands title to which is either held in trust by the United States for the benefit of the individual Indian, or held by an individual Indians subject to restriction by the United States against alienation and over which the Spokane Tribe of Indians exercises governmental power.
- (o) "Key Employee" means all employees who have authority over receipt or distribution of revenues from the gaming activity, and shall include but not be limited to cashiers, dealers, pit bosses, floor managers, supervisors and any other individual who has the authority to sign checks or handle cash or currency.
- (p) "Licensee" means any person who has been issued a valid and current license pursuant to the provisions of this Gaming Code.
- (q) "Net Revenue" means gross revenues of a gaming activity less amounts paid out as, or paid for, prizes, winnings, and total operating expenses, including reasonable salaries paid to employees, and excluding management fees, as defined by § 1.20.
- (r) "Management Contract" means any contract, subcontract, or collateral agreement between the Spokane Tribe and a contractor or between a contractor and subcontractor, if such contract or agreement provides for management of all or part of a gaming operation, excluding those parts of the operation that are not related to specific gaming activities.
 - (1) "Management," specifically in the context of this definition means policy decision-making authority regarding the gaming activity.
- (s) "Management Fee" means any monies paid from gaming revenue to any person or entity contracted and/or licensed to operate a gaming establishment.
 - (1) Such term shall not include monies paid for operating expenses.
 - (2) Such term shall also include any monies paid to the owner of a gaming establishment licensed pursuant to § 3.03 of this Code.

- (t) "Operating Expense" means"
 - (1) any expense incurred in the daily operation of a gaming activity that is specifically designated as an operating expense in a management contract;
 - (2) in the case of an establishment licensed by the Tribe pursuant to § 3.03, the term shall mean an expense specifically designated as an operating expense in any regulation adopted by the Commission.
 - (3) Operating expense shall include all monies that are reasonably attributed to maintaining and operating the gaming activities, reasonable salaries paid to employees, and non-gaming activities that are reasonably related to promoting business in the gaming establishment.
- (u) "Patron" means any person or group of persons who participate as players in games as defined by this Code, or who are physically present on premises wherein or whereon such games are being played.
- (v) "Person" means any association, partnership, corporation, firm trust or other form of business association as well as a natural person.
- (w) "Primary Management Officials" shall include all officials of the gaming activity who exercise authority over daily operation of the gaming, including the authority to hire and fire employees, to supervise employees or to establish operational policy for the gaming activity.
 - (1) Such officials shall include, but not be limited to, all owners, officers, and shareholders with greater than a 10% ownership interest, or partners of the management contractor, if any.
- (x) "Regulation" means the regulations of the Commission under this Code.
- (y) "Reservation" when not qualified, means:
 - (1) all lands and water areas within the exterior boundaries of the Spokane Reservation, established pursuant to Executive Order, January 18, 1881 and any extensions thereof, and all Spokane Tribal and allotted Indian lands outside the exterior boundaries of the Spokane Indian Reservation.;
 - (2) any other lands designated as reservation lands by the Secretary of the Department of Interior.
- (z) "Services" means labor provided by 1 person to or for another, where such labor is provided in pursuit of the purpose of gaming pursuant to this code.
- (aa) "Tribal Court" means the Tribal Court of the Spokane Tribe of Indians.
- (bb) "Tribal-State Compact" or "Compact". Tribal-State Compact" or "Compact means a written document, either negotiated and agreed to by the Spokane Tribe and an official or agency of the State of Washington, or prescribed by the Secretary pursuant to 25 U.S.C. 2710 (7) (B) (vii), governing the conduct of Class III gaming activities on Indian lands.
- (cc) "Tribe" means the Spokane Tribe of Indians.
- (dd) "Working days" means Monday through Friday except Federal or Tribal holidays.
- (ee) Words and Terms: Tense, gender and number: In constructing the provisions of this Code, save when otherwise plainly declared or clearly apparent from the context;
 - (1) words in the present tense shall include the future tense;
 - (2) words in masculine, feminine and neuter genders shall include all genders;
 - (3) words in the singular shall include the plural, and in the plural shall include the singular.

Section 23-2 Administration and Enforcement

23-2.01 Unauthorized Gaming.

- (a) Any Indian who commits any act of unauthorized gaming on this reservation or on any Indian land shall be guilty of a crime and shall be prosecuted in Tribal Court.

- (b) However, it is hereby declared that Class II and authorized Class III gaming, conducted on this reservation or on any Indian land, that fully complies with the provisions of this Code shall not be subject to any criminal penalties.

23-2.02 Ownership-Revenues to Benefit Tribe.

- (a) Except for those licenses issued pursuant to § 3.04, the Tribe shall have the sole proprietary interest in, and the sole responsibility for the conduct of the gaming activity.
- (b) Such provision does not, however, limit the Tribe's ability to enter into a management contract wherein net revenues are divided between the Tribe and other parties to the contract.
- (c) A gaming establishment shall be operated so as to produce the maximum amount of net revenues to the Tribe. Net revenues will go entirely to the Tribe and will be used solely for the following purposes:
 - (1) to fund Tribal government operations or programs;
 - (2) to provide for the general welfare of the Tribe and its members;
 - (3) to promote Tribal economic development;
 - (4) to donate to charitable organizations; or
 - (5) to help fund operations of local government agencies.

Net revenues from the gaming establishment may be used to make per capita payments to members of the Tribe upon the preparation of a plan to allocate revenues to the above uses and approval of this plan by the Secretary of the Department of Interior.

23-2.03 Establishment of Commission.

- (a) The Spokane Tribal Gaming Commission is hereby established.
- (b) The Commission shall consist of 3 members appointed by a majority vote of the Council.
- (c) Only enrolled members of the Tribe may be appointed to the Commission.
- (d) A commissioner shall be appointed by the Tribal Council and may be removed from office only for cause and by a unanimous vote of Council.
- (e) Vacancies shall be filled within 30 days by the Council.

23-2.04 [Reserved]

23-2.05 Compensation of Commissioners.

- (a) Commissioners shall be compensated at a rate to be established by the Tribal Council.
- (b) Commissioners shall be reimbursed for actual expenses incurred on Commission business, including necessary travel expenses.

23-2.06 Selection of Chairperson.

- (a) The Commission shall select a chairperson from its membership, who shall serve a 3-year term, and shall have the power to convene special meetings of the Commission upon 24 hours written notice to members of the Commission.
- (b) The 24-hour notice requirement may be waived by a majority of the Commission.

23-2.07 Meetings Open to Public. General meetings of the Commission shall be open to the general membership of the Spokane Tribe; all meetings shall be governed by Roberts Rules of Order.

23-2.08 Quorum-Majority Vote.

- (a) A quorum shall consist of 2 members of the Commission.
- (b) All decisions shall be made by a majority vote of the quorum present (or participating by telephone line), unless indicated otherwise in this Code.
- (c) Proxy or assignments of voting shall be prohibited.

23-2.09 Monthly Reports.

- (a) The Commission shall make monthly reports to the Council within 30 days after the close of the month for which the information is being required.

- (b) The reports shall include a full and complete statement of gaming revenues paid to the Tribe, expenses and all other financial transactions of the Commission and a summary of all licensing and enforcement actions.

23-2.10 Powers.

- (a) The Commission shall exercise all powers necessary to effectuate the purposes of this Code.
- (b) The Commission may exercise any proper power and authority necessary to perform the duties assigned to it by the Code, and is not limited by enumeration of powers in this chapter.
- (c) The Commission shall meet with the Chairman not less than once each month to make recommendation and set policy, to approve or reject reports of the Chairman and transact other business that may be properly brought before it.
- (d) The Commission shall promulgate rules and regulations for the operation of any gaming establishment and shall hear and resolve all disputes regarding any provision of the Code.
- (e) In all decisions, the Commission shall act to promote and ensure integrity, security, honesty, and fairness of the operation and administration of all gaming activities.
- (f) The Commission shall have the power and authority to deny any application, to limit, condition, suspend, or restrict any license, make a finding of suitability or approval of a license, or a finding of suitability or approval of or the imposition of a fine upon any person licensed, for any cause deemed reasonable by the Commission.

23-2.11 Prior Notice of Actions.

- (a) In adopting, amending, and repealing regulations, the Commission shall give prior notice of the proposed action to all licensees and other persons whom the Commission or Chairman has reason to believe have legitimate and bona fide interest in such proposed action.
- (b) Said notice shall inform such persons as to the general nature of the proposed action and advise them as to the manner in which comments on said proposed action shall be received by the Commission.
- (c) In emergencies, the Commission may summarily adopt, amend, or repeal any regulation if, at the time, the Commission determines such action is necessary for the immediate preservation of the public peace, health, safety, morals, and good order or general welfare, together with a statement of facts constituting the emergency; provided, the Commission shall schedule such emergency action for a regular hearing within 60 days.

23-2.12 Request for Commission Action.

- (a) Any person who is determined by the Commission or Chairman to be a bona fide interested party may file request in a manner and form approved by the Commission requesting the adoption, amendment or repeal of a regulation.
- (b) Upon receipt of the request, the Commission shall within 30 days deny the request in writing or schedule the matter for action pursuant to this chapter.

23-2.13 Voting on Licensing.

- (a) Any Commission vote resulting in approving, disapproving, revoking, suspending, limiting or conditioning a license under this Code shall be by ballot only; provided, that in an emergency a phone vote may be polled pursuant to Commission Regulations.
- (b) Should an applicant disagree with the determination of the Commission, the Commission shall hold a hearing to review its decision, within 3 working days from the date an applicant files his/her disagreement with the Commission.
- (c) At the hearing the burden shall be upon the applicant to show cause why the Commission's determination was incorrect.
- (d) Any Commissioner that may gain economically (other than gain to the Tribe and Tribal membership generally) from the granting or denial of a licensing application shall abstain from voting on such application.

23-2.14 Commission Findings. Following such hearing, the Commission shall, within 3 working days, reach a determination concerning:

- (a) the accuracy of the preliminary certification of facts, and
- (b) whether the license in question should be granted, continued, suspended, revoked, conditioned, or limited, and
- (c) whether or not any other action recommended to the Commission including, but not limited to, forfeitures, should be taken.

23-2.15 Notification of Commission Decision. Within 3 working days following this determination the Commission shall inform the subject in writing of that determination.

23-2.16 Right to Appeal.

- (a) The subject shall have a right to appeal the determination of the Commission to the Tribal Court.
- (b) Such appeal must be filed with the Tribal Court in written form on or before the 10th day following receipt of the written determination of the Commission.
- (c) A determination of such appeal by the Tribal Court shall be final and no further appeal may be had.
- (d) In any appropriate case which has been referred to Tribal Court for final action.
- (e) The Tribal Court shall review, de novo, the determination of the Commission.
- (f) The Court's action may be appealed to a panel of 3 associate judges.
- (g) Such appeals must be heard within 30 days.
- (h) In the event that associate judgeships are vacant, such vacancies shall be filled by visiting judges of other Tribal Courts.

23-2.17 Administrative duties of the Tribal Gaming Commission.

- (a) The Tribal Gaming Commission shall perform all duties, exercise all powers, assume and discharge all responsibilities, and carry out and effect all purposes of this Code relating to the regulation of all gaming activity.
- (b) In all decisions, the Commission shall act to promote and ensure integrity, security, honesty, and fairness of the operation and administration of all gaming activity.
- (c) The Commission's duties shall include but not be limited to the following:
 - (1) Correspond with the National Indian Gaming Commission and do whatever is necessary to complete compliance with the rules and regulations of that agency.
 - A. Specifically, the Commission shall arrange for an annual outside audit of authorized gaming and will provide a copy to the National Indian Gaming Commission;
 - (2) Assure that all gaming activity is conducted in a manner which adequately protects the environment and the public health and safety;
 - (3) Prescribe an adequate system that ensures that background investigations are conducted on all primary management officials and key employees of any Gaming establishment and that oversight of such officials and their management is conducted on an ongoing basis.
 - A. The Commission shall immediately notify the National Indian Gaming Commission of the issuance of such licenses.
 - B. The Commission will review all applications and background investigations to ensure that no person shall be eligible for employment in or with any part of the gaming operation if that person's prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming.
 - C. The Commission shall notify the National Indian Gaming Commission of the results of such background checks before the issuance of such licenses;

- (4) Recommend the hiring such professional, clerical, technical, and administrative personnel as may be necessary to carry out the provisions of this Code;
- (5) Identify and make necessary arrangements for a law enforcement agency to take fingerprints and for conducting a criminal history check which shall, at a minimum, include a check through the Federal Bureau of Investigation National Criminal Information Center.
- (6) Review all records, documents, and anything else necessary and pertinent to enforcement of any provisions of this Code.

23-2.18 Right of Inspection. The Commission, including its agents, inspectors, and employees have the authority:

- (a) To inspect and examine all premises wherein gaming is conducted or gambling devices or equipment are manufactured, sold or distributed;
- (b) To inspect all equipment and supplies in, upon or about a gaming establishment, or inspect any equipment or supplies wherever located, that may, or have been used in the gaming establishment;
- (c) Summarily to seize and remove from a gaming establishment (or whatever located) and impound such equipment or supplies for the purpose of examination, inspection, evidence or forfeiture;
- (d) To demand access to and inspect, examine and audit all papers, books and records of applicants and licensees respecting any income produced by any gaming business, and require verification of income and all other matters affecting the enforcement of the policy of or any of the provisions of this Code;
- (e) To seize and impound any patron's winnings which the Commission may have reasons to believe may have been won or obtained in violation of this Code pending a civil forfeiture hearing on such seizure;
- (f) For the purpose of administration and enforcement of this Code the Commission, including its investigative personnel may, if deemed necessary by the Tribal Council, have the powers of the peace officer of the Spokane Tribe of Indians for purposes of this Code only;
- (g) Commissioner shall have full power and authority to issue subpoenas and compel the attendance of witnesses for hearings at any place within the Reservation, to administer oaths and to require testimony under oath.
 - (1) Any process or notice may be served in the manner provided for service of process and notices in civil actions.
 - (2) The Commission and the Chairman may pay such transportation and other expenses of witnesses, as it may deem reasonable and proper.

23-2.19 Confidentiality of Information. The Commission and Chairman may refuse to reveal, in any court proceeding the identity of any informant, or the information obtained from the informant, or both the identity and the information.

23-2.20 Powers of Delegation.

- (a) The Commission may organize itself into functional divisions as it may deem necessary and from time to time alter such plan of organization, as it may deem expedient.
- (b) The Commission shall establish its own budget for operations, and acquire such furnishings, equipment, supplies, stationery, books, motor vehicles, and other things as it may deem necessary or desirable in carrying out its functions, and incur such other expenses, within the limit of funds available to it, as it may deem necessary.
- (c) Within the limits of a Council approved budget, the Commission shall employ and fix the salaries of or contract for the services of such professional, technical and operational personnel and consultants as the execution of its duties and the operation of the Chairman and Commission may require.

- (d) At the Council's discretion, said budget may be reviewed and modified by the Council at any time.
- (e) Upon the end of the budget year any surplus, which might exist, shall be refunded to Council at their discretion.
- (f) The Commission and Chairman shall each keep and maintain a file of all applications for licenses under this chapter, together with a record of all action taken with respect to such applications.
- (g) The Commission and Chairman shall keep and maintain such other files and records as they may deem desirable and all such records may be open to public inspection as they may deem appropriate; provided, that the annual Commission budget shall be made available to any Tribal member upon demand.

23-2.21 Sanctions. Any person who engages in activities on property subject to the provisions of this Gambling Code without a license, in violation of the license or terms imposed thereon, in violation of terms of suspension, or in violation of any regulation, provision, or amendment under this Code shall be in violation of the Code, including any person who unlawfully trespasses upon any premises licensed by this Code without the consent of the licensee and/or the Commission.

23-2.22 Limitations Period. No fine shall be assessed nor any action taken for any violation under the preceding section unless a charge is filed in proper form with the Tribal Court within 2 years of the commission of the offense.

23-2.23 Violations of Code-Punishment.

- (a) By accepting a license, the licensee is consenting to the civil jurisdiction of the Tribal Court.
- (b) Any violation of this Code shall be subject to a fine of no more than \$5000 for each separate count or violation, or prohibited from any gaming activity, or both.
- (c) Each day of violation shall constitute a separate count or violation under this Code.
- (d) A violator may also be required to pay court costs, storage fees, and auction or sales fees.
- (e) All property used or which may be used in activities in each and every separate violation of this Code may become the property of the Tribe; persons may be prohibited from trespassing on premises licensed under this Code, licenses may be suspended, revoked, or limited and/or establishments may be forcibly closed.
- (f) All such action shall be taken at the discretion of the Commission, subject to the right of appeal to Tribal Court.
- (g) Winnings found to have been received in violation of this Code are forfeited and become the property of the Tribe.

23-2.24 Due Process Regarding Enforcement Actions. The Commission shall promulgate regulations protecting due process rights of all individuals subject to the enforcement of this Code. Such regulations shall provide, at a minimum:

- (a) provide standards for emergency or summary suspension of license;
- (b) provide fair notice and opportunity for hearing regarding any revocation or suspension of license, and regarding any enforcement action taken pursuant to this Code;
- (c) provide right to appeal, de novo, of any Commission disciplinary or enforcement action to Tribal Court.

23-2.25 Special Agents.

- (a) The Commission shall authorize special agents appointed pursuant to Section 1 of Chapter IV of the Tribe's Law and Order Code or pursuant to any appropriate section and/or chapter of any subsequent Law and Order Code to perform services reasonably necessary to assure compliance with the provisions of this Code only.
- (b) Said special services of enforcement and surveillance shall be under the authorization and direction of the Chairman, unless otherwise determined by the Commission.

- (c) This section shall in no way be deemed to limit the normal law enforcement functions of these or other Tribal law enforcement officers not so authorized.

23-2.26 Independence of Commission.

- (a) The Chairman, Commissioners, members of the Council and their immediate families shall receive no personal compensation, gift, reimbursement or payment of any kind, from any person doing or wishing to do business with the Tribe relating to gaming, nor with any person wishing to obtain an unfair advantage in any authorized wager on gaming.
- (b) Personal compensation, gift, reimbursement or payment of any kind shall not include business entertainment, meals, lodging, or other ordinary and reasonable expenses in the negotiation and solicitation of contracts.
- (c) Any person receiving property in violation of this provision, including cash payments, shall forfeit that property immediately to the Tribe; and the Tribal Prosecutor shall prosecute the offending person(s) to the fullest extent possible under Tribal law for accepting a bribe.
- (d) The Commission shall cooperate to the fullest extent possible with any Federal or State law enforcement agency to pursue prosecution under applicable Federal or State law.

Section 23-3 Licensing of Games

23-3.01 Mandatory License.

- (a) Any person seeking to conduct, operate, or manage any gaming activity pursuant to this codes shall apply for, and receive, all the required licenses from the Commission prior to engaging in such gaming activities.
- (b) Engaging in such gaming activities without first obtaining the required licenses shall be deemed a violation of this Code and shall be punishable in accordance with § 2.26.

23-3.02 [Reserved]

23-3.03 Licensing and Regulation of Class II Gaming Activity; Net Revenue Allocation; Audits; Contracts.

- (a) A separate license issued by the Commission shall be required for each place, facility, or location within the Tribe's jurisdiction at which any Class II Gaming Activity is conducted.
- (b) The Commission may license and regulate a Tribally owned Class II Gaming Activity if -
 - (1) such gaming activity is located on Indian lands within the Tribe's jurisdiction, and the State of Washington permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal laws); and
 - (2) except as provided in Section 3.04, the Tribe will have the sole proprietary interest and responsibility for the conduct of such gaming activity, and
 - (3) net revenues from such Gaming Activity are used in accordance with Section 2.02 of this Code; and
 - (4) such gaming activity is subject to annual outside audits, which may be encompassed within existing independent Tribal audit systems, and provided to the Council, and
 - (5) all contracts for supplies, services, or concessions for an aggregate amount in excess of \$25,000 annually relating to such gaming are also subject to independent audits; and
 - (6) the construction and maintenance of the gaming facility, and the operation of that gaming, is conducted in a manner which adequately protects the environment and the public health and safety; and
 - (7) all primary management officials and key employees of the Class II gaming operation have successfully passed a background investigation which is approved by the Tribe and the National Indian Gaming Commission.

23-3.04 "Grandfathered" Licenses and Licenses that Mirror State Restrictions.

- (a) Licenses that Mirror State Restrictions. The Commission may license and regulate Class II gaming activities owned by any person or entity other than the Tribe and conducted within the Tribe's jurisdiction, only if the requirements described in section (b)(1) of this Section are met and are conducted in a manner that is at least as restrictive as the regulations established by Washington State law governing similar gaming within its jurisdiction.

- (1) No person or entity, other than the Tribe, shall be eligible to receive a license from the Commission to own a Class II gaming activity conducted within the Tribe's jurisdiction if such person or entity would not be eligible to receive a license from the State of Washington to conduct the same activity within its jurisdiction.
- (b) "Grandfathered" Licenses. The provisions of subsection (a) of this Section and the provisions of Subsections (2) and (3) of Section 3.02(b) shall not bar the continued operation of an individually owned Class II gaming operation that was licensed and regulated by the Tribe and was operating on September 1, 1986, if:
 - (1) such gaming operation remains in full compliance with all applicable Tribal and Federal laws, and is issued an annual license renewal from the Commission, and
 - (2) income to the Tribe from such gaming is used only for the purposes described in Section 2.02 of this Code, and
 - (3) not less than 60 percent of the net revenues is income to the Tribe, and
 - (4) the owner of such gaming operation pays the appropriate assessment levied by the National Indian Gaming Commission.

23-3.05 Issuance of Tribal Gaming Licenses; Objections.

- (a) The Commission shall consult with appropriate law enforcement officials concerning any gaming licenses it may issue.
- (b) If, after issuance of a gaming license by the Commission, reliable information is received that a primary management official or key employee does not meet the standard established under Section 3.04 of this Code, the Commission may suspend such license and, after notice and hearing, may revoke such license.

23-3.06 License and Regulation of Class III gaming activities; Tribal-State Compact Required.

- (a) The Commission may license and regulate Class III Gaming Activity if,
 - (1) Such gaming meets the requirements of Section 3.02, and
 - (2) conducted in conformance with the terms and conditions of a valid Tribal-State Compact entered into by the Tribe and the State of Washington, or with the terms and conditions of valid procedures for the regulation of class III games in lieu of a compact;
- (b) If the Indian Gaming Regulatory Act is unconstitutional, the Commission may license and regulate Class III gaming activities without regard to the IGRA and without regard to the laws of the State of Washington.
 - (1) In such situation, agents of the Washington State Gambling Commission are prohibited from entry onto Indians lands subject to the jurisdiction of the Spokane Indian Tribe.

23-3.07 Non-transferability of License.

- (a) Any license issued pursuant to the provisions of this Code is valid only for the person or entity at the place of business shown on the face thereof.
- (b) It is not assignable or otherwise transferable to any other person or entity for any other location without approval of the Chairman and Commission.

23-3.08 Granting of License-Majority Vote.

- (a) To approve of any license issued pursuant to this Code, a quorum of the Commission must be present with a majority vote of approval by said quorum required.
- (b) A license will not be issued to a person whose license has previously been revoked pursuant to this Code, or to whom the issuance of renewal of a license has been denied, except with the majority approval of the Commission members.

23-3.09 Application Fee.

- (a) The Commission shall set a fee for applications, background investigations, and licenses.
- (b) All such fees shall be made payable to the Spokane Tribal gaming Commission and delivered to the Spokane Tribe's Accounting office.

23-3.10 Background Investigation.

- (a) No License shall be granted to any person or entity who has been determined to be a person or entity whose prior activities, criminal record, if any, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.
- (b) The background investigation shall be at least as stringent as the regulations of the National Indian Gaming Commission published as 25 CFR § 556 in the 58(13) Fed. Reg. (Fri., 1/22/93).

23-3.11 Failure of Applicant to Disclose Material Information.

- (a) An applicant for licensing shall make true and full disclosure of all information to the Chairman and Commission as necessary or appropriate in the public interest or as required in order to carry out the policies of this Tribe relating to licensing and control of the gaming industry.
- (b) It is the duty of the applicant to disclose all information material to whether his involvement with gaming would jeopardize or compromise the Tribal interest, whether or not the applicant has been specifically requested to provide that information.
- (c) It shall constitute a violation of this code to fail to disclose, to mislead or to misstate any such material information to the Chairman of the Commission, or to any licensee's employer.

23-3.12 Temporary Employment Licenses.

- (a) The Commission may issue a temporary employment license to any person or entity applying for a license to work in a licensed gaming establishment which shall be valid pending the background investigation of the applicant.
- (b) In no event shall such temporary license be valid for greater than 180 days.

23-3.13 Parameters of Licensee.

- (a) Violation of any provision of this Code or any of the Commission's regulations by a licensee, his agent, or employee shall be deemed contrary to the public health, safety, morals, good order and general welfare of the Spokane Tribe and the inhabitants of the Spokane Reservation, and shall be deemed grounds for refusing to grant or renew a license, suspension or revocation of a license, or shall constitute grounds for the filing of charges by the Commission or Chairman.
- (b) Acceptance of a gaming license or renewal thereof, or condition imposed thereon, by a licensee, constitutes an agreement on the part of the licensee to be bound by all the regulations and conditions of the Chairman or Commission and by the provisions of this Code as the same are now, or may hereafter be amended or promulgated, and to cooperate fully with the Chairman and Commission.
- (c) It is the responsibility of the licensee to keep himself informed of the contents of all such regulations, amendments, provisions, and conditions, and ignorance thereof will not excuse violations.
- (d) The Commission shall use reasonable efforts to notify all licensees of changes in regulations.

23-3.14 Licensing of Distributors. The Commission may authorize, require and issue such annual licenses as the Commission by regulation may provide, to any person or entity to engage in the selling, distributing, or otherwise supplying gambling equipment or paraphernalia for use in connection with licensed gaming activity.

Section 23-4 Management Contracts

23-4.01 Commission Approval Required.

- (a) Any management contract entered into by the Tribe for the operation and management of Class II and Class III gaming activity must be submitted to the Commission for approval, but, before approving such contract, the Commission shall require and obtain the following information:
 - (1) the name, address, and other additional pertinent background information on each person or entity (including persons comprising such entity) having direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corporation

- and each of its stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock; and
 - (2) a description of any previous experience that each person listed pursuant to subsection (1) has had with other gaming contracts with Indian Tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had a contract relating to gaming; and
 - (3) a complete financial statement of each person listed pursuant to subsection (1)
- (b) Any person listed pursuant to subsection (a)(1) shall be required to respond to such written or oral questions that the Commission may propound in accordance with its responsibilities under this section.
 - (c) For purposes of this Code, any reference to the management contract described in Section 4.01(a) shall be considered to include all collateral agreements to such contract that relate to the gaming activity.
 - (d) After the Commission has given its approval of a management contract, the Commission shall submit such contract to the National Indian Gaming Commission for its approval.
 - (1) No such contract shall be valid until the National Indian Gaming Commission has approved it, provided however, that a person or entity may perform pursuant to the terms of the management contract on an interim basis pending NIGC approval.
 - (e) In making the determination to approve management contracts, when the Tribe is submitted competing bids or proposals involving gaming wherein the bids or proposals will provide substantially the same return to the Tribe and its membership, the Commission and the Council shall give preference to Tribal members and cooperative associations of Tribal members over non-Tribal members.
 - (1) Further, preference will be given to non-member Indians and cooperative associations of non-member Indians over non-Indians.

23-4.02 Approval of Management Contracts. The Commission shall approve any management contract entered into by the Tribe pursuant to this Chapter only if it determines that such contract is in compliance with the provisions of this Gaming Code, and provides at least:

- (a) for adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the Council on a monthly basis;
- (b) for access to the daily operations of the gaming to appropriate Tribal officials who shall also have a right to verify the daily gross revenues and income made from any such Tribal gaming activity;
- (c) for a minimum guaranteed payment to the Tribe that has preference over the retirement of development and construction costs;
- (d) for an agreed ceiling for the repayment of development and construction costs;
- (e) for a contract term not to exceed 5 years, except that, upon the request of the Tribe, the Commission may authorize a contract term that exceeds 5 years but does not exceed 7 years if the Commission is satisfied that the capital investment required, and the income projections, for the particular gaming activity require additional time; and
- (f) for grounds and mechanisms for terminating such contract, but actual contract termination shall not require the approval of the Commission.
- (g) for preference to Tribal members and non-member Indians in hiring of employees for the gaming establishment and for provisions that the management contract be subject to the TERO Code.

23-4.03 Percentage-of-Net-Revenue Fees.

- (a) A management contract providing for a fee based upon a percentage of the net revenues of a Tribal gaming activity may be approved by the Commission if such percentage fee is reasonable in light of surrounding circumstances.

- (1) Except as provided in this Section, such fee shall not exceed 30 percent of the net revenues;
- (b) Upon request of the Council, the Commission shall approve a management contract providing for a fee based upon a percentage of the net revenues of a Tribal gaming activity that exceeds 30 percent but not 40 percent of the net revenues if the Council is satisfied that the capital investment required, and income projections, for such Tribal gaming activity require the additional fee, and such contract is otherwise in compliance with this Gaming Code.

23-4.04 Contract Disapproval. The Commission shall not approve any contract if it determines that:

- (a) Any person listed pursuant to Section 4.01(a)(1) who:
 - (1) has been or subsequently is convicted of any felony relating to a gaming offense; or
 - (2) has knowingly and willfully provided materially important false statements of information to the Commission or the Tribal officials who negotiate such contracts or has refused to respond to questions propounded pursuant to Section 4.01(b); or
 - (3) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;
- (b) The management contractor has, or has attempted unduly to interfere or to influence for its gain or advantage any decision or process of Tribal government relating to gaming activity;
- (c) The management contractor has deliberately or substantially failed to comply with the terms of the management contract or the provisions of this Code or any regulations adopted pursuant to this Code or the Indian Gaming Regulatory Act.

23-4.05 Modifying or Voiding Contract. The Commission, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if it subsequently determines that any of the provisions of this Chapter have been violated.

23-4.06 Conveying Interest in Land. No management contract for the operation of a gaming activity regulated by this Code shall transfer or, in any other manner, convey any interest in land or other real property, unless specific applicable statutory authority exists and unless clearly specified in writing in said contract.

23-4.07 Fee for Investigation Cost. The Commission may require a potential contractor to pay a fee to cover the cost of the investigation necessary to reach a determination required in Section 4.04 of this Chapter.

Section 23-5 Auditing and Internal Control

23-5.01 Minimum Procedures for Control of Internal Fiscal Affairs.

- (a) The Commission shall promulgate regulations for control of internal fiscal affairs of all gaming operations.
- (b) At a minimum, those regulations shall:
 - (1) Prescribe minimum procedures for safeguarding the gaming operation's assets and revenues, including recording of cash and evidences of indebtedness, mandatory count procedures.
 - A. Such procedures shall establish a control environment, accounting system, and control procedures that safeguard the assets of the organization, assures that operating transactions are properly recorded, promote operational efficiency, and encourage adherence to prescribed policies;
 - (2) Prescribe minimum reporting requirements to the Commission;
 - (3) Provide for the adoption and use of internal audits, by internal auditors and Certified Public Accountants licensed to practice public accounting;
 - (4) Formulate a uniform code of accounts and accounting classifications to assure consistency, comparability and effective disclosure of financial information.
 - A. Such code shall require that records be retained that reflect drop (amount of cash wagered by patrons), win/loss (amount of cash won/lost by the gaming

- operation) and the percentage of win/loss to drop, or provide similar information, for each type of game, or each gaming device;
- (5) Prescribe the intervals at which such information's shall be furnished;
 - (6) Provide for the maintenance of documentation, i.e. checklists, programs, reports, etc., to evidence all internal work performed as it relates to the requirements of this section; and
 - (7) Provide that all financial statements and documentation referred to in subsection (f) be maintained for a minimum of 2 years.

23-5.02 Commission Oversight of Internal Fiscal Affairs.

- (a) The Commission shall, by regulation, require audits of the financial statements of all gaming operations.
- (b) Such audits must:
 - (1) be made by independent Certified Public Accountant;
 - (2) include an opinion, qualified or unqualified or, if appropriate, disclaim an opinion on the financial statements taken as a whole in accordance with standards of the accounting profession established by rules and regulations of the American Institute of Certified Public Accountants; and
 - (3) disclose whether the accounts, records and control procedures maintained by the gaming operation are as required by the regulations promulgated by the Commission; and
 - (4) provide for a preliminary review of the internal control structure, upon adoption of the policies and procedures by the entity, to disclose any deviation from prescribed rules and regulations and report such findings to the Commission and management;
 - (5) The Commission shall bear its own costs related to performance of the provisions of this section.

23-5.03 Commission Right to Conduct Audit. The Commission shall be able to retain its own appointed accountants, or direct an accountant employed by the Tribe, to conduct its own audit of any gaming operation.

23-5.04 Prohibition Against Embezzlement.

- (a) Any delay, maneuver or action of any kind which in the opinion of the Chairman is effectuated by any licensee to unlawfully divert gaming or other proceeds properly belonging to the Tribe shall constitute grounds for taking disciplinary action against that licensee.
- (b) If the Commission finds an unlawful diversion was attempted, it shall sanction the licensee. Sanctions may include fining, revoking, suspending, limiting or refusing to renew the license.

23-5.05 Non-Compliance. Failure to comply with this chapter or the regulations promulgated there under, shall constitute a per se violation of this Code.

Section 23-6 Authorization of Gaming

23-6.01 Prohibition Against Gaming. No person duly authorized by the Commission shall engage, conduct or condone any Class II or Class III game unless such game is approved by this Commission and regulations for rules governing such game have been duly promulgated by this Commission.

23-6.02 Grace Period. The prohibition contained in Section 6.01 shall not apply to those games already being played as of the date of enactment of this Code, provided, however, that the licensee conform to the rules promulgated hereunder within 5 days of such promulgation.

23-6.03 Authorization of Gaming.

- (a) The Commission may authorize the playing of any game not prohibited by the laws of the State of Washington.
- (b) Such regulations shall conform with standards of the rules for the play of games, as such games are played generally within the international gaming industry.

23-6.04 Approval of Gaming Terminals. The Commission shall have the discretion to review and approve all gaming terminals used in the gaming operation as to integrity, fairness, and honesty.

- (a) The Commission may test any machine in a gaming facility at any time, or may require a prototype or sample of any model of gaming terminal used in the gaming operation to be placed in the custody of the Chairman and retained by him as a control for comparison purposes.
- (b) Any evidence that gaming terminals used in the gaming operation has been tampered with or altered in any way that would affect the integrity, fairness, or honesty of the terminal shall be immediately reported to the Commission.

23-6.05 Posting of Rules.

- (a) The Rules of each authorized game offered at any duly licensed gaming establishment shall be made available.
- (b) The Gaming operation shall post the rules in a conspicuous location in clearly legible manner, that the rules are available for inspection, upon request.

Section 23-7 Exclusion or Ejection of Individuals

23-7.01 List of Undesirables.

- (a) The Commission shall, by regulation, provide for the establishment of a list of persons who are to be excluded or ejected from any duly licensed gaming operation.
- (b) The list may include any person whose presence in the gaming establishment is determined by the Commission to pose a threat to the interests of the Tribe, or to licensed gaming.
- (c) Race, color, creed national origin or ancestry, or sex must not be grounds for placing the name of a person on the list.

23-7.02 Notice and Opportunity to be Heard.

- (a) The Commission shall promulgate regulations providing fair notice and opportunity to be heard to any individual whose name is being contemplated by the Tribe to be placed on the list referred to in section 7.01.
- (b) Such regulations must provide the person an opportunity to show cause why his name should be deleted from the list.
- (c) The individual may appeal any decision of the Commission to place his name on the list to Tribal Court.

23-7.03 Prohibition Against Listed Individuals.

- (a) It shall be a violation of this Code for any licensee who knowingly fails to exclude or prevent any persons placed on the list referred to in section 7.01 from entering into or engaging in any game at a duly licensed gaming establishment.
- (b) It shall be a violation of this Code for any person whose name appears on the list referred to in section 7.01 to enter into or engage in any game at a duly licensed gaming establishment.
- (c) Nothing in this section may be interpreted to prevent the gaming operation from refusing service to anyone.

23-7.04 Prohibition Against Gambling by Minors. It shall be a violation of this Code for any licensee who knowingly permits gaming at a licensed gaming establishment to any individual under the age of 18 years.

Section 23-8 Cheating

23-8.01 Unlawful Acts. It shall be unlawful for any person:

- (a) to alter or misrepresent the outcome of a game or other event on which wagers have been made after the outcome is made sure but before it is revealed to the players;
- (b) to claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a gambling game with intent to defraud, without having made a wager contingent thereon, or to claim, collect or take an amount greater than the amount won;
- (c) knowingly to entice or induce another to go to any place where a gambling game is being conducted or operated in violation of the provisions of this chapter, with the intent that the other person play or participate in that gambling game;

- (d) to place or increase a bet or wager after acquiring knowledge of the outcome of the game or event which is the subject of the bet or wager, including past-posting and pressing bets;
- (e) to reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet or wager, including pinching bets;
- (f) to manipulate with intent to cheat, any component of a gaming terminal or any tangible device used in connection with the gaming activity in a manner contrary to the designed and normal operational purpose for the component, with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game.

23-8.02 Prohibition against Electronic Aids.

- (a) Except as specifically permitted by the Commission, no person shall possess with the intent to use, or actually use, at any table game, either by himself, or in concert with others, any calculator, computer, or other electronic, electrical, or mechanical device to assist in projecting an outcome at any table game, to keep track of or analyze the cards having been dealt, to change the probabilities of any table game or the playing strategies to be utilized.
- (b) Nothing in this section shall be interpreted to preclude the gaming establishment from maintaining and offering such electronic aids so long as the information provided from such aids is made available to all players.

Section 23-9 National Indian Gaming Commission and Tribal-State Compacts

23-9.01 National Indian Gaming Commission—Regulations.

- (a) Notwithstanding any provision in this Gaming Code or any regulation promulgated there under, the Commission is fully empowered to comply with all regulations promulgated by the National Indian Gaming Commission, including, but not limited, to all requirements to report Codes, contracts, license applications, background checks, and other information to the National Commission.
- (b) Nothing in this section shall be interpreted as a waiver of the Tribe's right to challenge the legality of any such regulations.
- (c) If IGRA is unconstitutional, this section shall be void.

23-9.02 National Indian Gaming Commission-Assessment.

- (a) Notwithstanding any provision in this gaming Code or any regulation promulgated thereunder, the Commission is fully empowered to comply with all assessments authorized by the National Commission.
- (b) Such assessments shall be paid from the Treasury of the Spokane Tribe of Indians.
- (c) This provision does not affect the responsibility of those possessing grandfathered licenses as set forth in § 3.04(b) to pay assessments directly to the National Commission.
- (d) Nothing in this section shall be interpreted as a waiver of the Tribe's right to challenge the legality of any such regulations.
- (e) If IGRA is unconstitutional, this section shall be void.

23-9.03 Compact with the State of Washington.

- (a) Notwithstanding any provision in this gaming Code or any regulation promulgated thereunder, the Commission is fully empowered to comply with the provisions of any compact properly executed between the Tribe and the State of Washington.
- (b) Nothing in this section shall be interpreted as a waiver of the Tribe's right to challenge the legality of any such compacts.
- (c) If IGRA is unconstitutional, this section shall be void.

Section 23-10 Miscellaneous

23-10.01 [Reserved]

23-10.02 Maintenance of Code and Regulations.

- (a) Each licensee shall obtain, maintain and keep current a copy of the Gaming Code and regulations promulgated thereunder, which shall be located at the premises used for the conduct of a licensed activity.
- (b) The Code and regulations shall be produced by the licensee and shown to any person upon demand. That the licensee may not have a current copy of the Code, or each of the rules of the Commission, shall not in any way diminish the licensee's obligation to abide by the Code and regulations.
- (c) The Commission shall provide, at no cost, copies of the Code and regulations, and amendments thereto, to each licensee.

12-10.03 Compliance with Other Laws. The construction, maintenance and operation of any facility in which gaming activities are to take place shall be in a manner, which adequately protects the environment and the public health and safety and shall comply with any otherwise applicable Tribal and federal laws relating to environmental protection and public health and safety.

23-10.04 Amendments.

- (a) All provisions of this Gaming Code are subject to amendment by a majority of both the Commission and the Spokane Tribal Council.
- (b) All regulations promulgated by the Commission are subject to proper revision, repeal, or amendment by the Commission and the Spokane Tribal Council.

23-10.05 Severability. If any provision of this Code, or its application to any purpose or circumstance, is held invalid by a court of competent jurisdiction, the full remainder of the provision, or the application of the provision through another person or circumstance, shall not be affected.

CHAPTER 24 - LIQUOR CODE

Section 24-1 Purpose

24-1.01 Purpose.

- (a) The Spokane Tribe possesses the sovereignty to decide whether to allow liquor transactions on its Reservation.
- (b) If the Spokane Tribe allows liquor transactions, it also possesses the sovereignty to regulate those transactions.
- (c) By the enactment of this Code, the Spokane Tribe is permitting liquor transactions that are in conformity with this Code and 18 USC Section 1161.
- (d) The Spokane Tribe also intends this Code to regulate and control the sale, distribution, and possession of liquor.
- (e) This Code is adopted pursuant to Article VIII of the Constitution of the Spokane Tribe of Indians

24-2.01 Title. This Chapter shall be known as the Spokane Tribal Liquor Code.

24-2.02 Jurisdiction. The Spokane Tribe of Indians enacts this Code to apply to all lands under its jurisdiction, namely all lands and water areas within the exterior boundaries of the Spokane Reservation, any extensions of the Reservation, and all Spokane Tribal and allotted Indian lands outside the exterior boundaries of the Spokane Indian Reservation, as well as those lands that fulfill the definition of "Indian Country" as defined in 18 USC Sections 1151 and 1154.

Section 24-3 Definitions

24-3.01 Definitions. For the purpose of this Chapter, unless otherwise required by the context, the following words and phrases shall have the designated meanings:

- (a) "Alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance.
 - (1) This term does not include alcohol which is intended to be or has been denatured and used as a fuel for use in motor vehicles, farm implements and machines or implements of husbandry.
- (b) "Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than 4% of alcohol by weight, and not less than 1-half of 1% of alcohol volume.
 - (1) For purposes of this Chapter any such beverage, including ale, stout and porter containing more than 4% of alcohol by weight shall be regulated the same as "beer."
- (c) "Tribal Council" means the Spokane Tribal Council.
- (d) "Commercial sale" means the transfer, exchange or barter, in any or by any means whatsoever for a consideration, by any person, association, partnership, or corporation of liquor and beer products.
- (e) "Licensed operator" means that person licensed by the Spokane Liquor Commission to operate a liquor outlet.
- (f) "Liquor" includes the 4 varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine and beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semi-solid, or other substance, which contains more than 1% of alcohol by weight shall be conclusively deemed to be intoxicating.
- (g) "Liquor Outlet" means a Tribally-licensed retail sales business selling liquor products by the package or the drink on the lands under the jurisdiction of the Tribe and this Code.
- (h) "Package" means any container or receptacle used for holding liquor.

- (i) "Public place" includes streets and alleys of towns; highways or roads; buildings and grounds used for school purposes; public halls and grounds adjacent thereto; those parts of establishments where beer or liquor may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls of Tribal buildings, restaurants, theaters, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; publicly owned parks and/or playgrounds; Tribal fairgrounds, and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.
- (j) "Regulations" means those regulations made by the Spokane Liquor Commission.
- (k) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding 24% of alcohol by volume.
- (l) "Spokane Liquor Commission" means the Board that shall administer this Chapter and is empowered as set out in Section 24-4 of this Chapter.
- (m) "Tribe" means the Spokane Tribe of Indians.
- (n) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than 24 percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding 24% of alcohol by volume.

Section 24-4 Membership and Powers of the Spokane Liquor Commission

24-4.01 Membership.

- (a) The Spokane Tribal Council shall be the Spokane Liquor Commission.
- (b) The Council may, if it so wishes, appoint others as a Commission to serve in its stead.
- (c) That Commission shall be composed of no less than 5 and no more than 7 members.

24-4.02 General Powers. The Commission is empowered to:

- (a) Administer this Code by exercising general control, management, and supervision of all liquor sales, places of sale and sales outlets as well as exercising all powers necessary to accomplish the purposes of this Code;
- (b) Adopt and enforce rules and regulations in furtherance of the purposes of this Code and in the performance of its administrative functions;
- (c) To license each liquor outlet within the jurisdiction of the Spokane Tribe of Indians.
- (d) To examine the records of each liquor outlet at a time and place convenient to both the licensed operator and the Commission.
- (e) To revoke any license issued to a liquor outlet at its informed discretion.
- (f) To inspect the physical premises of each liquor outlet.
- (g) Designate any area, upon application of the owner, where public consumption of liquor may occur.

Section 24-5 Licensing of Liquor Outlet

24-5.01 License Required. Each liquor outlet is required to possess a license granted by the Commission.

Section 24-6 Application for Liquor Outlet License

24-6.01 Application.

- (a) Applications for a liquor outlet license may be obtained at the Tribal Office.
- (b) Completed applications shall be submitted to the Liquor Commission.
- (c) Members of the Spokane Tribe of Indians shall have preference over other applicants for licenses.

24-6.02 Application Fee.

- (a) Each application shall be accompanied by an application charge or fee of \$100, which shall be non-refundable, even if the applicant is not granted a license.
- (b) The application fee for special use liquor license to be issued under 24-6.04 shall be \$15.

24-6.03 Grant of License.

- (a) The Commission shall review the application and may, if it deems it necessary, request additional information and documentation from the applicant.
- (b) If the Commission is satisfied that the applicant is a suitable and reputable person, the Commission may issue a license for the sale of liquor products.
- (c) The Commission shall state on the license whether the license is for the sale of liquor by the drink, by the package, or both.
- (d) A license shall only entitle the operator to 1 outlet.
- (e) A license may be granted for the sale of only beer or wine by the drink.

24-6.04 License Renewal.

- (a) A license shall be issued for the period of 2 years.
- (b) This license shall be non-transferrable.
- (c) The license shall be renewable every 2 years at the discretion of the Commission, with the operator filing a new application and paying the filing fee.
- (d) The Commission may also issue a special use liquor permit to persons paying the necessary application fee under 24-6.02 for a maximum period of 3 days as long as the liquor to be sold or distributed is in conjunction with regularly scheduled community or social events.

24-6.05 Limitation on Licenses.

- (a) The Commission shall carefully limit the number of licenses and limit the location of the licenses to protect the health, safety and welfare of the people.
- (b) The number and location of the licenses is within the sole discretion of the Commission.

24-6.06 Designation of Public Use Area.

- (a) An applicant may apply for a designation as a public use area.
- (b) The applicant shall be responsible for obtaining a liquor license and shall so indicate in its application that the application is for the purpose of consumption of liquor on the premises.
- (c) All provisions of this Chapter shall apply to any area so designated unless specifically excluded.

Section 24-7 Restrictions on Liquor Outlets

24-7.01 Sales to Minors. No licensed operator shall give, sell or otherwise supply liquor to any person under 21 years of age, either for his or her own use or for the use of his or her parents or for the use of any other person.

24-7.02 Consumption of Liquor Upon Licensed Premises Prohibited. No licensed operator shall permit any person to open or consume liquor on his or her premises or any premises adjacent thereto and in his or her control, unless the operator has a license to sell liquor by the drink or has otherwise been designated under this chapter as a location where public consumption of liquor may occur.

24-7.03 Conduct on Licensed Premises.

- (a) No Tribal operator shall be disorderly, boisterous or intoxicated on the licensed premises or on any public premises adjacent thereto which are under his or her control, nor shall he or she permit any disorderly, boisterous or intoxicated person to be thereon; nor shall he or she use or allow the use of profane or vulgar language thereon.
- (b) No operator or employee shall consume liquor, beer or wine while working on the licensed premises.
- (c) No operator shall permit suggestive, lewd or obscene conduct or acts on his or her premises.

24-7.04 Employment of Minors.

- (a) No person under the age of 21 years shall be employed in any service in connection with the sale or handling of liquor, either on a paid or voluntary basis, except as otherwise provided herein.
- (b) Employees 18 years or older may sell and handle beer or wine not to be consumed on the premises provided that there is direct supervision by an adult 21 years of age or older.

24-7.05 Display of License. Any Tribal operator issued a license shall frame under glass and display the license on the premises.

24-7.06 Operator's Premises Open to Commission Inspection. The premises of all Tribal operators, including vehicles used in connection with liquor sales, shall be open at all times to inspection by the Commission.

24-7.07 Hours of Operation. All liquor outlets, with the exception of grocery stores or convenience stores selling only beer or wine, shall close by 3:00 a.m. and not reopen before 6:00 a.m.

24-7.08 Records Confidential. All records of the Commission shall be confidential.

Section 24-8 Sovereign Immunity Preserved

24-8.01 No Waiver of Sovereign Immunity.

- (a) Nothing in this Chapter is intended or shall be construed as a waiver of the sovereign immunity of the Spokane Tribe of Indians or its officials.
- (b) No official, agent or employee of the Tribe is authorized, nor shall he or she attempt, to waive the immunity of the Tribe or its officials.

Section 24-9 Tribal Liability and Credit

24-9.01 No Liability by Tribe.

- (a) An operator is forbidden to represent or give the impression to any supplier or any other person with whom he or she does business that he or she is an official representative of the Tribe or Commission authorized to pledge Tribal credit or financial responsibility for any of the expenses of his or her business operation.
- (b) The operator shall hold the Spokane Indian Tribe and the Spokane Liquor Commission harmless from all claims of liability of whatever nature.

Section 24-10 Insurance

24-10.01 Insurance.

- (a) The operator shall maintain at his or her expense adequate insurance covering liability, fire, theft, vandalism, and other insurable risks.
- (b) The Commission or the Tribal Business Committee may establish as a condition of any license higher limits and any additional coverage it deems advisable.

Section 24-11 Revocation of Operator's License

24-11.01 Grounds for Revocation. Failure of an operator to abide by the provisions of this Chapter and any additional regulations or requirements imposed by the Spokane Liquor Commission shall constitute grounds for revocation of the operator's license.

24-11.02 Notice of Revocation.

- (a) If by a majority vote of the members of the Spokane Liquor Commission, it is decided that grounds exist for the revocation of a license of any operator, notice shall be given to the operator of a hearing at which the grounds and evidence of such a revocation shall be presented by the Commission, and an opportunity shall be presented to the operator to answer any charges, produce evidence, and make argument on his or her behalf.
- (b) Such hearing shall be held within 10 days of such notice, but may be continued to a later date if both the Commission and the operator consent.

24-11.03 Request for a Rehearing.

- (a) If after notice and hearing, the Commission revokes an operator's license, the operator may within 10 days after such revocation, petition the Commission for a rehearing.

- (b) The petition shall state the basis for a rehearing, including all newly discovered evidence or information not before the Commission at the first hearing.
- (c) The Commission shall grant or deny the request for a rehearing within 20 days of the receipt of the petition.

24-11.04 Judicial Review of Revocation.

- (a) An operator whose license was revoked may petition the Spokane Tribal Court for review of the decision within 20 days of the written decision of the Commission.
- (b) The appeal shall be on the record and shall not be heard de novo.
- (c) If the Court finds that the order of the Spokane Liquor Commission was arbitrary and capricious, clearly erroneous, in violation of the Constitution of the Spokane Tribe of Indians, in violation of the Constitutional rights of Indians as set forth in 25 USC 1301-1303, made upon unlawful procedures or some other error of law, the Court shall vacate the order of the Commission and remand to the Commission for the re-issuance of a license.

24-11.05 Scope of Review Limited to Issue of Revocation.

- (a) By authorizing such a review of its decision, the Spokane Tribe is not waiving its sovereign immunity explicitly or implicitly, but providing operators with judicial reviews of its decisions.
- (b) Thus suits against the Spokane Tribe of Indians or its officials for damages or any other relief are not authorized by this Chapter.

24-11.06 Judicial Review Not Granted to Those Denied a License Upon Application.

- (a) An application for a liquor license is a privilege and not a right.
- (b) Thus a simple denial of an application for a license is not entitled to judicial review in the Spokane Tribal Court.

24-11.07 Emergency Powers. If for an extremely serious reason, such as the keeping of the peace or the health and welfare of the people, the Commission finds it necessary to close the premises of a liquor outlet, it may do so provided that a hearing is provided to the licensed operator within 3 days (excluding weekends and holidays) of the closing of the liquor outlet.

Section 24-12 Violations

24-12.01 Violations. Any person(s) who shall violate any provision of this Chapter shall be subject to 1 or all of the following civil remedies:

- (a) A civil penalty of up to \$4500 per occurrence per day and confiscation of all proceeds of such activities.
- (b) A civil injunction against continued violations of this Chapter.
- (c) Exclusion from the Spokane Reservation in conformity with Chapter 21 of this Code.
- (d) If licensed operators, the revocation of the liquor outlet licenses.

Section 24-13 Severability

24-13.02 Severability. If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the Chapter or the application of the provision to other persons or circumstances is not affected.

Section 24-14 Previous Liquor Codes and Codes Abrogated

24-14.01 Previous Code Provisions Abrogated. It is the intent of the Spokane Indian Tribe and of the Spokane Business Committee that this liquor code cited above totally supersedes and stands in the place of any previously existing codes and Codes relating to liquor.

CHAPTER 25 - MOTOR VEHICLE LICENSING

Section 25-1 Title

25-1.01 Title. This Chapter shall be known as the Motor Vehicle Licensing Code.

Section 25-2 Licensing and Regulation

25-2.01 Exclusive Licensing and Registration. All motor vehicles (i.e., every self-propelled vehicle including motorcycles and snowmobiles) of any sort, type or kind, or any trailer, wagon or motor drawn vehicle owned, rented or leased by the Spokane Tribe of Indians and operated exclusively in the service of the Spokane Tribe shall be licensed and registered exclusively by the Spokane Tribe.

25-2.02 Tribal License and Registration Required. All vehicles described in the preceding section shall display at all times current Spokane Tribal license plates or tags and shall carry within the vehicle the proper Spokane Tribal registration certificate.

25-2.03 Certificate of Ownership. No vehicle shall be licensed by the Spokane Tribe nor a certificate of registration issued unless a satisfactory certificate of ownership is presented by the owner.

25-2.04 Information Required. The registration certificate shall contain the following information:

- (a) The date of registration.
- (b) Registration number assigned to the registered owner and to the vehicle.
- (c) The name and address of the registered owner and the name and address of the legal owner, plus the nature and amount of the encumbrances.
- (d) The vehicle identification number.
- (e) The trade name, model and year of the vehicle.
- (f) If a passenger vehicle, the maximum seating; if a truck or tractor and trailer, the maximum gross weight.
- (g) Any other information required by the Spokane Tribe.

25-2.05 Records Maintained.

- (a) Records on all vehicles licensed pursuant to this Code shall be maintained at the Spokane Tribal Police Department, Wellpinit, WA 99040.
- (b) Such shall be public records.

Section 25-3 Reciprocity and Exemptions

25-3.01 Reciprocity. Motor vehicles properly licensed and registered pursuant to the laws of any nation, Indian Tribe or nation, state, foreign country, territory or federal district shall not be required to display a license of the Spokane Tribe if:

- (a) The licensing authority above grants to the vehicles owned and operated by the Spokane Tribe and which are licensed and registered according to this Code the same exemptions, benefits and privileges granted to vehicles properly registered and licensed by that licensing authority, and,
- (b) If that licensing authority does not demand that a Spokane Tribal license and registration be obtained.

25-3.02 Exemptions. Members of the Spokane Tribe having their primary residence on Reservation lands and vehicles making deliveries of goods and services to the residents of the Spokane Reservation or the Spokane Tribe itself shall not be required to have Spokane Tribal registration and license tags even if the licensing authority that licenses that vehicle does not grant the necessary reciprocity as outlined in Section 25-3.01.

Section 25-4 Fees

25-4.01 Fees.

- (a) No fee will be charged for license plates or tags required to be displayed on motor vehicles owned, leased or rented and operated by the Spokane Tribe.

- (b) Others required to obtain license plates or tags because of a lack of reciprocity under 25-3.01 shall be charged a fee of \$30.
- (c) Such plates and tags may be obtained at the Spokane Tribal Police Department.

Section 25-5 Violations

25-5.01 Fine.

- (a) Any person who shall fail to obtain a Tribal license when required or who shall fail to display the same in a manner prescribed by the instructions on the license or the tag, or who shall fail to properly register the vehicle with the Spokane Tribe shall be fined a civil penalty of \$50.
- (b) Failure to have the necessary certificate of registration on the vehicle shall be fined a civil penalty of \$20.

Section 25-6 Special Permits for Disabled Persons

25-6.01 Special Permit Available.

- (a) All Tribal vehicles dedicated to the transportation of disabled persons shall be issued special license plates, decals, or cards indicating such.
- (b) Those vehicles shall be allowed free and unlimited parking in areas where parking is restricted as to persons or the length of time.
- (c) However, this permit does not apply to those zones or areas in which stopping and parking is prohibited to all vehicles.
- (d) The operator of the vehicle transporting disabled persons shall prominently display the card, decal, or license plates.

25-6.02 Disabled Persons Defined. For purposes of Section 25-6.01, a disabled person shall be defined as 1 who meets 1 of the following criteria:

- (a) Loss of both lower limbs;
- (b) Loss of normal or full use of the lower limbs to sufficiently constitute a severe disability;
- (c) Is so severely disabled that the person cannot move without the aid of crutches or a wheelchair;
- (d) Loss of both hands;
- (e) Suffers from lung disease or suffers impairment of the cardiovascular system to such a degree that the capabilities of the person for motion are severely limited;
- (f) Is of such advanced age and suffers from disabilities associated with age that the capabilities of the person for motion are severely limited.

25-6.03 Reciprocity. Any vehicle displaying a special card, license or decal from another jurisdiction indicating the vehicle's use for transporting disabled or handicapped people should be granted the same rights and privileges within the boundaries of the Spokane Reservation and on the lands of the Spokane Tribe wheresoever located as those licensed by the Spokane Tribe.

Section 25-7 Severability

25-7.01 Severability. If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

Section 25-8 Previous Licensing Codes and Codes Abrogated

25-8.01 Previous Code Provisions Abrogated. It is the intent of the Spokane Indian Tribe and of the Spokane Tribal Council that this licensing code totally supersedes and stands in the place of any previously existing codes and Codes relating to motor vehicle licensing and registration.

CHAPTER 26 - TAXATION CODE

Section 26-1 Title and Purpose

26-1.01 Title. This Chapter shall be known as the Spokane Tribal Taxation Code.

26-1.02 Purpose. It is the legislative intent and purpose of the Spokane Tribal Council in enacting this Chapter:

- (a) To exercise its inherent sovereign power to tax in an equitable manner and in conformity with the laws of the Spokane Tribe and of the United States.
- (b) To raise revenues for governmental programs and essential services provided not only to Tribal members but also to all persons and enterprises living or engaged in economic activities within the jurisdiction of the Spokane Tribe.
- (c) To raise revenues from those who avail themselves of the substantial privilege of carrying on business within the territorial jurisdiction of the Spokane Tribe.
- (d) To raise revenues from those who derive revenues from the use of the renewable and non-renewable natural resources of the Tribe.
- (e) To fully exercise the power of the Spokane Tribal Council as contained in Article VIII(c) of the Constitution, namely
 "(c) to provide for taxes, assessments, permits and license fees upon members and non-members on all lands within the jurisdiction of the Spokane Tribe of Indians."
- (f) To use all revenue collected for the providing of Tribal governmental services and the development of programs which will contribute to the health, education and economic welfare of all who live within the jurisdiction of the Spokane Tribe. No tax revenue shall be disbursed to Tribal members on a per capita basis.

Section 26-3 Jurisdiction

26-3.01 Jurisdiction. The territorial jurisdiction of the Spokane Tribe of Indians to which this Code applies extends to all lands under its jurisdiction, namely all lands and water areas within the exterior boundaries of the Spokane Reservation, any extensions of the Reservation, to all Spokane Tribal and allotted Indian lands outside the exterior boundaries of the Spokane Indian Reservation, as well as to those lands that fulfill the definition of "Indian Country" as defined in 18 USC Section 1151.

Section 26-5 Definitions

26-5.01 Definitions. For the purposes of this Chapter, the following words and phrases shall have the designated meanings:

- (a) "Bona fide charitable or non-profit organization" means:
 - (1) A church or organized religion, or
 - (2) An organization recognized as exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, or
 - (3) An organization which has been determined by the Spokane Tribal Tax Commission to be such because of the organization's charitable, educational, cultural, or benevolent purposes.
- (b) "Business" means all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly, but shall exclude investment activities.
- (c) "Tribal Council" means the Spokane Tribal Business Council, the elected governing body of the Spokane Tribe.
- (d) "Electric light and power company" means and include any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the generation, transmission or distribution of electricity on the Spokane Reservation and engaged in business of furnishing, transmitting, distributing or generating electrical energy for light, heat or power for compensation as owner, lessee or otherwise.

- (e) "Engaged in Business" means commencing, conducting, or continuing in business and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.
- (f) "Extractor" means every person who from his own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource products, or fells, cuts or takes timber, Christmas trees or other natural products.
 - (1) It does not include persons performing under contract the necessary labor or mechanical services for others.
- (g) "Gross receipts" means all revenues or property received or accrued by a business under its normal method of accounting arising out of transactions or operations conducted on or partially on the lands within the jurisdiction of the Spokane Tribe.
 - (1) Where transactions or operations are conducted only partially on said lands, an equitable allocation of gross receipts between taxable and non-taxable receipts shall be made by the Commission.
- (h) "Liquor Outlet" means a Tribally licensed retail sales business selling liquor products as defined in 24-3.01(6) by the drink or the package on lands under the jurisdiction of the Tribe.
- (i) "Motor vehicle transportation company" means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the conveyance and transportation of persons and/or property by motor propelled vehicles over any public street and/or highways on the Spokane Reservation between fixed termini or over a regular route, or engaged in the business of transporting persons and/or property for compensation as owner, lessee or otherwise.
- (j) "Person" means and includes any individual, firm, co-partnership, joint venture, association, corporation, trust, estate, or any other group acting as a unit, whether mutual, cooperative or otherwise, and/or trustees or receivers appointed by any court.
- (k) "Reservation" means the Spokane Indian Reservation.
- (l) "Tax Commission" means that 3 member board appointed by the Tribal Council to implement this Chapter.
- (m) "Tax Year" means either the calendar year or the taxpayer's fiscal year when 1 is permitted by the Commission.
- (n) "Telephone company" mean and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the transmission of communication by telephone on the Spokane Reservation through owned or controlled exchanges and/or switchboards, and engaged in the business of furnishing telephonic communication for compensation as owner, lessee or otherwise.
- (o) "Tribal Court" means the Court of the Spokane Tribe of Indians located at Wellpinit, Washington.
- (p) "Tribe" means the Spokane Tribe of Indians.
- (q) "Trust lands" means those lands held in trust by the United States, with either the Tribe or Tribal members owning the beneficial interest in such lands.

Section 26-7 Establishment and Powers of the Tax Commission

26-7.01 Establishment of Tax Commission.

- (a) The Tribal Council hereby establishes the tax commission.
- (b) The tax commission shall consist of 3 persons appointed by the Tribal Council.
- (c) The members shall be appointed by the Tribal Council during the month of April and their terms shall begin on May 1.

- (d) Of the first Commission, the term of 1 member shall run for 3 years, 1 for 2 years, and 1 for 1 year and each shall be staggered 3 years terms thereafter.
- (e) Commission members may be removed by the Tribal Council with or without cause upon 10 days written notice and an opportunity by the Commission member to be heard by the Council.
- (f) All vacancies of the Commission shall be filled by the Tribal Council for the remaining term of the position vacated.

26-7.03 Power and Duties of the Tax Commission. The tax commission shall:

- (a) Assess and collect all taxes authorized by this Chapter.
- (b) Make, adopt and publish such rules and regulations the Commission deems necessary or desirable to carry out the duties imposed on the Commission by this Chapter.
- (c) Issue subpoenas, when necessary, signed by the Chairperson of the tax commission to compel witnesses to appear and give evidence, as well as to produce books and papers.
- (d) Hold audits at a place of business after reasonable notice is given so long as such audits are held during normal business hours.
- (e) Hold hearings, collect testimony, employ experts and in general do all that is necessary to decide and implement all matters relevant to the matters of this chapter.
- (f) Impose civil penalties and interest upon those persons who fail to pay taxes or comply with the provisions of this chapter.
- (g) Seek and obtain judgments and judicial orders of execution necessary to insure payment of all delinquent taxes.
- (h) Recommend to the Tribal Council such amendments to this chapter as it deems necessary to remedy injustices and irregularities in taxation.
- (i) Hold all tax monies collected until disbursement to the Tribe. The Commission shall keep a certain percentage for operating expenses, which amount shall be determined by the Tribe after consultation with the Commission. The remainder shall promptly be disbursed to the Tribe.

Section 26-9 Review of Commission Decisions

26-9.01 Right of Review.

- (a) All persons affected by a decision of the tax commission shall have the right of review of that decision by the Commission and, after its final decision on review, by the Tribal Council.
- (b) A person is not "affected" by a decision unless that person was a party to the proceeding or was directly impacted by the decision.

26-9.03 Review by Commission. Commission reviews shall be in 2 steps as follows:

- (a) A conference type hearing by a member of the Commission or a designated staff person who upon giving the appellant adequate opportunity to present his case and conducting his own review shall issue a recommended Decision on Review for approval by the Commission.
- (b) If the appellant is not satisfied with the Recommended Decision, he shall be entitled on written application to a hearing before the whole Commission which shall thereafter make a final Decision on Review.
- (c) Said decision shall be final and conclusive unless the appellant shall, within 30 days, appeal that decision to the Tribal Council.

26-9.05 Review by Tribal Council. Council reviews of Commission decisions shall follow these procedures:

- (a) The review is initiated by the appellant filing a petition in writing requesting Tribal Council review.
 - (1) The petition shall set out the basis and reasons for seeking such a review.
- (b) The Commission shall within 1 week file with the Council all of its official record of the appellant's case and of its own review of the matter.

- (c) The Council shall set a day for hearing the appeal which shall be not less than 10 days, nor more than 20 days after the filing of the Commission record.
- (d) Both the appellant and the Commission shall have a full opportunity to file or present records, evidence, testimony and argument on the issues on appeal and the Council may seek any independent testimony or evidence it deems relevant and needed.
- (e) The appellant may be represented by an attorney, in which case the Tribal Attorney shall represent the Commission.
- (f) A careful record of the hearing shall be maintained by the Tribal Secretary who shall electronically record all of the proceedings.
- (g) The Council consideration shall be de novo.
 - a. It shall decide the appeal by a majority of a quorum voting at the conclusion of the hearing.
 - b. Its decision shall be in writing.
 - c. The Council may modify, affirm or reverse the decisions of the Commission or refer the matter back to the Commission for further consideration and proceedings.
 - d. The decision of the Council shall be final and conclusive unless appealed from to the Tribal Court.

Section 26-11 Judicial Review

26-11.01 Right to Judicial Review. A person affected by the decision of the Tribal Council may petition the Tribal Court for the Spokane Tribe of Indians for review.

26-11.03 Interim Payment of Tax.

- (a) One mandated by a decision of the Tribal Council to pay a tax shall pay such tax during the time of the judicial review unless the Court orders otherwise for good cause.
- (b) The Court may, if the tax is not paid, order a bond be posted with the Court pending the outcome of the review.

26-11.05 Review Shall be on the Record.

- (a) Review of the Tribal Council decision shall be on the record and shall not be heard de novo.
- (b) If the Court finds that the order of the Tribal Council is arbitrary and capricious, clearly erroneous, in violation of the Constitutional rights set forth in 25 USC Section 1301-1303, made upon unlawful procedures or some other error of law or is in violation of the Constitution of the Spokane Tribe of Indians, the Court shall vacate the order of the Tribal Council and remand the matter to the Council for further proceedings.

26-11.07 No Waiver of Sovereign Immunity.

- (a) By authorizing such a review, the Spokane Tribe is not explicitly or implicitly waiving its sovereign immunity.
- (b) Suits against the Spokane Tribe of Indians or its officials for damages or other relief are not authorized by this chapter.

Section 26-13 Business Privilege Tax

26-13.01 Business Privilege Tax Imposed. There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities upon the lands within the jurisdiction of the Spokane Tribe for each business within the following classifications:

- (a) The operation of a telephone company.
- (b) The operation of a motor vehicle transportation company.
- (c) The operation of an electric power and light company engaged in the generation, production, distribution or sale of electrical energy.
- (d) The operation of retail grocery outlets.
- (e) The operation of a garage for the repair of motor vehicles.

- (f) The operation of a gasoline service station, including a grease rack, sale of tires, oil, or other accessories, etc.
- (g) The operation of a wholesale or retail sales business of any nature, including convenience stores and smoke shops.
- (h) The operation of a restaurant, cafe or any other business dispensing food or beverages for consumption on premises.
- (i) Engaging in business as an extractor.
- (j) The operation of a liquor outlet.
- (k) The operation of a marina.
- (l) The operation of a recreational vehicle center.
- (m) The operation of a card room.
- (n) The operation of a Laundromat.
- (o) The operation of a construction company.

26-13.03 Exempt Persons.

- (a) This section shall not apply to the United States Government, the Spokane Tribe of Indians, or their agents and employees as long as they are engaged in official duties within the scope of their employment.
- (b) This section shall not apply to the wholly owned and operated business enterprises of the Spokane Tribe.
- (c) This section shall not apply to any Tribal corporation which is entirely owned by the Spokane Tribe of Indians, and whose stock is voted by the Spokane Tribal Council, nor to any joint venture in which the Tribe or said corporation is a joint venture.
- (d) This section shall not apply to persons who are located wholly off the Reservation, have no lands or leaseholds on lands, nor easements or interests in lands subject to the jurisdiction of the Spokane Tribe, but come on to these lands to provide products or services to the residents.
 - (1) However, this section shall apply to contractors and subcontractors whose contract proceeds for work on improvements on lands subject to the jurisdiction of the Spokane Tribe exceed \$25,000.
- (e) This section shall not apply to persons growing or producing for sale any agricultural or horticultural produce or crop, including the raising for sale of any animal, bird or insect, or the milk, eggs, meat, wool, honey, fur or other substance obtained from them.
- (f) This section shall not apply to bona fide charitable or non-profit organizations.
- (g) This section shall not apply to extractors who are paying either the leasehold tax of Section 26-8 or the severance tax of Section 26-9.

26-13.05 Calculation of the Tax.

- (a) The tax commission shall recommend for approval of the Tribal Council an appropriate business privilege tax for each of the classifications listed under 26-7.01.
 - (1) Before such tax is established, notice of hearing shall be provided to all affected. At the hearing, persons affected and other interested persons shall have the right to present testimony.
- (b) The tax established by the Tribal Council for each of the various classifications, with the exception of an electric power and light company, shall not exceed 1% of the gross receipts of any person or business, and the first \$25,000 of gross receipts received by any person or business shall be exempt.
- (c) The tax on an electric power and light company engaged in the generation or production of electrical energy on the Reservation shall not exceed 1 cent or be less than 1 mill (.1 cent) per kilowatt hour (KWH) of energy generated. In determining the amount of the tax to be levied, if

not all of the generating project lands are within the jurisdiction of the Spokane Tribe, the relative contribution of those other lands shall be taken into account.

- (d) All persons engaged in a business other than 1 specifically mentioned in this section shall apply for and receive a license from the tax commission as required in Section 26-7.04 of this Chapter, and shall at that time pay the license fee and a privilege tax not to exceed \$50 a year.
- (e) Any person engaging in more than 1 taxable activity under this Chapter shall be required to pay the taxes required for each kind of business activity in which that person engages.

26-13.07 Business License.

- (a) Any person obligated to pay a business privilege tax, leasehold interest tax and severance tax must also apply for and receive a license from the tax commission.
- (b) Furthermore, a person located off the Reservation, but who comes on to the Reservation to engage in business must also obtain a business license, even though that person is not bound to pay tax under this Code.
- (c) The cost of such a license shall be \$10.
- (d) The Spokane Tribe, through the tax commission, may impose such conditions upon the issuance of a license as it may see fit.
- (e) Such conditions may include, but are not limited to, the time, place and manner of conducting business.
- (f) The Commission shall renew the license each year upon that person satisfactorily paying the necessary business privilege tax, leasehold interest tax or severance tax.
- (g) Any person who engages in business without a business license shall be fined a civil penalty of not more than \$4500 per day, or if not a Tribal member, exclusion from the Spokane Reservation in conformity with Chapter 21 of this Code, or both, unless reasonable cause for waiver is found.

26-13.09 Tax Reports and Payments. Any person obligated to pay a business privilege tax shall, within 45 days following the end of each calendar month, file a return indicating the amount of tax due and shall at that time remit payment of the tax.

Section 26-15 Leasehold Interest Tax

26-15.01 Leasehold Interest Tax Imposed. There is levied and shall be collected from every person who leases the trust lands of the Spokane Tribe, whether Tribally or individually owned, and wheresoever located, a leasehold interest tax.

26-15.03 Exemptions. The following leasehold interests shall be exempt from taxes:

- (a) All trust lands leased by the Spokane Tribe of Indians or the United States Government.
- (b) All trust lands leased by the wholly owned and operated enterprises of the Spokane Tribe.
- (c) All trust lands leased by a Tribal corporation which is entirely owned by the Spokane Tribe of Indians, and whose stock is voted by the Spokane Tribal Council, or trust lands leased by a joint venture in which the Tribe or said corporation is a joint venturer.
- (d) All trust lands leased by persons for a home site. However, such home sites shall not exceed 5 acres, and a tax shall be levied for those lands in excess of 5 acres.
- (e) All leasehold interests for which the annual taxable rent is less than \$500 a year in money or the equivalent of \$500 in share crop produce.

26-15.05 Calculation of the Tax.

- (a) The tax commission shall recommend for approval of the Tribal Council an appropriate leasehold tax for all trust lands leased for agricultural purposes, but in no case shall the amount of the tax exceed 5% of the taxable rent paid by lessee.
- (b) The tax commission shall recommend for approval of the Tribal Council an appropriate leasehold tax for all trust lands leased for any other business purposes, other than for mining, but in no

case shall the amount of the tax exceed 5% of the taxable rent paid by lessee if the leased property has improvements and 10% if the property has no improvements.

- (c) The tax commission shall recommend for approval of the Tribal Council an appropriate leasehold tax for all trust lands leased for mining purposes by taxing the value of the possessory interest, but in no case shall the tax exceed 10% of the value of the possessory interest per year; nor shall the tax be less than .05% of the value of the possessory interest.
- (d) The commission shall compute the value of the possessory interest by either or both of the following 2 methods:
 - (1) Fair Market Value Method: The value of the possessory interest may be computed by comparing the interest to be valued with comparable interests which are sold by willing sellers to willing buyers, neither of whom are under a compulsion to act.
 - (2) Present Value of Income to Be Received: The value of the possessory interest may be computed by capitalizing the value of the gross income to be drawn from the ore body and subtracting from it the capitalized value of the reasonable expenses to be incurred. Such capitalization shall be done for the life of the possessory interest in question.
- (e) However, if the ore body is being mined during all or part of any taxable year, a leasehold interest tax shall not be assessed for that year or portion of that year during which a severance tax was assessed in conformity with Section 26-9.01 et. seq.
- (f) Before any of the above taxes are established, notice of hearing shall be provided to all affected persons at the hearing and persons affected and interested persons shall have the right to present testimony.

Section 26-17 Severance Tax

26-17.01 Severance Tax Imposed. There is levied and shall be collected a severance tax from every person who mines or extracts U_3O_8 from trust lands of the Spokane Tribe, whether Tribally or individually owned, and wheresoever located.

26-17.03 Exempt Persons.

- (a) This section shall not apply to the United States Government, the Spokane Tribe of Indians, or to their agents and employees so long as they are engaged in official duties within the scope of their employment.
- (b) This section shall not apply to the wholly-owned and operated business enterprises of the Spokane Tribe.
- (c) This section shall not apply to any Tribal corporation that is owned entirely by the Spokane Tribe, and whose stock is voted by the Tribal Council, nor to a joint venture in which the Tribe or said corporation is a joint venturer.

26-17.05 Calculation of Tax.

- (a) The tax commission shall recommend for approval of the Tribal Council an appropriate severance tax which shall be not more than 10% nor less 1% of the value of the contained yellow cake (U_3O_8) recovered from the uranium ore mined from the trust lands of the Spokane Tribe.
- (b) The tax commission shall compute the value of the ore mined from the lands of the Spokane Tribe by the amount of U_3O_8 produced from that ore.
- (c) The value of the U_3O_8 shall be either the spot market price average for that month or the actual contract sales price of the U_3O_8 , whichever is more.
- (d) If the tax is based upon a contract sales price, the amount of the tax may be computed on the spot market price average for that month with the tax adjusted after the annual audit.
- (e) However, before such tax is levied, notice and hearing shall be provided to all against whom a tax shall be levied. At the hearing, persons affected and interested persons shall have the right to present testimony.

26-17.07 Production Reports and Payments.

- (a) Within 45 days from the end of each calendar month, each extractor of uranium shall provide reports to the tax commission showing the number of pounds of U₃O₈ produced and the amount of tax due.
- (b) Taxes shall be remitted with the report.

Section 26-19 Tax Refunds

26-19.01 Claim for Refund.

- (a) No refund shall be allowed unless a claim is filed with the tax commission within 2 years from the date of payment.
- (b) Each claim shall be in writing and shall state the specific grounds upon which the claim is founded.

26-19.03 Commission Decision.

- (a) The tax commission shall act upon such claim within 90 days.
- (b) If the tax commission decides in favor of the claimant, the commission shall return or grant credit for that amount with 12% simple interest.
- (c) If the tax commission disallows the claim, the commission shall give written notice of such disallowance.

26-21 Late Payment Penalties and Interest

26-21.01 Penalty for Late Payment.

- (a) If payment of any tax due is not received by the required due date, the commission shall assess a penalty of 25% of the tax due and owing.
- (b) The tax commission may waive all or part of the penalty for good cause shown.

26-21.03 Interest for Late Payment.

- (a) The tax commission shall also collect interest for late payments in the amount of either 12% per annum or the prime rate at Old National Bank in Spokane plus 2%, whichever is greater.
- (b) The interest rate shall fluctuate accordingly during the period of delinquency.

Section 26-23 Effective Date of This Code

26-23.01 Effective Date.

- (a) The effective date of this Taxation Code shall be 90 days from the date of enactment by the Spokane Tribal Council.
- (b) This Chapter shall have prospective effect only, but the tax commission shall assess and collect all taxes from the effective date of this Code.

Section 26-25 Enforcement

26-25.01 Enforcement.

- (a) In the event a person fails to pay a tax when due, an action for taxes owed may be brought by the tax commission in Tribal Court for the Spokane Tribe of Indians or any other Court of competent jurisdiction.
- (b) The Tribal Court is empowered to grant a judgment for any tax due and unpaid, together with interest and late payments as set forth in Section 26-11 of this Code.

26-25.03 Additional Penalties. In addition to granting a judgment, the Tribal Court may also impose 1 or more of the following remedies:

- (a) A civil penalty of up to \$500 per day.
- (b) Exclusion from the Spokane Reservation in conformity with Chapter 21 of this Code.
- (c) Revocation of any business license issued in accordance with 26-7.04.
- (d) Attorney's fees and costs.

26-25.05 Execution. The Spokane Tax Commission may execute any judgment obtained from any Court of competent jurisdiction using any of the usual execution methods including the following:

- (a) The tax commission shall seek and obtain from the Spokane Tribal Court an order directing the Spokane Tribal Police to seize any property of the delinquent person, and further directing the Spokane Tribal Police to sell the same at a public auction.
 - (1) The Tribal Police may seize either personal or real property, provided the real property is not held in trust by the United States.
- (b) Notice of sale, and the time and place thereof, shall be given to the delinquent person at least 60 days before the date of sale.
 - (1) The notice shall be mailed by certified mail, return receipt requested and first class mail to the delinquent person at his last known address.
 - (2) The note shall contain a description of the property to be sold, a statement of the amount due, and notification that unless the amount is paid by a date certain, the property will be sold.
- (c) The property shall be sold at public auction to the highest bidder.
 - (1) The taxpayer may bid at the sale.
 - (2) The Spokane Tribe also can be a bidder at the sale.
 - (3) The taxes, interest, penalties and the cost of the sale shall be deducted from the proceeds of the sale.
 - (4) Any remaining funds shall be returned to the taxpayer.

CHAPTER 27 - LEASEHOLD MORTGAGES

Section 27-1 Purpose

27-01.01 Purpose.

- (a) The purpose of this Chapter is to avail the Spokane Tribe and its members and others designated by the Tribe of financing and other funding for the construction and/or purchase and/or repair or improvement of family residences and related structures and facilities, including infrastructure on trust and otherwise restricted lands within the jurisdiction of the Spokane Tribe by prescribing procedures for the recording, priority and foreclosure of leasehold mortgages given to secure such financing or other funding.
- (b) This Chapter replaces in its entirety the former Chapter 27 entitled "Mortgages and Deeds of Trust".
 - (1) However, this substitution of law does not affected vested rights secured under the operation of former Chapter 27, and any such vested rights shall be governed by the former Chapter 27.

Section 27-2 Definitions

27-02.01 Definitions. [missing in original text] ... entity that presented the same for recording.

- (a) "Tribe" means the Spokane Tribe of Indians.
- (b) "Tribal Council" means the Tribal Council of the Spokane Tribe.
- (c) "Tribal Recording Clerk" means the person designated by the Tribal Council to perform the recording functions under this Chapter or any deputy or designee of such person.
- (d) "Tribal Secretary" means the secretary of the Spokane Tribe.
- (e) "Tribal Court" means the Tribal Court as established by the laws of this Tribe or such body as may now or hereafter be authorized by the laws of the Tribe to exercise the powers and functions of a court of law.
- (f) "Lease" means the lease of trust or otherwise restricted property for which a Leasehold Mortgage, as defined in this Chapter, has been or will be given.
- (g) "Lessor" means the beneficial or equitable owner of trust or otherwise restricted property under a Lease for which a Mortgage, as defined in this Chapter, has been given, or the heir(s), successor(s), executor(s), administrator(s) or assign(s) of such Lessor.
- (h) "Leasehold Mortgage" means the mortgage of a lease of trust or otherwise restricted property given to secure financing or other funding for the construction and/or purchase of a family residence or related structures or facilities.
- (i) "Mortgagor" means the Tribe, including any entity of the Tribe, or member of the Tribe or any other person or entity authorized by Resolution of the Tribal Council who has executed a Leasehold Mortgage as defined in this Chapter, or any heir(s), successor(s), executor(s), administrator(s) or assign(s) of the Tribe or Tribal member or other person or entity.
- (j) "Mortgagee" means the mortgagee under any Leasehold Mortgage as defined in this Chapter or the successor(s) in interest or assignee of any such mortgagee.
- (k) "Subordinate Lien holder" means the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Leasehold Mortgage under this Chapter (except the Tribe with respect to a claim for a Tribal leasehold tax).
- (l) "Leasehold Mortgage Foreclosure Proceeding" means a proceeding in the Tribal Court to foreclose the interest of the Mortgagor(s), and each person or entity claiming through the Mortgagor(s), in a Lease for which a Leasehold Mortgage has been given.

Section 27-3 Priority

27-03.01 Priority.

- (a) A Leasehold Mortgage recorded in accordance with the recording procedures set forth in this Chapter shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a Tribal leasehold tax assessed after the recording of the mortgage.
- (b) Nothing in this Chapter shall prevent any person or entity from recording a Leasehold Mortgage in accordance with state law or from filing a Leasehold Mortgage with the Bureau of Indian Affairs.

Section 27-4 Recording

27-04.01 Recording.

- (a) From time to time, the Tribal Council shall designate, by Resolution, a Tribal Recording Clerk, and such additional deputy Tribal recording clerks, as the Tribal Council deems proper to perform the recording functions under this Chapter.
- (b) If approved by Resolution of the Tribal Council, the Tribal Recording Clerk may designate 1 or more designees to perform the recording functions under this Chapter.
- (c) The Tribal Recording Clerk shall maintain in the Tribal Court a system for the recording of Leasehold Mortgages and such other documents as the Tribal Council may designate by law or Resolution.
- (d) The Tribal Recording Clerk shall endorse upon any Leasehold Mortgage or any other document received for recording:
 - (1) The date and time of receipt of the Leasehold Mortgage or other document;
 - (2) The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each Leasehold Mortgage or other document received; and
 - (3) The name of the Tribal Recording Clerk receiving the Leasehold Mortgage or document.
- (e) Upon completion of the above endorsements, the Tribal Recording Clerk shall make a true and correct copy of the Leasehold Mortgage or other document and shall certify the copy as follows:

SPOKANE TRIBE

SPOKANE RESERVATION)
)
)

I certify that this is a true and correct copy of document received for recording this date.

Given under my hand and seal this _____ day of

(SEAL)

Signature

Title

- (a) The Tribal Recording Clerk shall maintain the copy in the records of the recording system and shall return the original of the Leasehold Mortgage or other document to the person or entity that presented the same for recording.
- (b) The Tribal Recording Clerk shall also maintain a log of each Leasehold Mortgage or other document recorded in which there shall be entered:
 - (1) The name(s) of the Mortgagor(s) of each Leasehold Mortgage, identified as such;
 - (2) The name(s) of the Mortgagee(s) of each Leasehold Mortgage, identified as such;
 - (3) The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents;
 - (4) The date and time of receipt;
 - (5) The filing number assigned by the Tribal Recording Clerk; and
 - (6) The name of the Tribal Recording Clerk receiving the Leasehold Mortgage or document.
- (b) The certified copies of the Leasehold Mortgages and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying.
- (c) In lieu of presenting an original Leasehold Mortgage or other document for recording, any person or entity may present a copy of the same upon which there is an original certification in substantially the following form which has been signed and sealed by a judge or clerk of the Tribal Court, the Tribal Secretary, or by a notary public or other authorized official of the State of Washington:

_____)
) ss.
_____)

I certify that this is a true and correct copy of a document in the possession of _____ this date.

Given under my hand and seal this _____ day of _____.

(SEAL)

(Signature)

(Title)

(Date of Expiration of Commission, if applicable)

- (d) The recording procedures set forth in this Chapter for Leasehold Mortgages shall also apply to any assignment of a Leasehold Mortgage.
- (e) The Tribal Council may from time to time establish recording fees, copying fees, and fees for the certification of any document recorded under the recording system established under this Chapter.

Section 27-5 Leasehold Mortgage Foreclosure Proceedings

27-5.01 Leasehold Mortgage Foreclosure Proceedings. Upon the default of the Mortgagor(s) under a Leasehold Mortgage, the Mortgagee may commence a Leasehold Mortgage foreclosure proceeding in the Tribal Court by filing:

- (a) A verified complaint:
 - (1) Naming the Mortgagor(s) and each person or entity claiming through the Mortgagor(s) subsequent to the recording of the Leasehold Mortgage, including each Subordinate Lien holder (except the Tribe with respect to a claim for a Tribal leasehold tax), as a defendant;
 - (2) Describing the property;
 - (3) Stating the facts concerning the execution of the Lease and the Leasehold Mortgage; the facts concerning the recording of the Leasehold Mortgage; the facts concerning the alleged default(s) of the Mortgagor(s); and such other facts as may be necessary to constitute a cause of action;
 - (4) Having appended as exhibits true and correct copies of each promissory note, Lease, Leasehold Mortgage, or assignment thereof relating to the property; and
 - (5) Including an allegation that all relevant requirements and conditions prescribed in
 - A. all applicable statutes and Codes, whether Tribal, federal or state,
 - B. all regulations promulgated under such statutes and Codes and
 - C. the provisions of the Lease and the Leasehold Mortgage have been complied with by the Mortgagee.
- (b) A summons issued as in other cases requiring the Mortgagor(s) and each other defendant to appear for a trial upon the complaint on a date and time specified in the summons.
 - (3) The trial date specified in the summons shall be not less than 20 nor more than 45 days from the date of service of the summons and complaint.
 - (4) The summons must notify the defendant(s) that judgment will be taken against the defendant(s) in accordance with the terms of the complaint unless the defendant(s) file an answer with the court and appear for trial at the time, date and place specified in the summons.

Section 27-6 Service of Process and Procedure

27-6.01 Service of Process. The laws of the Tribe governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any Leasehold Mortgage Foreclosure Proceeding under this Chapter.

27-06.02 Certified Mailing to Tribe and Lessor.

- (a) In any Leasehold Mortgage Foreclosure Proceeding where the Tribe or the Lessor(s) is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe and to the Lessor(s) by certified mail, return receipt requested, within 5 days after the issuance of the summons, but not less than 20 days prior to the date set for trial.
- (b) If the location of the Lessor(s) cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the Lessor(s) in care of the Superintendent of the Olympic Peninsula Agency of the Bureau of Indian Affairs.

Section 27-7 Intervention

27-07.01 Intervention.

- (a) The Tribe or any Lessor may petition the Tribal Court to intervene in any Leasehold Mortgage Foreclosure Proceeding under this Chapter.

- (b) Neither the filing of a petition for intervention by the Tribe, nor the granting of such a petition by the Tribal Court shall operate as a waiver of the sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.

Section 27-8 Cure of Default by Subordinate Lien holder

27-08.01 Cure of Default by Subordinate Lien holder.

- (a) Prior to the entry of a judgment of foreclosure, any Mortgagor or any Subordinate Lien holder may cure the default(s) under the Leasehold Mortgage.
- (b) Any Subordinate Lien holder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lien holder to cure the default(s), plus interest on such amounts at the rate stated in the note for the Leasehold Mortgage.

Section 27-9 Power of the Tribal Court

27-9.01 Power of the Tribal Court. If the alleged default(s) have not been cured, and if the Tribal Court should find for the Mortgagee, the Tribal Court shall enter judgment:

- (a) Foreclosing the interest in the Lease of the Mortgagor(s) and each other defendant named in the complaint upon whom proper and timely service has been made, including each such Subordinate Lien holder; and
- (b) Assigning such Lease to the Mortgagee.

Section 27-10 Miscellaneous

27-10.01 No Redemption. There shall be no right of redemption in any Leasehold Mortgage Foreclosure Proceeding.

27-10.02 No Deficiency Judgment. No deficiency judgment shall be entered in any Leasehold Mortgage Foreclosure Proceeding.

27-10.03 Remedies Exclusive. The remedies provided under this Chapter are exclusive.

27-10.04 No Merger. There shall be no merger of estates by reason of the execution of a Lease or a Leasehold Mortgage or the assignment or assumption of same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the Leasehold Mortgage.

Section 27-11 Limited Waiver Sovereign Immunity

27-11.01 Limited Waiver of Immunity. In any case where the Tribe, including any entity of the Tribe, is a Mortgagor under a Leasehold Mortgage, the Tribe, or such entity of the Tribe, may be sued as a defendant in such capacity only and only under this Chapter; *provided, that* there shall be no award of attorney fees or costs against the Tribe, or any entity of the Tribe, in any proceeding involving the Tribe, or such entity, except where prior written consent to such an award have been given by the Tribe, or such entity.

Section 27-12 Restrictions on Sale, Transfer or Conveyance

27-12.01 Restrictions on Sale, Transfer or Conveyance of Leasehold Interest. The Mortgagee shall not sell, transfer or convey any Lease or leasehold interest which has been assigned to it in a Leasehold Mortgage Foreclosure Proceeding except to the Tribe, the Spokane Indian Housing Authority or an eligible member of the Spokane Tribe.

Section 27-13 Approval of Tribe Required for Lease

27-13.01 Approval of Tribe Required for Lease. Any lease of trust or other restricted lands, whether Tribally or individually owned, for which a Leasehold Mortgage is executed for the purposes of this Chapter, is subject to the approval of the Tribe, acting through the Spokane Tribal Council.

Section 27-14 Severability

27-14.01 Severability. If any paragraph, subparagraph, clause or sentence of phrase of this Chapter or regulations adopted pursuant to this Chapter shall be declared invalid, or declared invalid as applied to any person or circumstance, such decision shall not affect the validity of the remaining portions of the Chapter,

and those remaining portions shall remain in full force and effect and to this end, provisions of this Chapter and any regulations adopted hereunder are declared severable.

CHAPTER 28 - UNLAWFUL DETAINER

Section 28-1 Purpose and Jurisdiction

28-1.01 Purpose. It is the legislative intent and purpose of the Spokane Tribal Council in enacting this Chapter:

- (a) To promote the health, welfare and peace of the people of the Spokane Reservation by providing an orderly, efficient and peaceful method of determining the rights of people to be on the lands of the Spokane Reservation and evicting them when necessary and just to do so.
- (b) To provide a judicial remedy for those who claim they are being evicted wrongfully from their lands or homes.
- (c) To prevent the wrongful damage and destruction of the real property and buildings of the people of the Spokane Reservation.

28-1.02 Jurisdiction. The Spokane Tribe of Indians enacts this Code to apply to all lands under its jurisdiction, namely all lands and water areas within the exterior boundaries of the Spokane Reservation, any extensions of the Reservation, and all Spokane Tribal and allotted Indian lands outside the exterior boundaries of the Spokane Indian Reservation, as well as those lands that fulfill the definition of "Indian Country" as defined in 18 USC Section 1151.

Section 28-2 Definitions

28-2.01 Definitions. For the purpose of this Code, the following words and phrases shall, unless otherwise indicated, have the following meaning:

- (a) "Forcible entry" means any person who enters upon any real property by means of any kind of violence, fraud, intimidation, stealth, or circumstances of terror; or who, by force, threats or menacing conduct, forces the party in actual possession of any real estate to leave.
- (b) "Forcible detainer" means any person who by force or threats of violence, unlawfully holds and keeps the possession of any real property; or who in the nighttime or during the absence of the occupant of any real property, enters real property and refuses for the period of 3 days to surrender the same to such former occupant when ordered to leave.
- (c) "Secretary" means the Secretary of the United States Department of Housing and Urban Development (HUD) or his or her designee, attorney or agent, or the assignee of the Secretary.
- (d) "Unlawful detainer" means a tenant of real property, who has less than a life estate, is guilty of unlawful detainer if:
 - (1) The person continues in possession of, or holds over, real property after the expiration of a lease;
 - (2) The person continues in possession of real property even though there is a default in the payment of rent due and owing under a lease, including a lease-purchase agreement, and he or she has been given notice to either pay the rent within 3 days or vacate the premises during that same period;
 - (3) The person continues in possession of the real property after failing to keep or perform a condition of the lease, including a lease-purchase agreement, and fails to cure the defect within 3 days after notice;
 - (4) The person commits waste or other damage or destruction to the property or the buildings, or allows or carries on any unlawful business or nuisance, and remains in possession after 3 days notice to vacate the premises;
 - (5) A person, who without the permission of the owner, and without having any color of title, enters upon the land of another and who fails to leave after 3 days notice.
 - (6) The person continues in possession of real property after the interest of a person in a Homebuyer Opportunity Agreement or other contract or agreement to purchase a home situated on such property has been forfeited or terminated.
 - A. Such an agreement shall include a lease-purchase agreement under which the option to purchase has been exercised.
 - (7) After the interest of a person in a lease has been foreclosed in a leasehold mortgage foreclosure proceeding.

- (e) "Occupant" means a person who for the 5 days preceding any unlawful entry, was in the peaceable and undisturbed possession of the real property.

Section 28-3 Commencement of Action

28-3.01 Notice.

- (a) Before an unlawful detainer action can commence in Tribal Court, the defendant shall be served with a notice to vacate, stating the reasons and also stating the deadline for the defendant to vacate which shall not be less than 3 days nor more than 30 days from the date of service.
- (b) Service on the defendant shall be accomplished in conformity with Section 4 of this Code, namely 4-4.02, 4-4.03, and 4-4.04 of the Code.

28-3.02 Commencement of the Action. After the expiration of the time set by notice in conformity with Section 28-3.01, an unlawful detainer action may be commenced by the filing of the complaint with the Clerk of Tribal Court, noting:

- (a) The names of the plaintiff and defendant;
- (b) When notice to vacate was given and the failure of the defendant to cure the defect or vacate;
- (c) A description of the property and its location;
- (d) Facts upon which the action is based, i.e., failure to pay rent, failure to vacate after the expiration of the lease, etc;
- (e) Any allegations of fraud, force, violence, waste, destruction and any damages because of such;
- (f) The amount of rent due and owing;
- (g) Whether the property is to be restored to the plaintiff.

Section 28-4 Summons

28-4.01 Summons.

- (a) Upon the filing of a complaint, the Clerk shall cause to be issued a summons directed to defendant requiring the defendant to appear before the Spokane Tribal Court at a date and time certain which shall be at least 3 days, but no more than 20 days after service of summons and complaint upon the other party.
- (b) Additionally, the summons shall notify defendant that failure to appear at the date and time specified will result in the granting of the relief sought in the complaint.

28-4.02 Emergency Hearing.

- (a) If great risk to life or damage to property exists because of a violation of this Chapter, the plaintiff may seek an emergency hearing on the matter.
- (b) Upon a showing that great risk to life or property damage exists, the Court shall take appropriate steps to protect the life of the property at risk, including eviction of the premises, if necessary.
- (c) If the Court finds that sufficient grounds exist for emergency action, the Court shall note the matter for hearing as soon as possible, but not later than 5 days from the date of the emergency hearing.

Section 28-5 Service of Summons and Complaint

28-5.01 Service. A summons, with a copy of the complaint attached, shall be served upon the defendant by personal service, mail or publication in accordance with Chapter 4, Section 4-4.02, 4-4.03 and 4-4.04 of this Code.

Section 28-6 Answer by Defendant

28-6.01 Answer by Defendant.

- (a) The defendant in any action brought under this Chapter shall, on the day fixed for his appearance, appear and answer the complaint, stating any claim of title or any grounds by which he claims right to possession of the real property subject to the action.

- (b) The defendant may answer in writing any day prior to the hearing, and serve a copy on the plaintiff prior to the hearing.

Section 28-7 Continuance in Cases Involving the Secretary

28-7.01 Continuance in Cases Involving the Secretary. Except by agreement of all parties, there shall be no continuance in cases involving the Secretary which would interfere with the requirement in 28-8.01 (2) that the property shall be restored to the plaintiff not later than 60 days after the date of service of the summons and complaint.

Section 28-8 Judgment

28-8.01 Judgment.

- (a) If there is a finding of the Court in favor of the plaintiff and against the defendant, judgment shall be entered for the restoration of the property.
- (b) The judgment shall declare forfeiture of the lease, agreement or tenancy.
- (c) The Court shall assess damages caused by forcible entry, forcible detainer or unlawful detainer and the amount of any rent due and issue a judgment for twice the amount of the damages plus unpaid rent.
- (d) Any money judgment shall be enforced in conformity with Chapter 4 of the Law and Order Code.
- (e) Any judgment granting the restoration of the property of the plaintiff may be enforced immediately against the defendant, and the judgment shall be a sufficient order to request and receive the assistance of the Tribal Police to carry out the order, and no special order of the Court shall be necessary to do so.
- (f) In all cases involving the Secretary, the property shall be restored to the plaintiff not later than 60 days after the date of service of the summons and complaint.

Section 28-9 Criminal Penalties

28-9.01 Criminal Violations. Any persons guilty of forcible entry or forcible detainer may also be subject to the criminal offenses under Chapters 10 and 12 of this Code.

CHAPTER 29 - DOMESTIC VIOLENCE

Section 29-1 Title, Purpose and Definitions

29-1.01 Purpose. It is the legislative intent and purpose of the Spokane Tribal Council in enacting this Chapter:

- (a) To promote the health, welfare and peace of the people of the Spokane Reservation by providing an orderly, efficient and peaceful method of handling domestic violence situations;
- (b) To provide maximum protection to victims of abuse;
- (c) To show that all members of the Tribe and the entire community residing on the Spokane Indian Reservation are to be cherished and treated with respect, and,
- (d) To show that the voluntary use of any mind altering chemical/drug, including alcohol, will not be an excuse for violent behavior.

29-1.02 Jurisdiction. The Spokane Tribe of Indians enacts this Chapter to apply to all people within the exterior boundaries of the Spokane Reservation, and all Spokane Tribal and allotted Indian lands outside the exterior boundaries of the Reservation, as well as those lands that fulfill the definition of "Indian Country" as defined in 18 U.S.C. Section 1151.

29-1.03 Definitions. For the purposes of this Code, the following words and phrases shall, unless otherwise indicated, have the following meaning:

- (a) "Abuse" means the infliction of physical harm, bodily injury or sexual assault, or the apprehension of physical harm, bodily injury or sexual assault, and includes but is not limited to:
 - (1) Assault;
 - (2) Assault and Battery;
 - (3) Abduction;
 - (4) Attempted Rape or Rape;
 - (5) Malicious Destruction of Property;
 - (6) Criminal Trespass to Land, if owned by the alleged victim;
 - (7) Criminal Trespass to Building, if owned or leased by the alleged victim;
 - (8) Malicious Mischief;
 - (9) Kidnapping;
 - (10) Violation of a No Contact Order or Restraining Order issued under this Chapter;
 - (11) Stalking.
- (b) "Court" means Spokane Tribal Court.
- (c) "Intimate Partner" means a spouse, former spouse(s), a person related by blood or marriage, a person related by an existing or prior marriage, a person who resides or formerly resided with the person, or a person with whom the person has a child in common regardless of whether they have been married or have lived together at any time.
- (d) "Domestic Violence" means an act of abuse inflicted by a perpetrator upon
 - (1) an intimate partner
 - (2) the child of the intimate partner
 - (3) the child of the perpetrator
 - (4) a parent of the perpetrator.
- (e) "Mandatory Arrest" means that the police officer shall arrest within 24 hours, if there is probable cause to believe the person to be arrested has committed an offense as defined by this Chapter, even though the arrest may be against the express wishes of the victim. The victim need not sign a complaint for an arrest to occur.
- (f) "Order of Protection" means a court order granted for the protection of victims of domestic violence.
- (g) "No Contact Order" means a court order issued by the Court at the time the bail hearing or arraignment, directing the defendant to have no contact with the victim.
- (h) "Perpetrator" means the person who has allegedly committed an act of domestic violence.

- (i) "Police Officer" means a member of the Spokane Tribal Police, the Bureau of Indian Affairs Police, or a conservation/park ranger, security officer or other person who holds a special commission with the Spokane Tribe.

Section 29-2 Crime of Domestic Violence

29-2.01 Penalty/Punishment. Any person who shall knowingly commit an act of domestic violence and has been convicted of the underlying offense shall be sentenced to, in addition to the sentence for the underlying conviction:

- (a) for a first offense, a \$350 fine;
- (b) for a second conviction within 2 years, not less than 30 days in jail, and/or not less than \$500, or both such confinement and fine; or
- (c) for a third or subsequent conviction within 2 years, not less than 60 days, and/or a fine of \$1,000, or both such confinement and fine.
 - (1) This section shall apply to any offense committed after the enactment of this section, but any conviction for a crime of domestic violence committed before enactment of this section may be considered in determining whether the sentence should be enhanced.
- (d) Juveniles: Any juvenile committing domestic violence shall be subject to prosecution and all other conditions outlined under this chapter.
 - (1) Any such prosecution shall be in accordance with Section 6-1.08 (Chapter 6 Youth Code) and any imposition of jail time shall be served in a Juvenile Detention Center.

Legislative History-Amended 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-2.02 Willful Violation of No Contact or Restraining Order. Willful violation of a court order issued in a domestic violence case is a crime and upon conviction, the defendant shall be sentenced to a period of confinement not to exceed 1 year or ordered to pay a fine not to exceed \$5,000, or both jail sentence and fine, and costs.

29-2.03 Willful Violation of the Prohibition on Possessing a Firearm. Willful violation of a Court order issued in a domestic violence case prohibiting the defendant from possessing a firearm is a crime and upon conviction, the defendant shall be sentenced to a period of confinement not less than 30 days and not to exceed 1 year and/or order to pay a fine of not less than \$1,000, and not more than \$5,000, or both jail sentence and fine, plus costs.

Legislative History-Amended 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-2.04 Additional Requirements. In addition to the imposition of such confinement and/or fine the Court shall order the person convicted of the offense of domestic violence to complete a domestic violence evaluation and comply with treatment recommendations, as provided in Section 29-4.09 of this Chapter, and if alcohol and/or drugs is indicated, also complete a chemical dependency evaluation and comply with treatment recommendations as provided in Section 29-4.08.

Section 29-3 Duties of Police Officers

29-3.01 Primary Duty. It shall be the primary duty of the police officer, when responding to a domestic violence situation, to enforce the laws allegedly violated and to protect the complaining party(ies).

29-3.02 Response to Domestic Violence Situations

- (a) A police officer shall arrest an alleged perpetrator of domestic violence, if an arrest warrant has been issued, or without a warrant, if the offense occurs in the presence of the officer or if the officer has probable cause to believe that the person to be arrested has committed domestic violence without regard to any other requirements imposed by Chapters 8, 9 or 10, of the Spokane Tribal Law and Order Code, including a person who may have violated the terms of a No Contact or Restraining Order, prohibiting the person from contact and/or acts or threats of acts of violence and/or excluding that person from a residence.
 - (1) If the conditions for arrest established by this Section are present, the officer shall arrest the alleged perpetrator of domestic violence regardless of whether the alleged victim signs a complaint and whether the arrest is against the expressed wishes of the alleged victim.

- (b) Whenever a police officer investigates an alleged act of domestic violence, regardless of whether an arrest is made, the officer shall make a written incident report of the alleged abuse and submit that report to the Spokane Tribe's Domestic Violence Program, or Department of Health and Human Services if there is no such program, within 48 hours for purposes of program coordination.
- (c) In all domestic violence arrests, the officer shall notify the victim advocate on call of the situation and allow the advocate to accompany him/her to the call once the scene has been determined to be secure by the officer.
 - (1) If the advocate cannot be reached the advocate shall be notified by the next working day.
 - (2) If, after investigating a complaint of domestic violence, the officer does not make an arrest, the officer shall notify the victim advocate and advise of the incident.
- (d) Within 24 hours following an arrest involving domestic violence, the police officer shall advise the known victims of:
 - (1) the availability of Domestic Violence Treatment Programs;
 - (2) their legal rights and available services;
 - (3) information about how to obtain a "No Contact Order" or a Temporary Restraining Order, and,
 - (4) the availability of filing a criminal complaint if an arrest is not immediately made.
- (e) Upon an arrest of an alleged perpetrator under this section, the arresting police officer shall cause the filing with the court a criminal complaint and an affidavit or written report of the alleged abuse.
 - (1) Whether or not the alleged perpetrator has been arrested, the police shall refer the alleged victim to the victim advocate within 24 hours.
 - (2) The Spokane Tribal Police Department and the Bureau of Indian Affairs Police, or other commissioned officer, shall develop and maintain a protocol for implementation of their obligations under this Chapter.
- (f) While held in custody, the alleged perpetrator shall not be allowed to have contact with the alleged victim from jail.
- (g) If a law enforcement officer receives complaints of domestic violence from 2 or more opposing persons, the officer shall evaluate each complaint separately to determine who was the predominate aggressor.
 - (1) If the officer determines that 1 person was the predominate aggressor, the officer need not arrest the other person alleged to have committed domestic violence.
 - (2) In determining whether a person is the predominate aggressor, the officer shall consider:
 - (3) The history of domestic violence, both documented prior complaints and convictions and the law enforcement officer's own prior knowledge of the family;
 - (4) The relative severity of the injuries inflicted on each person, i.e., who in this relationship poses the most danger to the other;
 - (5) The likelihood of future injury to each person, i.e., who is at the most risk of future harm;
 - (6) Whether 1 of the persons acted in self-defense and/or in defense of others, and,
 - (7) The degree to which 1 of the persons has acted with deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain or fear of harm to the person or third party.
- (h) A law enforcement officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by any party.
- (i) A law enforcement officer shall not consider the use of abuse of alcohol or other controlled substances by either party in making a determination as to whether of domestic violence has been committed.

- (j) The employment, economic, educational, social, physical and/or mental health and political status of the alleged perpetrator and/or victim shall not be considered in making an arrest.
- (k) The law enforcement officer is not required to make an arrest based on who hit who first, but shall consider the dynamics of domestic violence.

29-3.03 Ethics: Familial Relationships of Law Enforcement, Prosecution, and Judges to Defendant.

- (a) All public servants shall be expected to perform their duties and proceed in accordance with this chapter no matter what the employment, education, social and political status of the alleged perpetrator and/or victim.
- (b) Public servants shall be held to the highest professional standards in responding to the crime of domestic violence.
- (c) In instances where law enforcement officers respond to a call involving a relative by blood or marriage, the officer shall note the relationship on the case report.
- (d) In instances where law enforcement officers have responded to a call involving a relative by blood or marriage, the supervisor reviewing the report shall review the report for accuracy and ensure that appropriate action has been taken.

29-3.04 Transportation. Upon request of the victim, the police officer or emergency medical response team shall provide or arrange for transportation of the victim to a medical facility or a place of shelter.

Section 29-4 Special Court Rules

29-4.01 Special Court Rules. In addition to the rules of court generally applicable to criminal proceedings, the Court has the duty to take the following actions in a proceeding involving alleged domestic violence offenses.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.02 Court Appearance by Defendant.

- (a) At the first court appearance of the defendant charged with an offense involving domestic violence the Court may impose a No Contact Order or other conditions of pretrial release according to the procedures established by court rule for a preliminary appearance of an arraignment.
- (b) The No Contact Order as provided in Section 29-4.05, if issued, shall be provided to law enforcement upon issuance.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.03 Defendant Guilty.

- (a) If a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such order shall be provided to the victim.
- (b) Willful violation of a court order issued under this section is a crime and shall be punished in conformity with section 29-2.02.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.04 Proof of Dissolution not Required. The Court shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.05 Location of Victim. The Court shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence; *provided that* the court shall order a criminal defense attorney not to disclose to his client the victim's location.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.06 Issuance of No Contact Order.

- (a) If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court authorizing release may issue, by telephone, a No Contact Order prohibiting the person charged or arrested from having contact with the victim.
- (b) The No Contact Order shall also be issued in writing as soon as possible.

29-4.07 Surrender of Deadly Weapon and Prohibition of Possession. If the court has probable cause to believe that the person charged or arrested is likely to use or display or threaten to use a deadly weapon in any further acts of violence, the court may also require that person to surrender any deadly weapon in that person's immediate possession or control, or subject to that person's immediate possession or control and prohibit the person from possessing a deadly weapon.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.08 Presentence Report. If the alleged perpetrator pleads guilty, a pre-sentence report may be ordered at the discretion of the Court prior to sentencing.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.09 Alcohol and Drug Evaluation. If it appears to the Court that alcohol or drugs played a part in the abuse, the Court may order a chemical dependency evaluation prior to sentencing.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.10 Guilty Plea or Conviction. Upon a guilty plea of conviction, the defendant shall be ordered to participate in an appropriate domestic violence program consisting of at least the following:

- (a) The defendant shall attend and cooperate in an intake session for evaluation.
- (b) The evaluation shall be completed by a Court approved evaluator for domestic violence, or the Spokane Tribal Domestic Violence Program, not later than 14 calendar days after entry of the order requiring evaluation, unless the Court extends that time period.
- (c) The defendant shall sign the necessary waiver of confidentiality for the treatment provider to provide a copy of the evaluation and recommended treatment plan which shall be provided to the Court and the parties.
- (d) In the discretion of the Court the execution of any monetary or jail penalty may be suspended pending completion of the treatment ordered by the Court.
- (e) The domestic violence program and/or other service provider shall submit progress reports to the Court at least once every 4 calendar weeks.

29-4.11 Willful Failure or Refusal to Comply With a Court Order.

- (a) Willful failure or refusal to comply with a court order requiring a perpetrator to attend and cooperate in evaluation and/or to undergo treatment as described in a treatment plan shall constitute contempt of court punishable as provided in Chapter 1, Section 1-8.03 and Chapter 4, Section 4-25.07 of the Spokane Tribal Law and Order Code, or a new charge of Disobedience of a Lawful Court Order of the Court, pursuant to Chapter 14 Section 14-7.01.
- (b) If the Court has suspended execution of any penalty imposed under Section 3 of this Chapter on the condition that the perpetrator undergo court-ordered evaluation and/or treatment, the Court may also order execution of any such suspended sentence, in addition to the Tribe filing Contempt or Disobedience charges under the above referenced statutes.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.12 Admissibility of Child Statement.

- (a) For purposes of prosecution including juvenile offense adjudications, a statement made by a child when under the age of 10 describing any act of sexual contact performed with or on the child by another, describing any attempted act of sexual contact with or on the child by another, or describing any act of physical abuse of the child by another that results in substantial bodily harm, not otherwise admissible by statute or court rule, is admissible in evidence if:
 - (1) The court finds, in a hearing conducted outside the presence of the jury, that the time, content and circumstances of the statement provide sufficient indicia of reliability; and
 - (2) The child either:
 - A. testifies at the proceedings; or
 - B. is unavailable as a witness; *provided, that* when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.
- (b) A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party his or her intention to offer the statement and the particulars

of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to challenge the statement.

29-4.13 Communication to Police. All orders prohibiting contact shall be immediately communicated to the Police, who shall keep such orders in their active records for immediate reference for at least 1 year from the date of issuance.

Section 29-5 Victim's Rights

29-5.01 Final Order-Defendant Convicted. When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such order shall be provided to the victim.

29-5.02 Decision Not to Prosecute. If a decision is made not to prosecute, the victim shall be advised, within 5 days of the decision, of the reasons for not prosecuting, and any recourse available to the victim.

29-5.03 Domestic Violence Leave.

- (a) Purpose: Victims of Domestic Violence are often times forced to flee from a perpetrator in order to avoid future danger and violence.
 - (1) In so fleeing victims who are employed frequently miss days of employment.
 - (2) It is the purpose of this section to preclude employers located on the Spokane Indian Reservation from terminating any employee who can document an instance of domestic violence which contributed to the employee's absence from employment.
 - (3) Employers have the option of granting such employees leave with pay or leave without pay because of domestic violence related absences.
- (b) Discharges for Absence of Employment Due to Domestic Violence Prohibited. It shall be a violation of this chapter for any employer located within the exterior boundaries of the Spokane Indian Reservation to terminate or otherwise discipline any employee who has missed work or is tardy to work when such employee demonstrates, either through the filing of criminal or civil proceedings in a court of law or by such other method satisfactory to the employer, that he/she has been the victim of domestic violence and that such violence contributed to his/her absence(s) from work or tardiness to work.
 - (1) In lieu of disciplinary action, the employer shall grant the employee leave with or without pay, dependent upon the policies of the employer, for such absences.
- (c) Penalty for Violation: Any employer who willfully violates this section shall be subject to a civil penalty of \$500 payable to the Tribe in addition to any other remedies the wrongfully discharged employee may have against his/her employer.
 - (1) Nothing in this section shall preclude a private party from commencing a wrongful termination action against an employer for violation of this section.

Section 29-6 Liability of Police Officers

29-6.01 Liability of Police Officers. A police officer shall not be held liable in any civil action for an arrest based upon probable cause, enforcement in good faith of a court order, or any other action or omission

29-6.02 taken in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident.

Section 29-7 Severability

29-7.01 Severability. If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the Chapter or the application of the provision to other persons or circumstances is not affected, provided that the purposes of the Chapter can still be fulfilled.

CHAPTER 30 SURFACE WATER AND GROUND WATER PROTECTION

Section 30-1 Purpose and Authority

30-1.01 Purpose. It is the legislative intent and purpose of the Spokane Business Tribal Council in enacting this Chapter:

- (a) To protect and preserve the quantities of Reservation surface and ground waters necessary to satisfy the needs of the Spokane Indian Reservation as the permanent homeland of the Spokane Tribe of Indians;
- (b) To promote the health, safety, welfare, and economic well-being of the Spokane Tribe, its people, and all the residents of the Spokane Indian Reservation;
- (c) To restore, maintain and protect the chemical, physical, biological, and cultural integrity of the surface and ground waters of the Spokane Indian Reservation;
- (d) To achieve a level of water quality that provides for the protection and propagation of fish and wildlife, for recreation in and on the water, and for all uses of the water existing at the time of this chapter's enactment and for other uses designated pursuant to this chapter;
- (e) To promote the holistic watershed approach to management of the Reservation's water, and
- (f) To provide for the protection of threatened and endangered species.

Legislative History-Enacted 7/31/98, Resolu. 98-213; Readopted 8/01/06, Resolu. 2006-524.

30-1.02 Jurisdiction. This chapter shall apply to all persons and conduct on all lands and water areas within the exterior boundaries of the Spokane Reservation, and any exertions thereof, and all Spokane Tribal and allotted Indian lands and waters outside the exterior boundaries of the Spokane Indian Reservation, as well as those lands that fulfill the definition of "Indian Country" as defined in 18 U.S.C. Section 1151.

30-1.03 Water Quality Standards.

- (a) The Spokane Tribal Council has adopted Water Quality Standards for lands and waters under the jurisdiction of the Tribe.
- (b) The current version shall be available at the Spokane Department of Natural Resources and the office of the Legal Revisor as established pursuant to Section 1-12 of the Spokane Law and Order Code.

Section 30-2 Clean Water Act § 401 Certification

30-2.01 Legislative History.

- (a) Water is, and has been, central to the culture, religion, subsistence and way of life of the Spokane Tribe of Indians since time immemorial.
- (b) Much of the Tribe's language is based upon water.
- (c) Unwritten laws of the Tribe have controlled use of water for thousands of years.
- (d) Waters arising on the Reservation are still generally in pristine conditions because of the importance that the Tribe has placed on their protection, and the resulting actions that the Tribe has taken, including the adoption of integrated resource management plans that are among the most advanced in the world.
- (e) Unfortunately, not all waters running through or bordering the Reservation arise on the Reservation and some have significant water quality problems.
- (f) Among the most significant are the waters in the Spokane River upon which the Tribe relies heavily for its cultural and recreational uses.
- (g) The Tribe has implemented an extensive water quality monitoring and testing program to deal with increasingly difficult water quality problems.
- (h) Since implementation of that program, the Tribe has identified key areas of the Reservation that suffer from water quality problems.

- (i) With this Code the Tribe takes the next major step in its efforts to protect water quality on the Reservation by exercising the inherent authority that has been recognized by the United States through the Federal Clean Water Act.

30-2.02 Applicability.

- (a) The Tribe is qualified to administer the provisions of the Federal Water Pollution Control Act, aka "Clean Water Act," pursuant to 33 U.S.C. § 1377(e) as that Act relates to waters within the exterior boundaries of the Reservation.
- (b) Each applicant for a federal license or permit to conduct any activity which may result in a discharge into the waters within the exterior boundaries of the Reservation, for which a certification pursuant to § 401 of the Clean Water Act is required, must provide the federal licensing or permitting agency with a certification from the Tribe in accordance with this Code.

30-2.03 Designated Agency for § 401 Certification Applications.

- (a) The Spokane Tribal Council shall appoint a Water Control Board, whose members, qualifications and terms of office shall be defined by Tribal Council Resolution.
- (b) The Water Control Board, through the Department of Natural Resources, shall be the Tribal entity responsible for collecting, reviewing, evaluating, processing, approving or denying all applications for § 401 water quality certification from the Tribe.

30-2.04 Procedure for Receiving and Processing § 401 Certification Applications.

- (a) All correspondence and notifications with regard to § 401 water quality certification applications are to be delivered to the Water Control Board.
- (b) Completed applications for certification shall be filed directly with the Water Control Board.
- (c) Any applicant for a federal license or permit to conduct any activity which may result in any discharge into the waters of the Reservation, including but not limited to the construction or operation of hydroelectric facilities, must provide the federal licensing or permitting agency with a certification from the Water Control Board that any such activity will comply with the Federal Clean Water Act and any applicable Tribal water quality standards which generally prescribe designated water uses, effluent limitations, water quality related effluent limitations, water quality standards and implementation plans, national standards of performance for new sources, and toxic and pretreatment effluent standards.
- (d) A completed application filed with the Water Control Board shall contain, at a minimum, the following information:
 - (1) Legal name and address of the project owner;
 - (2) Legal name and address of owner's designated official representative, if any;
 - (3) A description of the project location sufficient to locate and distinguish the proposed project facilities;
 - (4) Names and addresses of immediately adjacent property owners;
 - (5) A complete description of the project proposal, using written discussion, maps, diagrams, and other necessary materials;
 - (6) Name or description of involved river, stream, waterway, lake, or other body of water (using U.S. government stream identification and/or mapping);
 - (7) Copies of any environmental background information required by the federal licensing or other appropriate permitting agency or such other environmental background information as may be necessary to demonstrate that the proposed project or activity will comply with water quality requirements;
 - (8) Copies of any public notice or supporting information, issued by the federal licensing or permitting agency for the project or activity;

- (9) An exhibit substantially complying with 40 CFR § 1.22 and which contains:
- A. A description of the facility or activity, and of any discharge into Reservation waters which may result from the conduct of any activity including, but not limited to, the construction or operation of the facility, including the biological, chemical, thermal, and other characteristics of the discharge and the location or locations at which such discharge may enter Reservation waters;
 - B. A description of the function and operation of equipment or facilities to treat wastes or other effluents which may be discharged including specification of the degree of treatment expected to be attained;
 - C. The date or dates on which the activity will begin and end, if known, and the date or dates on which the discharge will take place;
 - D. A description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment or facilities employed in the treatment or control of wastes or other effluents;
 - E. An affirmative statement that the activity will be conducted in a manner which will not violate applicable federal or Tribal water quality standards;
 - F. A legal description of the real property impacted by the activity or facility for which a certification is sought; and
 - G. An exhibit which identifies and describes any other requirements of federal and/or Tribal law applicable to the proposed project which may have a direct or indirect relationship to water quality.
- (e) Each application submitted must be accompanied by the application fee based upon the fee schedule established by the Water Control Board.
- (f) The Tribal Council hereby specifically finds that such application fee is reasonably necessary and is related to the expense of governmental administration necessary in processing § 401 water quality certification applications.
- (g) The Water Control Board is authorized to require an applicant to submit any additional information necessary to complete an application or to assist the Water Control Board to adequately evaluate the project impacts on water quality.
- (h) Failure to complete an application or provide any requested additional information within the time specified in the request may be grounds for denial of certification, pursuant to Sections 30-1.05 and 30-1.06 of the Spokane Law and Order Code.
- (i) The Water Control Board shall notify the applicant by certified mail of the date the application is determined to be complete.
- (j) The application will be immediately deemed complete if a preliminary review indicates that all information required by Spokane Law and Order Code Section 30-1.04(3) and (4), including the exhibit required in subsection (1) of that section, has been submitted.
- (k) In order to inform potentially interested persons of the application, the Water Control Board shall prepare and circulate a public notice announcement of each certification request in a manner approved by the Tribal Council.
- (l) Notice shall be mailed to all parties known to be interested in the matter, including but not limited to adjacent property owners as cited in the application.
- (m) If the Tribal Council deems mailed notice to be impracticable, such public notice may be provided in a newspaper of general circulation in the area in which the activity is proposed to be conducted.
- (n) The notice shall tell interested parties of an opportunity to comment on the certification request in such manner as the Tribal Council deems appropriate, shall encourage comments by interested parties, and shall tell of any related documents available for public inspection and copying.
- (o) The Water Control Board shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit written views and comments.

- (p) All comments received during the 30 day period shall be considered in formulating the Water Control Board's position.
- (q) The Water Control Board shall add the name of any person or group upon request to a mailing list to receive copies of public notice.
- (r) The Water Control Board shall provide an opportunity for the applicant or any interested agency, person, or group of persons to request or petition for a public hearing with respect to certification applications.
- (s) If the Water Control Board determines that new information may be produced thereby, a public hearing will be held prior to the Water Control Board's final determination.
- (t) Instances of doubt shall be resolved in favor of holding the hearing.
- (u) There shall be public notice of such a hearing.
- (v) All interested and affected parties will be given reasonable opportunity to present evidence and testify at the public hearing.
- (w) In order to make findings required by Spokane Law and Order Code Section 30-1.05, the Water Control Board's evaluation of an application for project certification may include but need not be limited to the following:
 - (1) Existing and potential beneficial uses of surface or groundwater which could be affected by the proposed facility;
 - (2) Potential water related impacts from the generation and disposal of waste chemicals or sludge at a proposed facility;
 - (3) Potential modification of surface water quality or water quality as it affects water quality;
 - (4) Potential modification of groundwater quality;
 - (5) Potential impacts from the construction of intake or outfall structures;
 - (6) Potential impacts from waste water discharges;
 - (7) Potential impacts from construction activities;
 - (8) The project's compliance with the applicable provisions of the Federal Clean Water Act; and
 - (9) The project's compliance with water quality related to standards established by the Tribal Council.

30-2.05 § 401 Certification.

- (a) Within 120 days after an application is deemed complete pursuant to Spokane Law and Order Code Section 30-1.04(6) the Water Control Board shall serve written notice upon the applicant that the certification is granted or denied or that a further specified time period is required to process the application.
- (b) Written notice shall be served by sending such notice by certified mail to the address of the applicant as shown in the application except that granting of certification may be by regular mail.
- (c) Any extension of time shall not exceed 1 year from the date of filing a completed application.
- (d) If, after considering the complete application, the record of a hearing, if any, and such other information and data as the Water Control Board deems relevant, the Water Control Board determines that there is a reasonable assurance that the proposed activity will not result in a violation of applicable water quality standards, the Water Control Board will so certify.
- (e) If the Water Control Board determines that no water quality standards are applicable to waters which might be affected by the proposed activity, the Water Control Board will so notify the applicant and the federal licensing or permitting agency in writing and shall provide the federal licensing or permitting agency with advice, suggestions, and recommendations with respect to conditions to be incorporated in any license or permit to achieve compliance with the purpose of the Federal Clean Water Act.

- (f) In such case, no certification shall be required.
- (g) If the Water Control Board approves the certification application for a project, such certification shall contain the following:
 - (1) Name and address of applicant;
 - (2) Project's name and federal identification number, if any;
 - (3) Type of project or activity;
 - (4) Name of water body;
 - (5) General location;
 - (6) Findings that the proposed project or activity is consistent with:
 - A. Rules and standards adopted by the Tribal Council;
 - B. Applicable provisions of the Federal Clean Water Act;
 - (7) Such conditions as the Tribal Council or the Water Control Board determines necessary to maintain and protect water quality within the Reservation;
 - (8) Such conditions as the Tribal Council or the Water Control Board determines necessary to assure compliance with the standards of other Tribal agencies that the Tribal Council or the Water Control Board determines are water quality related and compliance with other appropriate requirements of Tribal law according to the Federal Clean Water Act;
 - (9) A condition that requires the certificate holder to notify the Water Control Board of all changes in the project proposal subsequent to certification; and
 - (10) A statement that there is a reasonable assurance that the project or activity will be conducted in a manner which will not violate applicable water quality standards.
- (h) The Water Control Board's certification for a project may include but need not be limited to the following conditions:
 - (1) Limitations on effluent discharge;
 - (2) Requirements that the applicant monitor effluent discharge on a regular basis;
 - (3) Termination of the operation upon evidence that such operation violated or threatens to violate Tribal water quality standards;
 - (4) Minimum flow conditions;
 - (5) Turbidity criterion;
 - (6) Criterion and use restrictions necessary to advance the Tribe's anti-degradation policy; and
 - (7) Any other established water quality standard deemed necessary by the Water Control Board to maintain and protect water quality on the Reservation.
- (i) If the applicant is dissatisfied with the conditions of any granted certification, the applicant may request a hearing before the Tribal Council or a hearings officer designated by the Tribal Council.
- (j) Such requests for a hearing shall be made in writing to the Tribal Council or the designated hearings officer within 20 days of the date of mailing the certification.
- (k) Any hearing shall be conducted pursuant to the rules of the Tribal Council.
- (l) If the Tribe fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed 1 year) after receipt of such request, the certification requirements of this chapter and § 401 of the Federal Clean Water Act shall be waived with respect to the application for a federal license or permit.
- (m) No license or permit shall be granted until the certification required by this chapter has been obtained or has been waived as provided above. No license or permit shall be granted if certification has been denied by the Tribe.
- (n) Certifications granted pursuant to these rules are valid for the applicant only and are not transferable without prior approval of the Tribal Council or its designated representative.

30-2.06 Denial of Certification.

- (a) If the Water Control Board proposes to deny certification for a project, a written notice setting forth the reasons for the denial shall be served upon the applicant following the procedures set forth in Spokane Law and Order Code Section 30-1.05(1).
- (b) The written notice shall advise the applicant to appeal rights and procedures.
- (c) A copy shall also be provided to the federal licensing or permitting agency.
- (d) The denial shall become effective 20 days from the date of mailing such notice unless within that time the applicant requests a hearing before the Tribal Council or a hearings officer designated by the Tribal Council.
- (e) Such a request for hearing shall be made in writing to the Tribal Council or the designated hearings officer and shall state the grounds for the request. Any hearing shall be conducted pursuant to the rules of the Tribal Council.

30-2.07 Revocation or Suspension of Certification.

- (a) Certification granted pursuant to these rules may be suspended or revoked if the Tribal Council or the Water Control Board determines that:
 - (1) the federal permit or license for the project is revoked;
 - (2) The federal permit or license allows modification of the project in a manner inconsistent with the certification;
 - (3) The application contained false information or otherwise misrepresented the project;
 - (4) Conditions regarding the project are or have changed since the application was filed; and
 - (5) Special conditions or limitations of the certification are being violated.
- (b) Written notice of intent to suspend or revoke shall be served upon the applicant following the procedures set forth in Spokane Law and Order Code Section 30-1.05(1).
- (c) The suspension or revocation shall become effective 20 days from the date of mailing such notice unless within that time the applicant requests a hearing before the Tribal Council or a hearings officer designated by the Tribal Council.
- (d) Such a request for hearing shall be filed with the Tribal Council or the designated hearings officer and shall state the grounds for the request.
- (e) Any hearing shall be conducted pursuant to the rules of the Tribal Council.

30-2.08 Inspection Before Operation.

- (a) Where a facility or activity has received certification pursuant to this section in connection with the issuance of a federal license or permit for construction or any other activity that affects Tribal water quality standards, and where such facility or activity is not required to obtain an operating license or permit, the Water Control Board or its representative, shall be afforded the opportunity to inspect such facility or activity for the purpose of determining if the manner in which such facility or activity will be operated or conducted:
 - (1) may result in any discharge to waters of the Tribe; or
 - (2) will violate applicable water standards.
- (b) If the Water Control Board, after an inspection pursuant to subsection 30-2.08(a), determines that operation of the proposed facility or activity may result in any discharge to waters of the Reservation or will violate applicable water quality standards, the Water Control Board shall so notify the applicant and the federal licensing or permitting agency, including the Board's recommendations as to remedial measures necessary to bring the operation of the proposed facility or activity into compliance with such standards.

Legislative History-Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

30-2.09 Enforcement.

- (a) The Tribe may develop procedures for inspection, monitoring, and entry with respect to facilities or activities for which a certification has been issued pursuant to this chapter.
- (b) The procedures discussed in 30-2.09(a) may provide as follows:
 - (1) The Water Control Board may require the owner or operation of any facility to:
 - A. establish and maintain records;
 - B. make reports;
 - C. install, use, and maintain monitoring equipment or methods (including where appropriate, biological monitoring methods);
 - D. sample effluents (in accordance with such methods, at such location, at such intervals, and in such manner as the Water Control Board shall prescribe); and
 - E. provide such other information as the Water Control Board may reasonably require; and
 - (2) The Water Control Board or its authorized representative (including an authorized contractor acting as a representative of the Water Control Board, upon presentation of his credentials:
 - A. Shall have a right of entry to, upon, or through any premises for which a certification has been issued pursuant to this chapter or in which any records required to be maintained under (a) of this subsection are located, and
 - B. May at reasonable times have access to and copy any records, inspect monitoring equipment or method required under clause (a), and sample any effluents which the owner or operator of such facility is required to sample under clause (a) of this subsection.
 - (3) Any records, reports, or information obtained under this section:
 - A. shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards, and
 - B. shall be available to the public, except that upon a showing satisfactory to the Water Control Board by any person that records, reports, or information, or particular part thereof (other than effluent data), to which the Water Control Board has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Water Control Board shall consider such record, report or information, or particular portion thereof confidential.
 - 1. Any authorized representative of the Water Control Board who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information which is required to be considered confidential under this subsection shall be subject to civil remedies to the extent provided by Tribal law.
 - 2. Nothing in this subsection shall prohibit the Water Control Board or it authorized representative from disclosing records, reports, or information to other officers, employees, or authorized representatives of the Tribe concerned with carrying out this chapter or when relevant in any proceeding under this chapter.
- (c) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise contained by the Water Control Board under this chapter shall be made available, upon written request of any duly authorized committee of Congress, to such committee.

Legislative History-Amended 4/7/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

30-2.10 Penalties.

- (a) Compliance Orders. Whenever, on the basis of any information available to it, the Water Control Board finds that any person (Indian or non-Indian) is in violation of any condition or limitation of a certification issued under this chapter, or is in violation of any of the Tribe's water quality standards, the Water Control Board may issue an order requiring such person to comply with

such conditions or limitations, or the Water Control Board may bring a civil action in accordance with subsection (2) of this section.

- (1) In any case in which the order under this section is issued to a corporation, a copy of such order shall be served on any appropriate corporate officers.;

(b) Civil Actions.

- (1) Civil Penalty. Whenever, on the basis of any information available to it, the Water Control Board finds that any person, Indian or non-Indian, is in violation of any condition or limitation of a certification issued under this chapter, or is in violation of any of the Tribe's water quality standards, the Water Control Board may seek to impose a civil penalty in the Tribal Court for a civil infraction.

- A. Such civil penalty shall not exceed the sum of \$500 for each such infraction.
- B. The procedures governing the adjudication in Tribal Court of such civil infractions shall be those set forth in Spokane Law and Order Code Chapter 4 (Civil Procedure/Actions).
- C. The Tribal Council hereby specifically finds that such civil penalties are reasonably necessary and are related to the expense of governmental administration necessary in maintaining law and order and public safety on the Reservation and in managing, protecting and developing the natural resources on the Reservation.

- (2) In determining the amount of a civil penalty, the Tribal Court shall consider the nature, circumstances, extent and gravity of the violation or violations, and, with respect to the violator, the economic benefit (if any) resulting from the violation, any history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty, and such other matters as justice may require.
- (3) A single operational upset which leads to simultaneous violations of more than 1 pollutant parameter shall be treated as a single violation.
- (4) Definition of "each infraction" as used in Section 30-1.10(2)(a).

(c) Civil Action. The Water Control Board is authorized to commence a civil action for appropriate relief, including permanent or temporary injunction, for any certification violation for which the Water Control Board is authorized to issue a compliance order under subsection (1) of this provision.

- (1) Any action under this subsection may be brought in the Tribal Court or (if jurisdictional grounds are satisfied) in the district court for the United States for the district in which the defendant is located or resides or is doing business.
- (2) The civil action authorized under this subsection includes, but is not limited to, an action for equitable relief or an action to recover actual damages.
- (3) "Actual damages" includes, but is not limited to the cost of investigations, inspections or monitoring surveys which lead to the establishment of violations; expenses incurred by the Tribe in removing, correcting or terminating any adverse effects upon human health and the environment resulting from the violative activity, whether or not accidental; and compensation for loss or destruction of wildlife, fish or aquatic life, or their habitat, or for any other damage caused by the violative activity, either to the Tribe or to any residents of the Reservation who are directly aggrieved by the violative activity, or both.
- (4) In any action brought by the Water Control Board, the Board may recover its reasonable costs incurred in enforcing the provisions of this chapter, including its reasonable attorney fees.
- (5) In any case in which the civil remedy provided under this section is issued to or brought against a corporation, a copy of such notice of civil remedy shall be served on any appropriate corporate officers.

(d) Criminal Penalties.

- (1) Tribal members and all other Indians subject to the criminal jurisdiction of the Spokane Tribe of Indians' Tribal Court, found guilty of violation of any of the provisions of this chapter shall, upon a conviction, be subject to a penalty or punishment of not greater than imprisonment for a term of 1 year and a fine of not more than \$5,000, or both.

- (2) Persons not subject to the criminal jurisdiction of the Spokane Tribal Court shall be referred over to the appropriate authorities for prosecution.

CHAPTER 31 - BUSINESS LICENSING CODE

Section 31-1 Declaration and Purpose

31-1.01 Declaration.

- (a) The Spokane Tribal Council finds that the regulation of persons engaged in trade and business on the Spokane Indian Reservation is necessary to safeguard and promote the peace, safety, morals and general welfare of the Tribe.
- (b) The Tribe shall have the sole and exclusive authority to grant, deny, extend, or withdraw the privilege of doing business within the Reservation, except where such authority is withdrawn from the Tribe by the operation of applicable federal laws.

31-1.02 Purpose. This Business Licensing Code, duly enacted by the Tribe, is designed to bring Reservation businesses into compliance with Tribal law and to establish a fund derived from fees and civil penalties to defray administrative and enforcement costs and to compensate individuals and the Tribe for damages caused by business non-compliance.

Section 31-2 Definitions

31-2.01 Definitions. The following terms, whenever used or referred to in this Code, shall have the following meanings, unless a different meaning clearly appears from the context:

- (a) "Agent" means the individual or individuals designated by a license to receive and accept service of process.
- (b) "Aggrieved party" means a party entitled to resort to a remedy.
- (c) "Applicant" means any person who submits an application to the Commission for a business license and who has not yet received such license.
- (d) "Business" means any regular or temporary business activity engaged in by any person for the purpose of conducting a trade, profession or commercial activity involving the sale of any property or service.
- (e) "Code" means the Spokane Business License Code as enacted and amended by the Tribal Council.
- (f) "Commission" means the Director and commissioners of the Spokane Business License Commission, acting as individuals in their official capacity or as a body.
 - (1) An acting Director appointed by the Tribal Council may serve as the Director, and the Tribal Council may serve as the Commission until the Tribal Council appoints a separate Director and Commission.
- (g) "Director" means the director of the "Commission" acting in his/her official capacity.
- (h) "Hearing" means a proceeding following notice conducted on the record which affords the licensee or applicant an opportunity to cross-examine witnesses and to present evidence.
- (i) "Licensee" means any person who is granted a business license by the Commission.
- (j) "Notice" means actual notice by hand delivery or by certified mail to the agent of a business.
 - (1) For time computations as provided for in the Code, which are to begin upon notice, such notice shall be at delivery, except that where delivery is not possible after 3 consecutive postal days due to the inaction or refusal of the agent, notice shall be at the time of the first attempted delivery.
 - (2) Upon return of the forms of notice to the Commission due to non-delivery by reason of inaction or refusal of the agent, the forms shall be mailed by regular mail.
- (k) "Person" means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, co partnership, joint venture, public utility, club, company, business trust, municipal corporation, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise, and includes any instrumentality thereof.
 - (1) The term includes members and non-members of the Tribe, but excludes any governmental entity.

- (l) "Property" means any existing and identified real or personal property.
 - (1) It shall also include any goods as that term is defined by the Uniform Commercial Code.
- (m) "Reservation" means all lands and water areas within the exterior boundaries of the Spokane Indian Reservation and all Spokane Tribal and allotted Indian lands outside the exterior boundaries of the Spokane Indian Reservation.
- (n) "Sale" means the transfer, exchange or barter, conditional or otherwise, of the ownership of, title to, or possession of real or personal property for consideration.
 - (1) The term shall also include leases, conditional sales contracts, leases with the option to purchase, and any other contract under which possession of the property is given to the purchaser but title is retained by the seller as security.
 - (2) It shall also include the furnishing of food, drink, or meals for compensation, whether or not consumed on the premises.
 - (3) It shall also include any conditional or unconditional provision of services for consideration.
- (o) "Service of Process" means the delivery of show-cause orders, cease and desist orders or other orders of the Commission or Tribal Court as authorized by this Code.
- (p) "Services" means the performance of labor for the benefit of another for consideration. It excludes labor performed by an employee for the benefit of his/her employer.

Section 31-3 Business License Commission

31-3.01 Creation and Powers.

- (a) To carry out the purposes and provisions of this Code in the absence of the Tribal Council serving in that capacity, the creation of a Business Licensing Commission is hereby authorized.
- (b) If a Commission is created, it shall be delegated all powers provided for in this Code, or impliedly necessary to implement its provisions, subject to review by the Tribal Council by virtue of such delegated powers.

31-3.02 Composition and Terms.

- (a) The appointed Commission shall be comprised of 3 Commissioners.
- (b) The Commissioners shall serve staggered terms as determined by the Tribal Council and may be removed only for cause by a majority vote of the Tribal Council.
- (c) The Tribal Council shall appoint the Director, who shall be a Tribal employee whose qualifications, compensation, and length of employment, shall be determined by the Council.
 - (1) There shall be 1 Director who shall serve under the Commission.
 - (2) The Director may be removed from office only for cause and by a majority vote of the Tribal Council.
 - (3) The Spokane Tribe TERO Director is appointed to act as Tribe's Business License Commission Director.

31-3.03 Meetings.

- (a) The Commission shall conduct regular public meetings as needed, or once every 3 months, at the Discretion of the Commission, to review actions taken by the Director, to hear public grievances associated with administration of this Code, to promulgate regulations pursuant to this Code, to formulate recommendations to submit to the Tribal Council for revisions of or amendments to this Code, and to take other actions necessary for the administration of the provisions of this Code.
- (b) The Commission may conduct additional meetings as the need arises.

31-3.04 Hearings.

- (a) The Commission shall hold hearings of record as provided for in this Code and shall provide transcripts or tape recordings of the hearings within 5 working days of the filing of an appeal of a Commission decision which was based upon the hearings.

- (b) The appellant shall pay reasonable copying costs as established by the Commission, unless such costs are waived by the Commission for good cause shown.

31-3.05 Regulations. The Commission may recommend for approval by the Tribal Council Tribal regulations or Memoranda of Agreement with federal and state agencies whenever the Commission finds such regulations or memoranda necessary to administer this Code.

Section 31-4 Business License

31-4.01 Applicability.

- (a) This Code shall be applicable to all persons engaged in business within the Reservation.
- (b) Each person engaged in business upon the Reservation shall obtain and have in effect at all times a business license issued by the Commission.

31-4.02 Application and Issuance.

- (a) An application for a business license shall be submitted in writing to the Director on a form provide by the Commission and approved by the Council.
- (b) Persons engaged in business at the time this Code is enacted shall have 30 days to obtain and submit to the Director an application for a license.
- (c) All applications shall include:
 - (1) A description of the type of business;
 - (2) The name and address of the owner or owners of the business;
 - (3) The trade name if any to be used by the business;
 - (4) The location(s) at which the business will be conducted;
 - (5) A sworn statement that the applicant is in compliance and will comply with all Tribal laws applicable to the applicant's business;
 - (6) A sworn statement that the applicant consents to Tribal Court jurisdiction and service of process; and
 - (7) The name(s), address(es) and signature(s) of the agent(s) who will accept service of process on behalf of the business.
- (d) Separate applications shall be submitted for each branch establishment or separate business location.
- (e) A reasonable application fee as set by the Council shall accompany each application.
- (f) The Director shall notify the applicant by regular mail within 14 days on whether a license shall be issued.
- (g) The license shall be issued for no additional cost on a form approved by the Council and the licensee shall post the license in a conspicuous manner at the business location designated on the license.

31-4.03 Denial of License and Appeal.

- (a) The Director shall not approve or renew a business license if the Director finds that:
 - (1) the applicant materially has misrepresented facts contained in the application;
 - (2) the applicant or the business presently is non-compliant with Tribal law;
 - (3) approval or renewal or the business license will threaten the peace, safety, morals, or general welfare of the Tribe; or
 - (4) the applicant or the business has incurred delinquent financial obligations, owed to the Tribe or to a Tribal Enterprise, that arise from activities related to the business for which a license, or a license renewal, is sought.
- (b) Notwithstanding the requirements of subsection (d), a business license may be issued or renewed if the Commission, in its sole and unreviewable discretion, approves a payment plan as a condition of the license. If the business fails to comply with such a repayment plan over the next 6 months, the Director shall revoke the license as set forth in section 31-5.01.
- (c) Within 14 days of receiving an application, the Director shall notify the applicant, by regular mail, whether the license shall be granted or denied. If the license is denied, the Director shall inform the applicant, in writing, of the reasons for the denial, and advise the applicant that the

applicant has 15 days from the mailing of the notice to file an appeal with the Commission in accordance with this Code.

31-4.04 Exemptions. The following shall be exempt from the licensing requirements of this Code:

- (a) Governmental entities;
- (b) Persons engaged in the traditional practice of medicine; and
- (c) Employees of a business.

31-4.05 Duration.

- (a) Annual License. An annual business license or renewal thereof shall be issued for a period of 1 year, or less, beginning October 1 or the date of approval, whichever is later, and continuing until midnight of the last day of the next September.
- (b) Short-Term License. A short-term business license shall be issued for business operating less than a period of 3 months, such period to be specifically set forth on the license.
- (c) Permanent License. Non-profit charitable, religious or educational organizations, or businesses chartered by the Tribe, and such other similar types of businesses as authorized by the Tribal Council, may be issued permanent business licenses.
 - (1) Except for renewal requirements, businesses operating under a permanent license shall be subject to all other provisions of this Code.

31-4.06 Conditions of License.

- (a) Each licensee shall comply with all applicable Tribal laws, including but not limited to, tax laws, TERO laws, health and sanitation laws, building codes, and any other Tribal laws specifically made applicable to licensees.
- (b) Licensees also must provide for workmen's compensation coverage, or comparable program, for all employees as a condition of their license.
- (c) The Director shall notify each licensee by regular mail of any additional Tribal laws with which the licensee must comply as such laws are enacted.

Section 31-5 Sanctions

31-5.01 License Revocation.

- (a) Whenever it is brought to the attention of the Director, and the Director finds, that a licensee is in non-compliance with any condition of his/her license, the Director shall serve notice upon the licensee's agent a show-cause order for revocation of the license.
- (b) Such notice shall state the reason(s) for the order, the time and place for a hearing before the Commission not exceeding 14 days and not less than 10 days from such notice, and that the licensee shall have an opportunity to cross-examine witnesses, to testify and to present evidence as to why a revocation order should not be issued.
- (c) In the event the Director determines the licensee's noncompliance is a direct and immediate threat to the peace, safety, morals, or general welfare of the residents of the Reservation, the Director shall issue a cease and desist order which shall be served on the business agent.
- (d) The business shall cease and desist operation immediately upon service of the order and may request in writing from the Director an expedited appeal hearing which shall be held no later than 48 hours, excluding weekends and holidays, from the time of submission of the request to the Director.
- (e) The Commission shall conduct public hearings on show-cause orders and cease and desist orders. The Director carries the burden of proof, by a preponderance of the evidence, that the noncompliance did occur.

31-5.02 Fines.

- (a) If the Commission finds, following a hearing and by a preponderance of the evidence, that a licensee failed to comply with the conditions of the license or failed to secure a license within the time requirements of this Code, the Commission may revoke the license and impose a civil fine in an amount not exceeding \$500.

- (b) In fixing the amount of the civil fine, the Commission shall consider, and expressly address in writing, if known, each and all the following criteria:
 - (1) the good or bad faith of the licensee;
 - (2) the injury to the public resulting from the violation;
 - (3) the benefits derived by the violator as a result of the violation;
 - (4) the violator's ability to pay;
 - (5) the administrative costs of prosecution; and
 - (6) the deterrent effect the fine will have on the violator and others and the need to vindicate the Commission's authority and the integrity of its orders.

31-5.03 Removal and Exclusion of Non-Indians.

- (a) If any non-Indian entity has its license revoked, fails to comply with any order of the Commission, or fails to appear for any hearing, the Director may petition the Tribal Court for an exclusion of the entity in accordance with the Spokane Law and Order Code.
- (b) Proof of license revocation, a finding of failure to comply with a Commission order, or failure to appear for a hearing after notice as provided in this Code, shall constitute sufficient grounds for exclusion.
- (c) Other applicable remedies under Tribal, federal or state law shall also be available as necessary to the Director to enforce the provisions of this Code.

31-5.04 Other Remedies.

- (a) The Director may petition the Tribal Court for other remedies not provided for in this Code which are necessary to enforce its provisions, including but not limited to, declaratory relief, temporary restraining orders, and preliminary and permanent injunctions.
- (b) The Director may also petition the applicable state court for writs of execution to enforce a final order of Tribal Court off-Reservation. The final order must include findings showing that:
 - (1) the Tribal Court had jurisdiction over the subject matter and the parties;
 - (2) the decree was not obtained fraudulently;
 - (3) the defendant was afforded due process, and,
 - (4) the judgment was consistent with the public policy of the Tribe.

31-5.05 Appeals.

- (a) Any person against whom the Commission has imposed any sanction as authorized by this Code may appeal to Tribal Court for appropriate relief in accordance with the Appellate Procedure under the Spokane Law and Order Code, except that the Tribal Court shall serve as the Appellate Court.
- (b) Findings of fact of the Commission shall not be disturbed unless found to be clearly erroneous.
- (c) The standard of review shall be that the Commission's order will be disturbed only on a finding that it was arbitrary, capricious, or not supported by the law.
- (d) The reviewing court may resort to procedures and remedies under the Administrative Procedures Act as implemented and enforced by federal agencies and courts.
- (e) Notwithstanding other provisions to the contrary under the Spokane Law and Order Code, enforcement of Commission orders for the assessments of fines shall be stayed pending appeal only upon the posting of a bond in Tribal Court in an amount equal to the fine.
- (f) License revocations shall not be stayed unless by expedited hearing the licensee can demonstrate to the Tribal Court by a preponderance of the evidence that the harm caused the licensee as a result of the revocation exceeds the potential harm caused the public by continued operation of the business.
- (g) The Tribal Court may require the posting of an additional bond if a stay of the revocation is ordered pending appeal in a reasonable amount designed to protect the public from potential harm, not to exceed \$3,000.

- (h) The Tribal Court shall return all or a portion of the bond to the licensee or transfer all or a portion of the bond to the Commission upon and in accordance with the issuance of the Tribal Court's final order.
- (i) The final order of the Tribal Court shall conclude the licensee's right of appeal.

Section 31-6 Savings Clause

31-6.01 Savings Clause. In the event that any provision of this Code is found or declared invalid, the remaining provisions of this Code shall be unaffected thereby, and shall remain in full force and effect.

CHAPTER 32 - ELECTION CODE

- Section 32-1 Purpose and Definitions**
- Section 32-3 Election Committee**
- Section 32-5 Election Boards**
- Section 32-7 Elections for Elective Office**
- Section 32-9 Polling Places**
- Section 32-11 Run-Off Election**
- Section 32-13 Election Disputes**
- Section 32-15 Certification of Election**
- Section 32-17 Appeal of Election Results**
- Section 32-19 Initiatives and Referendums**
- Section 32-21 Compensation to Election Committee and Board Members**
- Section 32-23 Amendment of Election Code**

Section 32-1 Purpose and Definitions

32-1.01 Purpose. The purpose of this Code is to provide a statutory framework that shall govern all elections of the Spokane Tribe of Indians, whether the election is for the consideration of an initiative or referendum or for the choice of the Tribal official.

32-1.03 Definitions. For purposes of this Code, certain terms are defined in this Section. The word "shall" is always mandatory and not merely advisory.

- (a) "Board" means the Election Boards as appointed by the Spokane Tribe Election Committee.
- (b) "Committee" means the Spokane Tribal Election Committee that is responsible for the oversight of Spokane Tribe elections.
- (c) "Immediate family" includes: a spouse or intimate partner; a child, stepchild, adopted child; grandchildren; parents or step-parents; grandparents; siblings; aunt or uncle, and niece or nephew; and any other person(s), whether or not related, residing in the same household.
- (d) "Qualified Tribal Voter" means any enrolled member of the Spokane Tribe, 18 years of age or older on the date of any scheduled election.
- (e) "Tribal Council" means the Spokane Tribe Tribal Council.

Section 32-3 Election Committee

32-3.01 Establishment of the Election Committee.

- (a) The Spokane Tribal Council shall appoint 3 Election Committee members from among the qualified voters of the Tribe.
- (b) The Council shall designate 1 of the Committee members as Chairperson.
- (c) The Council also shall appoint an alternate to serve in the absence of a regular member of the Committee.
 - (1) The Alternate member shall attend all Committee meetings, but shall not have a vote in Committee business.
 - (2) The Alternate member may assist in any election, but no Alternate shall have primary authority regarding any election process.
- (d) An Election Committee member shall be appointed until they resign, vacate their position, or the Council vacates their appointment.
- (e) While serving in their official capacity, Committee members shall adhere to the code of conduct applicable to Tribal employees as set forth in the Tribe's Personnel Manual.
- (f) Committee members shall not participate in an election when a candidate is within their immediate family.

32-3.03 Duties of the Election Committee. The Election Committee shall:

- (a) Appoint an Election Board for each polling place.

- (b) Post notice of any election throughout the Tribal community, to include, but not limited to: all Spokane Tribe Offices and Office of Spokane Tribe Enterprises; Offices of the BIA, IHS, and HUD; Wellpinit Post Office; and the American Indian Center in the City of Spokane.
- (c) Post notice of election deadlines at all polling places, and at other places frequented by Tribal members, at least 30 days before the candidate filing deadline.
- (d) Distribute and collect petitions of candidates for elective office and initiative petitions.
- (e) Examine the petition of any candidate for elected office and determine the eligibility of the candidate.
- (f) Compile and certify a list of candidates for any elective position.
- (g) Post the list of candidates at all polling places, and at other places throughout the Tribal Community and City of Spokane, as detailed in section 32-3.03(b), within 1 working day following the filing deadline.
- (h) Lock all ballot boxes before distribution to the polling places before the day of election.
- (i) Count the ballots cast and determine the results of the Election.
- (j) No later than the next working day after election, the Committee shall verify on the sign-in registers that there was no double voting.
- (k) Report the results of the election to the Tribal Council on the Monday immediately following the election.
- (l) Review and investigate any claims of irregularity regarding the election and make appropriate findings as to the validity or invalidity of the claims.
- (m) Report to the Tribal Council any complaint of irregularity and the Committee's findings regarding those complaints.
- (n) Preserve the ballots as evidence, under sealed lock and key for 1 year from the date of each election, for any election dispute to be resolved in conformity with of this Code.
- (o) Supervise any other matter directly related to the conduct of Tribal elections.

Section 32-5 Election Boards

32-5.01 Establishment of Election Boards.

- (a) The Election Committee shall appoint an Election Board for each polling place.
- (b) The Board members must be Spokane Tribal members over 18 years of age.
- (c) Election Board members shall not participate in election when a candidate is within their immediate family.

32-5.03 Duties of Election Board Members. Election Board members shall be present and shall supervise the balloting at their respective polling places to:

- (a) Coordinate clocks at all polling places on the day of election.
- (b) Ensure that ballots are distributed only to qualified Tribal voters.
- (c) Receive and preserve all ballots cast.
- (d) Ensure adequate recordkeeping to provide the Election Committee and the Tribal Council with sufficient information to come to an opinion regarding the validity of any election.
- (e) After the closing of the polls, 2 Board members shall deliver the locked ballot box, records, and materials to Tribal headquarters for opening and counting of ballots by the Election Committee.

Section 32-7 Elections for Elective Office

32-7.01 Qualifications for Elective Office. Minimum qualifications of the candidate for any elective office of the Spokane Tribe are as follows:

- (a) The candidate shall be an enrolled member of the Spokane Tribe of Indians.
- (b) The candidate shall have resided on the Spokane Reservation for the 2-year period immediately preceding the election.

- (1) Owning property, having a post office box, or maintaining a secondary residence on the Reservation shall not be sufficient to satisfy this provision.
 - (2) The candidate must have maintained their primary residence on the Spokane Reservation.
- (c) The candidate shall be at least 25 years of age and not more than 70 years of age as of the date of the election.
- (d) The candidate shall not have been convicted of a felony or of a misdemeanor involving dishonesty.
- (1) Such an ineligibility shall continue for a period of 5 years after conviction or 5 years after completion of actual incarceration, whichever comes later.

32-7.03 Petition of Candidacy.

- (a) Candidates shall qualify for a place on the ballot of the Spokane Tribe of Indians by filing with the Election Committee a petition signed by not less than 20 qualified voters requesting that the named person be listed on the ballot as a candidate for a specified Tribal office.
- (b) A candidate for the Tribal Council shall identify the number of the position for which the candidate is running.
- (c) A candidate for the Tribal Council may run for only 1 position in any election.
- (d) All candidates shall signature a declaration of residency and a release permitting the Election Committee to a conduct criminal background investigation in accordance with the Tribal constitutional requirement.
- (e) Candidates shall file a petition for candidacy with the Election Committee no later than 4:00 p.m. of the 36th calendar day before the scheduled election.
 - (1) The Election Committee member who receives the completed petition shall stamp or notate the petition with the date and time of receipt, and provide a receipt or a copy of the page with the petition stamp to the person filing the petition.
 - (2) If the day of filing falls on a weekend or holiday, the filing shall occur no later than the business day immediately preceding the 36th calendar day before the scheduled election.
- (f) The Election Committee shall post the list of candidates at all polling places, and at other places frequented by Tribal members, within 1 working day following the filing deadline.
- (g) A qualified voter can signature more than 1 candidate's petition, and can be counted as 1 of the 20 signatures required for certification.

32-7.05 Objections to Petition of Candidacy.

- (a) Any Tribal member may challenge a petition for candidacy by submitting a written objection to the Election Committee within 5 working days from the last day of filing.
- (b) The Election Committee shall rule on the objection and respond formally, in writing, within 5 working days of the filing of the written objection.
- (c) All written objections and the formal written responses of the Committee shall be public record and shall be on file at the Tribal Offices in Wellpinit, WA.
- (d) Any Tribal member aggrieved by a decision of the Election Committee regarding a petition for candidacy may appeal immediately to the Spokane Tribal Court in conformity with the Law and Order Code of the Spokane Tribe of Indians.
 - (1) The Tribal Court shall hear the matter the next business day after the filing of the appeal to ensure Resolution of the matter before Election Day.
 - (2) The aggrieved party has the burden of appealing immediately and if the aggrieved party does not do so, the party cannot petition the Court for postponement of the election so that the matter can be heard by the Court.

32-7.07 Certification of Candidates.

- (a) Within 14 calendar days of the last day of filing of the petition for candidacy, the Election Committee shall determine the eligibility of candidates in conformity with the Constitution of the Spokane Tribe and the Revised Spokane Law and Order Code.
- (b) In determining the eligibility of the candidates, the Committee shall provide the Tribal Council with:
 - (1) A list of all the candidates certified by the Committee to be eligible candidates.
 - (2) Notices containing a list of candidates and the rules of the election as determined by this Code.
 - (3) The Tribal Council and the Election Committee shall ensure that these notices are posted in conspicuous places at least 10 calendar days before the election.

Section 32-9 Polling Places

32-9.01 Polling Places.

- (a) Tribal voters shall exercise their right to vote in person at a designated voting place.
- (b) The polling places shall be as follows:
 - (1) Alfred McCoy Administration Building, Wellpinit
 - (2) Community Center, West End
 - (3) TANF building, 232 E. Lyons Avenue, Spokane, Washington.
- (c) If any of the above is not available for polling for any reason, the Committee shall recommend to the Tribal Council, and the Tribal Council shall approve any change to the election polling places.

32-9.03 Rules of the Polling Places. The Election Committee and the Election Boards shall ensure that the following rules and procedures are enforced strictly on Election Day:

- (a) Polls shall be open on Election Day between the hours of 8:00 a.m. and 8:00 p.m.
 - (1) Polling place doors shall be locked at 8:00 p.m.
 - (2) People still in line at 8:00 p.m. shall be allowed to vote.
- (b) Voting shall be by means of secret ballot.
- (c) Any qualified voter who, because of disability, is unable to read or write in casting the voter's ballot, may be assisted by a person of the voter's choosing.
- (d) Campaigning or loitering shall not be permitted within 200 feet of any polling place.
- (e) No candidate shall come within 200 feet of the polling place except for the purpose of casting the candidate's ballot.
- (f) Any qualified voter may challenge the eligibility of any voter to vote.
 - (1) The Election Board shall place any ballot cast by any person so challenged into an envelope, seal the envelope, and mark the envelope as a "Contested Vote" with the name of the voter.
 - (2) The envelope shall be delivered to the Election Committee, which shall determine the question of eligibility.

Section 32-11 Run-Off Election

32-11.01 Run Off Election for Candidates.

- (a) If the top 2 candidates for an elective office are tied, or no candidate for an elective office has received 50% or more of the total votes cast for that office in the General Election, the Committee shall conduct a runoff election the 2nd Saturday after the General Election.
- (b) Only those candidates who tied or received the most votes for a particular office shall be on the runoff ballot.

Section 32-13 Election Disputes

32-13.01 Election Disputes.

- (a) Any Tribal member who disputes the validity of a vote, or who challenges any aspect of an election, shall do so in writing and shall submit the written challenge to the Committee within 36 hours after the posting of the official results.

- (b) The Committee shall investigate the dispute or complaint as quickly as possible and shall issue formal findings.

Section 32-15 Certification of Election

32-15.01 Certification of Election. The Committee shall present its findings and the ballots to the Tribal Council for review and final decision at the time of certifying the results of the election, or sooner if the Committee deems it necessary to have a decision of the Tribal Council before to the election itself.

Section 32-17 Appeal of Election Results

32-17.01 Appeal. Any person aggrieved by a final decision of the Tribal Council may appeal to the Spokane Tribal Court in conformity with the Revised Spokane Law and Order Code.

- (a) The Tribal Council approves a limited waiver of the sovereign immunity to permit Tribal members to seek Tribal Court review.
- (b) The jurisdiction of the Tribal Court under this section is limited strictly to a review of the decision of the Tribal Council, and shall be limited solely to equitable remedies.
- (c) The right of appeal provided by this section shall not to be construed as a waiver of the sovereign immunity of the Tribe to any suit for legal damages.

Section 32-19 Initiatives and Referendums

32-19.01 Legal Review of Initiative. To provide for adequate legal review, a petition for an initiative must be filed no later than 2 weeks before the scheduled election in order to be placed on the ballot for that election.

32-19.03 Majority Vote Shall Decide Initiatives and Referenda.

- (a) A majority vote of the total votes cast shall decide an initiative or referendum, so long as the number of total votes cast in that election equals or exceeds 51% of the average voter turnout at the regular elections held during the previous 5 years.
- (b) The Election Committee shall certify that the total votes cast in that election equals or exceeds 51% of the average voter turnout at the regular elections held during the previous 5 years.

Legislative History-Enacted, 02/08/85, Resolu. 1985-87; Readopted 8/01/06, Resolu. 2006-524; Revised 5/15/07, Resolu. 2007-337.

Section 32-21 Compensation to Election Committee and Board Members

32-21.01 Compensation of Committee Members. Committee members and Board members shall be paid for their services at the same rate per day as elected officials of the Tribe, and shall be reimbursed for mileage expenses at the same rate as Tribal employees.

32-21.03 Compensation of Board Members.

- (a) Committee members and Board members shall be paid for their services at the same rate per day as elected officials of the Tribe, and shall be reimbursed for mileage expenses at the same rate as Tribal employees.
- (b) Board members shall receive stipends at the same rate as Tribal employees.

Legislative History-Enacted, 02/08/85, Resolu. 1985-87; Amended 01/04/01, Resolu. 2001-101; Readopted 8/01/06, Resolu. 2006-524; Revised 5/15/07, Resolu. 2007-337.

Section 32-23 Amendment of Election Code

32-23.01 Amendment of Election Code. This Code may be amended by a vote of 2 members of the Committee and approval by the Tribal Council.

CHAPTER 33 - SPOKANE TRIBAL UTILITY CODE

Section 33-1 General Provisions

33-1.01 Title and Date.

- (a) This Code shall be titled the Spokane Tribal Utility Code.
- (b) The Code shall become effective immediately upon adoption by Resolution by the Spokane Tribal Council.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-1.02 Purpose. The purpose of the Spokane Tribal Utility Code is to define the policies, establish an organization and identify the necessary rules and regulations for the operation, maintenance and management of the various public utilities located on the Spokane Indian Reservation.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-1.03 Policy.

- (a) It shall be the policy of the Spokane Indian Tribe to operate, maintain and manage the public utilities on the Spokane Indian Reservation so that the community residents are provided with a high level of services designed to minimize exposure to adverse conditions which could negatively impact the physical and environmental health of any individual or the community.
- (b) It shall be the policy of the Spokane Indian Tribe that the operation, maintenance and management of the public utilities shall be carried out through an efficient program and in a financially responsible, cost effective, and self-sufficient manner.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-1.04 Jurisdiction. The authority to establish a Tribal utility organization and to levy appropriate user fees to all residents and organizations operating on the Spokane Indian Reservation is provided in Article VIII of the Spokane Tribal Constitution.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

Section 33-2 Definitions

Definitions. Unless context specifically indicates otherwise, the meaning of terms used in the Code shall be set forth in this Section 33-2.

- (a) "Appurtenances" means the real and personal property owned by the utility or the Tribe located on, near or under the roadways and streets, such as fire hydrants, valves, manhole covers and drains, etc.
- (b) "Contractor" means any individual, firm, or organization who contracts to provide services or utility repairs, design, inspection, reconstruction or operation.
- (c) "Customer Lines" means the potable water lines and sanitary sewer lines located immediately adjacent to, inside of, or under, customer's residence or other building or property which are either connected to utility service lines or are maintained by the customer separately from utility service lines.
- (d) "Customer" means a person, business, agency or other organization that uses, is entitled to use, or is obligated to pay for the use of or provision of services from the Utility Department.
- (e) "Department" means the Utility Department of the Spokane Indian Tribe.
- (f) "Distribution system lines" means those potable water lines maintained by the Utility Department by which water utility services are provided to customers.
- (g) "Manager" means an individual hired by or appointed by the Utility Authority to oversee and manage the operation of the Utility Department.
- (h) "Meter" means a device, owned by the Utility Department, for measuring the amount of water provided to a particular customer.
- (i) "Off-reservation" means any area located outside of the exterior boundaries of the Spokane Indian Reservation.
- (j) "Operator" means an individual hired by or appointed by the Utility Authority or manager to provide direct day to day preventive maintenance and operational service for the public water.

- (k) "Public Utilities" means all utilities owned, operated, or managed by the Spokane Indian Tribe or its designated authority on and for the Spokane Indian Reservation.
- (l) "Regulation" means a rule of law or procedure duly adopted by the Utility Authority for purposes of implementing the requirements of this Code.
- (m) "Shall" is mandatory; "may" is permissive.
- (n) "Tribal Community," for the purposes of this Code, means, but is not necessarily limited to, enrolled Spokane Tribal Members.
- (o) "Utilities Services" means those basic services necessary for supporting residential and commercial development, including, but not limited to, water, sewer and garbage collection.
- (p) "Utility Department" means the governmental department of the Spokane Indian Tribe authorized to operate the utility services provided by the Tribe.
- (q) "Vendor" means any individual firm, contractor or organization who supplies parts, equipment, supplies and/or services to the Utility Department.

Section 33-3 Utility Department and Utility Authority

33-3.01 Establishment of Utility Department. There is hereby established the Spokane Tribal Utility Department having the responsibility for operating and maintaining the Tribal public utilities directly or by contract.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-3.02 Utility Authority. There is hereby established the Spokane Tribal Utility Authority to serve as the advisory, administrative and management authority for the Spokane Tribal Utility Department.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-3.03 Utility Authority - Operating Organization.

- (a) The Utility Authority shall operate as a subordinate unit of Tribal government independent in its daily operation, but responsible to the Tribal Council for its actions.
- (b) The methods of appointment, terms of office, and operating procedures of the Utility Authority shall be set forth in this Code and in regulations adopted by the Utility Authority.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-3.04 Utility Authority - Powers and Responsibilities.

- (a) The Utility Authority shall manage the public utilities of the Tribe, and obtain and disburse funds as required for operation, maintenance, and expansion of the Tribal public utilities.
- (b) To fulfill these responsibilities, the authority shall have the power to:
 - (1) Levy and collect reasonable fees for utility services, including but not limited to, monthly service charges, connection fees, penalties, construction permits, and other assessments deemed necessary by the Utility Authority and approved by the Tribal Council.
 - (2) Provide for the hiring and compensation of appropriate management and maintenance personnel.
 - (3) Adopt appropriate regulations to implement the requirements of the Code.
 - (4) Authorize disbursement of funds for operation, maintenance and repair of utility services.
 - (5) Contract with vendors and contractors to assure the safe and reliable services are available to and utilized by the residents of the Spokane Indian Reservation.
 - (6) Authorize investment of Utility Department funds.
 - (7) Impose sanctions on customers in accordance with Section 33-8.04 of this Code.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-3.05 Utility Authority-Membership.

- (a) The Utility Authority shall be composed of 5 persons appointed by the Tribal Council. 1 person shall be selected from the Tribal Council, and 4 persons selected from the general Tribal community.

(b) The Council shall appoint at least 3 of the 5 members from among the on-reservation users of the Tribal public utilities.

(c) Members of the Utility Authority shall be known as Utility Commissioners.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-3.06 Term of Office.

(a) Except for the initial Authority membership, all Commissioners will serve two-year terms, except for the representative from the Tribal Council who shall serve a 1-year term.

(b) Initial Commissioners of the Authority shall serve terms as follows:

<u>Council Representative</u>	<u>(Position 1)</u>	<u>-1 year</u>
At Large Representative	(Position 2)	-2 years
Community Representative	(Position 3)	-1 year
Community Representative	(Position 4)	-2 years
Community Representative	(Position 5)	-1 year

(c) Terms shall expire upon the swearing in of newly appointed Commissioners.

(d) In the event that the Council Representative Commissioner loses or resigns his position on the Council, his appointment to the Utility Authority shall expire immediately, and the Council shall fill the vacancy by appointment of a new Commissioner at the next regular meeting of the Tribal Council.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-3.07 Utility Authority-Method of Appointment.

(a) The Tribal Council shall annually appoint a council person to serve on the Utility Authority.

(b) For the Commissioner positions to be filled by Tribal community members, the Council shall advertise for 15 days in the Tribal newsletter or by other public notice, soliciting interested persons for nomination.

(c) For all commissioner positions, the Council shall choose persons capable and willing to perform the duties of the Authority.

(d) After receiving nominations, the Council shall appoint commissioners by a majority vote.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-3.08 Utility Authority Vacancies.

(a) If a Commissioner resigns, moves from the local area, dies, or is found guilty of a felony or major crime in any court of law, the Tribal Council shall declare the Commissioner position vacant.

(b) If any Commissioner misses 2 consecutive Utility Authority meetings without a valid excuse, the Tribal Council shall declare the position vacant.

(c) All vacancies shall be filled within 1 month in accordance with this section.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-3.09 Officers.

(a) Within 10 days after appointment of the initial commissioners, there shall be an organizational meeting of the Utility Authority to elect a Chairman, Vice Chairman and a Secretary-Treasurer from among the Utility Authority Commissioners.

(b) The officers shall be elected annually thereafter, immediately following the appointment of the new Commissioners by the Tribal Council.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-3.10 Duties of Officers. Officers of the Utility Authority shall assume the following duties:

(a) Chairman: Shall preside at all meetings; call and arrange all meetings; be responsible for all general management of the Utility Authority's affairs; and perform, all duties incidental to the office.

(b) Vice-Chairman: Shall perform all of the Chairman's duties in the absence of the Chairman; and shall assist the Chairman as required in handling the Utility Authority's affairs.

- (c) Secretary-Treasurer:
- (1) Shall keep and cause to be kept a complete and accurate record of all meetings and shall maintain all correspondence, notices and records of the Utility Authority;
 - (2) Shall be responsible for maintaining financial records of the Utility Department;
 - (3) Shall report the Department's financial status at each regularly scheduled Utility Authority meeting and shall present to the Commissioners for their action all requests for funds to meet the Department's financial obligations;
 - (4) Shall prepare an annual financial statement for submission to the Tribal Council for the general membership meeting;
 - (5) Shall make all investments for the Utility Authority in accordance with appropriate sections of this Code.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-3.11 Meetings.

- (a) The Utility Authority shall meet when business demands and requires attention, but in no case less than once per month.
- (b) Regular and special meetings shall be called by the Chairman.
- (c) Any 2 Commissioners may request the Chairman, in writing, to schedule a special meeting of the Utility Authority.
- (d) If the Chairman fails to schedule a meeting within 5 days after receipt of a written request, any other 2 Commissioners may call such a meeting.
- (e) Meetings shall be held in public places, and the Utility Authority shall provide at least 5 days public notice of special Authority meetings.
- (f) Emergency meetings may be convened with less than 5 days notice, in cases of emergency where loss of life, limb or property is threatened, where the continued operation of fiscal capability of the Tribal public utilities may be in jeopardy.
- (g) All meetings shall be open to members of the Tribal community and to users of the Tribal public utilities.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-3.12 Quorum and Voting.

- (a) A minimum of 3 commissioners is required to establish a quorum and conduct Utility Authority business.
- (b) Any action taken by the Utility Authority must be approved by a majority vote of those Commissioners present at a Utility Authority meeting.
- (c) Each Commissioner of the Utility Authority, except the Chairman, shall be entitled to vote on each matter coming properly before the Utility Authority.
- (d) The Chairman shall vote only in the event of a tie.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-3.13 Meeting Agenda. Regular meetings of the Utility Authority shall be conducted according to the following agenda outline:

- (a) Call to Order
- (b) Roll Call
- (c) Reading of minutes of previous meeting
- (d) Report of Treasurer
- (e) Report by Manager and/or Operator
- (f) Unfinished Business
- (g) New Business
- (h) Miscellaneous Business
- (i) Adjournment

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-3.14 Compensation.

- (a) Commissioners of the Utility Authority shall serve without monetary compensation, except as determined by the Tribal Council.
- (b) The Council shall establish prevailing government rates for mileage, per diem, or other costs, consistent with Tribal policy, and shall direct the Business Manager to approve such expenditures; provided that funds are available within the Utility Department budget approved by the Utility Authority and ratified by the Tribal Council.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-3.15 Public Hearings.

- (a) The Utility Authority shall convene public hearings to discuss changes in utility rates assessed to users of Tribal public utilities.
- (b) All users of Tribal public utilities shall be afforded 5 days written notice of such hearings, and adequate notices shall be posted at appropriate places within the community and/or in the Tribal newspaper.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472; Readopted 8/01/06, Resolu. 2006-524.

Section 3-4 Management and Finances

33-4.01 Management Personnel.

- (a) The Utility Authority shall manage the business and operating affairs of the Utility Department.
- (b) The Utility Authority may provide for hiring and contracting personnel for the care and maintenance of the Tribal public utilities (provided that hiring shall be in accordance with Tribal personnel policies), and shall establish compensation rates consistent with the Utility Department approved budget.
- (c) The Utility Authority may delegate only those management duties that are not specifically designated as duties to be performed exclusively by the Utility Authority.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-4.02 Annual Budget. The Utility Authority shall establish an annual budget enumerating the necessary cost of utilities operation, maintenance, administration, personnel, liability and other insurance, equipment replacement, and a reserve of major repairs and capital expenditures.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-4.03 User Fee Schedule.

- (a) The annual budget shall be used to determine a fee schedule to be assessed to the users of the Tribal public utilities.
- (b) The budget and fee schedule shall be approved by the Utility Authority and ratified by the Tribal Council.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-4.04 Fiscal Year. The fiscal year for the Utilities Department shall be the same as the fiscal year of the Tribal Council.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-4.05 Depository.

- (a) The Depository of the Department shall be a separate commercial account or account in any bank selected by the Utility Authority.
- (b) The account shall be in the name "Spokane Tribal Utility Authority."

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-4.06 Records and Accounts.

- (a) Suitable financial records shall be maintained for all expenditures, receipts from payments for services, investments and returns on investments, and any other financial matter necessary for operation of the Utility Department.
- (b) The separate accounting records for the Department shall be maintained in an appropriate businesslike manner.

(c) The records of accounts shall be made available to the Tribal Council upon request.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-4.07 Exclusive Use of Funds.

(a) The funds accrued by the Utility Authority and kept on deposit are for the exclusive use of the Utility Department for the necessary operation, maintenance, and management of the Tribal public utilities.

(b) Utility Authority funds shall not be transferred or loaned to the Tribal General Fund or any other accounts of the Tribe or other Tribal departments.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-4.08 Audit and Reports.

(a) The accounts of the Utility Authority will be audited annually at the close of the fiscal year at the expense of the Department.

(b) Annual and periodic reports shall be submitted by the Utility Authority to the Tribal Council.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-4.09 Bonding. Officers of the Utility Authority and other person(s) designated to handle funds for the Utility Department, shall be bonded for amounts of \$100,000 or more.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-4.10 Insurance.

(a) Fire and other insurance on property owned or used by the Department or on property in which the Department has an insurable interest shall be in amounts and type of coverage specified by the Utility Authority.

(b) Insurance may be part of the Tribal insurance policies, with the expenses thereof pro-rated to the Department if so directed by the Tribal Council.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-4.11 Petty Cash.

(a) A petty cash fund is authorized to be established in the amount of \$500.

(b) This fund may be used to pay small expenses, when necessary, and to pay small obligations when it is not feasible to pay by check on the official depository.

(c) The fund may be reimbursed periodically from the official depository of the Utility Authority in the amount of and upon the submittal of receipts, vouchers, and statements signed by the payees, of their proof of expenditure.

(d) Petty cash reimbursement vouchers shall be certified by the Treasurer.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-4.12 Regulations and Policy.

(a) The Utility Authority shall have the authority to adopt appropriate regulations and policy as needed to implement the provisions contained in this Code.

(b) Any proposed regulation or policy shall be submitted to the Tribal Council for review at least 2 weeks prior to its proposed effective date; provided, however, that emergency regulations may be adopted, and shall take effect immediately, without prior Council review.

(c) Emergency regulations shall be transmitted to the Tribal Council within 48 hours after adoption.

(d) Any regulation may be rescinded or approved by the Tribal Council at its discretion.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-4.13 Regulation Policy Suspension Alteration. No regulation duly adopted by the Utility Authority may be suspended or altered by any person without prior written authorization of the Utility Authority.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-4.14 Amendments. The Utility Authority shall recommend amendments to this Code that it believes necessary to promote the efficient, cost effective and self-sufficient operation of the Utility Department, and shall present such amendments to the Tribal Council for approval.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-4.15 Grievances.

- (a) Any customer or any applicant for utility services who is aggrieved by any action of the Utility Department or the Utility Authority may file a grievance with the Utility Authority.
- (b) The Utility Authority shall abide by the regulation set forth in this Code and shall handle such grievances in a manner which provides for due process of law.
- (c) All decisions by the Utility Authority on matters that have been submitted for grievance under the Department's grievance procedures shall be considered final.
- (d) Final decisions of the Utility Authority may be appealed to Tribal Court by an aggrieved party only on the basis that the Department's grievance procedures were not followed, or that due process was denied.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-4.16 Non-waiver of Sovereign Immunity.

- (a) The Utility Authority is an agency of the Spokane Indian Tribe and thereby retains all rights of sovereign immunity of the Tribe.
- (b) By providing services and entering into service agreements, the Utility Authority shall not waive the sovereign immunity of the Spokane Indian Tribe or any of its officers, agents, attorneys or employees, or any 1 else acting at the direction of and on behalf of the Spokane Indian Tribe.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

Section 33-5 Utility Services-Operation

33-5.01 Services Provided.

- (a) Initially, the services provided by the Utility Department shall include public water only.
- (b) Additional services may be provided upon approval by the Utility Authority and ratification by the Tribal Council.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-5.02 Water Service.

- (a) The Utility Authority is responsible to provide safe, adequate water for a fee to those service customers connected to the mainlines of the community water system.
- (b) Responsibility for maintenance will include water sources, storage tanks, controls, mainlines, valves, hydrants, and service lines to the curb stops only.
- (c) The service line from the curb stop to the house and interior house plumbing are the responsibility of the customer.
- (d) The individual household water meters are owned by the Utility Authority and it is the responsibility of the Department to maintain the meters.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-5.03 Maintenance Schedule.

- (a) The Utility Authority shall develop and follow a regular schedule of maintenance service for each water system and components thereof.
- (b) A record shall be kept of all routine maintenance and needed repairs performed.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-5.04 Personnel.

- (a) The Utility Authority shall have the full authority to hire, evaluate and discipline or fire if necessary the personnel required to manage, operate and maintain the public utilities.
- (b) The specific personnel policies of the Tribe shall be followed. Job descriptions for all employees will be developed and followed.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-5.05 Purchasing.

- (a) The utility system operator may make or approve purchase from the petty cash fund for amounts up to \$500.

(b) Above this amount, the Utility Manager must give approval and disburse funds according to appropriate sections of this Code.

(c) An accurate account and receipts of all expenditures will be kept.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-5.06 Equipment.

(a) All utilities equipment shall be maintained according to the established maintenance schedule and quickly repaired when necessary so that disruptions in services are minimized.

(b) Utility tools and equipment are not for personal use. Equipment shall not be loaned to other Tribal departments.

(c) A record of tools and the individual to whom they were assigned shall be maintained.

(d) Individuals will be held responsible for the security of tools and supplies that are assigned to them.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-5.07 Inventory.

(a) An accurate inventory of tools, equipment, and supplies will be kept up to date.

(b) A reserve supply of repair parts and regularly used supplies will be maintained by the Department.

(c) A listing shall be kept of local suppliers of repair parts, replacement equipment and expendable supplies.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-5.08 Public Relations.

(a) Any person filing a complaint or seeking information shall be given assistance in a courteous manner.

(b) Complaints may be presented verbally or in writing to any Department staff member for Resolution and action.

(c) Complaints that cannot be resolved within 10 days should be referred to the Utility Authority in writing.

(d) The Utility Authority will resolve such complaints at the next regularly scheduled meeting of the Authority.

(e) The Chairman may call a special meeting of the Commissioners to resolve complaints as deemed necessary.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-5.09 Emergency Notification. An emergency notification plan will be developed by the Utility Authority and reviewed annually for notifying residents and visitors of:

(a) Discontinued service for more than 8 hours.

(b) Substandard conditions in water quality. This includes bacteriological, chemical or physical quality deficiencies.

(c) Any other conditions which may adversely affect the health of the community residents or visitors.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-5.10 Staff Training.

(a) All employees that are newly assigned to operate the utility systems shall receive instruction from an experienced operator before the new employee assumes responsibility for operations.

(b) The Utility Authority will assure that operators maintain current knowledge of water system operation techniques.

(c) A training plan for the operators shall be developed which will provide for upgrading of knowledge and skill in water system operations, maintenance and management.

- (d) The Utility Department manager shall be required to possess a current Washington State certification as Water Distribution Manager.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-5.11 Limits of Responsibility.

- (a) The Department shall not be responsible for, nor shall it maintain or repair, any private or domestic water lines or fixtures except by specific agreement establishing fair rates of compensation to the Department, and that is approved and signed by the Utility Authority and owner of such facilities.
- (b) The Department shall not be liable for any loss or damage beyond its control resulting from any defect in or damage to, a customer's water or driveways or parking lots, hydrants or lighting.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-5.12 Right of Entry-Inspections.

- (a) The Department, or its authorized representative, is hereby authorized to make limited, reasonable inspections, at reasonable times, of any grounds, building or residence served by the Utility Department to the extent necessary to insure that customer utility fixtures, lines, and equipment are not being operated in a manner that would likely disrupt or interfere with utility services.
- (b) Except in cases of emergency where life, limb, or property are threatened, or in cases of immediate water shortages, the Department shall give the customer at least 24 hours notice prior to requesting permission to enter and inspect.
- (c) If permission to enter and inspect is denied or impeded in any way, the Department shall obtain a court order authorizing such entry and inspection. Where the permission to enter and inspect is unreasonably withheld, the Department may assess court costs and related expenses and add them to the affected customer's bill.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-5.13 Disruptions of Service.

- (a) The Department may shut off water or disrupt traffic on the public right-of-way to perform repairs, provided that advance notice has been given to affected customers.
- (b) Provided, however, that in cases of emergencies where loss of life, limb or property is threatened, or in cases of immediate water shortage, service may be disrupted without advance notice.
- (c) The Department shall not be responsible for consequent damage as a result of lack of water during authorized disruptions of service.
- (d) The Department shall not be liable for any associated damages or delay caused by the breaking or leaking of any pipe, valve, fixture or other contrivance as a result of lack of water to or from any main, services, hydrants, lines or reservoirs during authorized disruptions of service.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-5.14 Permits.

- (a) No connection, re-connection with, disconnection from, or other private use of any Department water or appurtenance or other utility service or facility shall be made without written permission of the Utility Authority.
- (b) No construction of any private water or sewer system, or other private utility is authorized without written permission from the Utility Authority.
- (c) The Utility Authority may require such plans from the permit application as it determines are necessary to decide whether or not a permit should be issued.
- (d) The Utility Authority may also require and establish a fee for construction permits.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-5.15 Water Shortage-Service Reference.

- (a) In cases of a water shortage proclaimed by the Utility Authority, the Department shall regulate the amount of water any customer may be allocated.

- (b) The Utility Authority also may give preference to the customers and/or amounts of water to be allocated, provided the Utility Authority allocates water according to public necessity of convenience, and provides for fair allocations between customers.
- (c) Any customer violating a legal allocation may have his/her water service discontinued.
- (d) Service shall be resumed only upon payment of the approved re-connection fee and any penalties.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-5.16 Unnecessary Waste of Water.

- (a) The Utility Authority reserves the right to terminate customer's service when the customer has repeatedly, and unduly wasted water.
- (b) Such undue waste is evidenced by the fact that hydrants, taps, hoses and other fixtures are permitted to run continuously without specific prior approval of the Authority.
- (c) Where such conditions have been observed, the Utility Authority having been notified of the condition, may terminate water to the premise if the condition is not corrected within 48 hours after receipt of the notice.
- (d) Service shall be resumed only after correction of the condition causing a waste of water and payment by the customer of the approved re-connection fee, penalties and any other accounts in arrears to the Utility Authority.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-5.17 Conservation of Resources.

- (a) The Department shall conduct operation, maintenance and repair services in a manner that will maximize the conservation of natural, financial, and property resources.
- (b) Customers of the Department shall be encouraged to conserved water resources.
- (c) The Department may offer assistance and service to customers for water conservation and other material resources conservation and recovery as determined to be feasible by the Utility Authority.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-5.18 New Customer Services. Any building within the service area of the Utilities shall be eligible for services, provided all of the following conditions are met:

- (a) Facilities are determined by the Utility Department, are adequate to meet the additional load.
- (b) New customer agrees to adhere to this Code.
- (c) Approval by the Utility Authority.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

Section 33-6 Customer Obligations

33-6.01 Conditions for Service Payments. As a condition for receiving utility services from the Utility Department, the customer shall comply with all provisions of this Code, and any regulations duly adopted by the Utility Authority as well as any other applicable codes or regulations, including being current in the payment of all fees, penalties, costs, damages, or other charges assessed by the Department.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-6.02 Maintenance, Repairs, Liability.

- (a) The customer shall be responsible for maintaining and repairing water lines located on or in the customer's grounds, building or residence in compliance with applicable regulations.
- (b) The customer shall notify the Department in advance of major maintenance or repairs planned for water lines.
- (c) The customer shall permit the Department to inspect the work for compliance with applicable regulations.
- (d) The customer shall be liable for any damage to the Department's lines, equipment or other property caused by the customer, his family, guests, invitees, tenants, agents, employees, contractors, licensees or permittees, or other persons under the customer's control or authority.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-6.03 Customer Termination of Service-Abandonment.

(a) A customer planning to vacate any grounds, building or residence served by the Department shall notify the Department in writing 1 week prior to the date the customer plans to either vacate or terminate service, whichever is later.

(b) A customer who fails to give notice is responsible for all charges accrued up to 1 week after notice is received by the Department, or up until service is terminated, whichever comes first.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-6.04 Water Shortage. During water shortages declared by the Utility Authority, the customer shall limit his use of water according to allocations established by the Utility Authority.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-6.05 Inspections.

(a) The customer shall not unreasonably withhold permission for the Department to enter and inspect the Department's and customer's fixtures, lines and equipment when necessary to insure that they are operating in a manner that would not likely disrupt or interfere with utility services.

(b) The customer shall be liable for any costs or related expenses caused by his/her unreasonable withholding of permission.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-6.06 Permits.

(a) The customer shall obtain written permission from the Utility Authority prior to making any connection, re-connection, with disconnection from, or other private use of any Department water system, or appurtenance or other utility service or facility.

(b) The customer shall obtain written permission from the Utility Authority prior to constructing any private water system.

(c) All fees assessed by the Utility Authority shall be paid by the customer prior to construction.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-6.07 Cross-Connection.

(a) The customer shall not make a cross-connection with the Tribal public water supply.

(b) A cross-connection is defined as any physical connection between the Tribal public water system and another piping, either water or waste.

(c) Any individual source must be totally disconnected from the household plumbing prior to connection to the Tribal public water supply.

(d) Disconnection done solely by a valve shall not be allowed.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

Section 33-7 Fee Schedules and Billing

33-7.01 Fee Schedule Establishment.

(a) The schedule of fees for utility services shall be set annually by the Utility Authority.

(b) The fee schedule shall be based on the estimated average annual costs for operation of all utility services.

(c) The fee schedule shall include a basic rate for all services, payment of which shall be required of each customer regardless of whether, or the extent to which, the customer uses any of the services, and; other fees, charges, penalties and assessments which the Utility Authority is authorized to levy as provided under various sections of this Code.

(d) The fee schedule may include, user fees; meter fees; construction permit fees; connection, disconnection or re-connection fees; inspection fees; penalties or late payment charges; and other assessments determined by the Utility Authority and approved by the Tribal Council.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-7.02 Public Hearing.

- (a) The Utility Authority shall hold a public hearing whenever a revised fee schedule is proposed for adoption.
- (b) At least 5 days in advance of the hearing, the proposed fee schedule shall be sent to each customer and shall be posted in an appropriate place.
- (c) Following the public hearing the Utility Authority shall set a fee schedule, taking into consideration comments received at the hearing.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-7.03 Notice to Customers. A copy of the fee schedule adopted by the Utility Authority shall be sent to each customer at least 33 days prior to the date the established fees take effect.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-7.04 Billing Responsibility.

- (a) The Utility Authority and/or Utility Department is responsible for billing customers for utility services.
- (b) The billing service, however, may be contracted to the Tribe, Housing Authority, other agency or firm at the discretion of the Utility Authority and Tribal Council.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-7.05 Monthly Statement. Each month the Department shall mail to all utility customers a statement detailing the following information:

- (a) The customer's name and account number;
- (b) The types and levels of service used in the current month;
- (c) The billed cost of the current month's service, plus an accounting of bills or charges past due, if any;
- (d) The date that payment is due, and
- (e) The location to mail or deliver payment.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-7.06 Due Date. The monthly date on which payment will be due shall be established by the Utility Authority regulation.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-7.07 Payments Past Due.

- (a) Payments not received within 10 days after the established due date are considered past due.
- (b) The Department shall issue a notice of payment past due to the customer, detailing the payment owed and the consequences for failure to pay.
- (c) The notice shall be sent no later than the date the next billing is sent out.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-7.08 Delinquent Account. If the payment past due is not paid within 10 days after the next regular monthly due date, the account shall be declared delinquent.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-7.09 Notice of Delinquency. The Department shall immediately notify the customer in writing once his/her account has been declared delinquent, and list the sanctions that may be imposed without further notice.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-7.10 Advance Deposits.

- (a) The Utility Authority may require each new customer to pay an advance deposit equal in amount to the basic monthly rate fees for the first month of service, prior to receiving services.
- (b) The deposits shall be retained by the Utility Authority no longer than 1 year.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

Section 33-8 Enforcement, Penalties, Sanctions

33-8.01 Authority and Enforcement.

- (a) The Utility Authority is hereby authorized by the Tribal Council to collect established fees for service and to impose sanctions and penalties for non-payment.
- (b) The Utility Authority shall enforce its regulations, fee collections and provisions of this Code by shutting off water service of any and all violators and delinquent bill-payers or imposing other penalties and sanctions as authorized.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-8.02 Attachment of Customer's Property. The Utility Authority shall not seek to attach customer's property, nor seek to have fines assessed by Tribal Court, except in limited cases of blatant or continued abuses or destruction of property.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-8.03 Penalty Schedule.

- (a) The Utility Authority shall develop and adopt a penalty schedule which outlines specific penalties, fines and assessments for violation and non-compliance with the provisions of this Code.
- (b) The penalty schedule shall be reviewed for the appropriateness annually by the Utility Authority.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-8.04 Sanctions Authorized. The following sanctions may be imposed by the Utility Authority for failure of the customer to comply with any provisions of this Code or with any duly adopted regulation of the Utility Authority.

- (a) Termination of service(s);
- (b) Assessment of penalties based on a penalty schedule adopted by regulation of the Utility Authority;
- (c) Assessment of late charges based on a schedule adopted by regulation of the Utility Authority;
- (d) Assessment of damages resulting from the customer's non-compliance;
- (e) Forfeiture of all or part of a deposit and any accumulated interest;
- (f) Filing of a lien against the customer's property after the account is declared delinquent;
- (g) Enforcing a lien by seeking judgment, and satisfaction from the customer's property from a court of competent jurisdiction; and
- (h) Filing suit for damages in a court of competent jurisdiction, and
- (i) Referring violations that may involve criminal conduct to the police or prosecutor.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-8.05 Sanction Guidelines. The Utility Authority shall use the following guidelines when considering the appropriate sanctions to be imposed in any given case:

- (a) Whether the sanction required by this Code or other applicable law, or whether imposition is discretionary;
- (b) The minimum sanction needed to effect compliance;
- (c) The irreparable harm to operation of the Department, and the Tribe, if the sanction is not imposed;
- (d) The customer's past record of compliance or non-compliance, or good faith efforts to achieve compliance;
- (e) The irreparable harm to other persons or property if the sanction is not imposed; and
- (f) The effectiveness of similar sanctions in securing compliance in other cases.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

Section 33-9 Miscellaneous Provisions

33-9.01 Validity, Severability. The invalidity of any section, clause, sentence or provision of this Code shall not affect the validity of any part of this Code which can be given effect without such invalid part or parts.
Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-9.02 Amendments.

(a) The Spokane Tribal Council has the power to amend this Code at any time.

(b) The Tribal Council shall act upon proposed amendments to this Code, submitted for action by the Utility Authority, by approval or disapproval of such proposed amendments.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

33-9.03 Suspension of Code. No employee, officer, contractor or agent of the Spokane Indian Tribe is authorized to suspend or alter any of the provisions of this Code without the formal approval of the Spokane Tribal Council.

Legislative History-Enacted, 09/24/92, Resolu. 1991-472A; Readopted 8/01/06, Resolu. 2006-524.

CHAPTER 34 - HAZARDOUS SUBSTANCE CONTROL

34-1.01 Short Title. This Chapter shall be known as the Spokane Tribe Hazardous Substances Control Act. Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

34-1.02 Declaration of Policy.

- (a) The beneficial stewardship of the land, air, and waters of the Spokane Indian Reservation is a solemn obligation of the present generation for the benefit of future generations.
- (b) Each person either residing on or doing business within the exterior boundaries of the Spokane Indian Reservation ("Reservation Population") benefits from a healthful environment and each person has a responsibility to preserve and protect the quality of the Reservation Environment.
- (c) The Spokane Tribal Council ("Council") finds that an emergency currently exists which requires the immediate action of the Council to secure the preservation of life, health, property, and natural resources of the Tribe, its people, and fee and trust lands.
 - (1) Pollution sources are currently known to be, or suspected of, contaminating the Reservation air, land, surface water and ground waters ("Reservation Environment") for which existing federal law may not apply or may not be enforced.
 - (2) Synergistic and cumulative impacts harmful to the health of the Reservation people and ecosystems, are resulting from existing pollution and will be compounded by pollution from new sources.
- (d) The emergency is having a serious and substantial effect on the Tribe's political integrity, economic security, and health and welfare, requiring the Tribe, as a sovereign, to act in protection of the Reservation's people and ecosystems.
- (e) The main purpose of this Chapter is to address the existing emergency, to provide remedial law for the cleanup of hazardous substances sites, and to prevent the creation of future hazards due to improper use or disposal of hazardous substances on or into the Reservation Environment.

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

34-1.03 Definitions.

- (a) "Acceptable Human Health Risk" means any current or future situation in which any substance released into the environment results in a cumulative risk determined by applying the appropriate risk scenario for the intended uses of the resources and summing the risks from each contaminant of concern, measured in each medium (such as air, surface water ground water, soils, and sediments) over each pathway is estimated to be:
 - (1) For systemic toxicants, acceptable exposure levels shall represent concentration levels to which the human population, including sensitive subgroups, may be exposed without adverse effect during a lifetime or part of a lifetime, incorporating an adequate margin of safety.
 - (2) Generally, for systemic toxicants, this exposure level is represented by a hazard index of less than unity ($HI < 1$);
 - (3) For known or suspected carcinogens, acceptable exposure levels are generally concentration levels that represent an excess upper bound life-time cancer risk to an individual of 10^{-6} using information on the relationship between dose and response.
- (b) "Acceptable Ecological Risk" means risk to ecological resources resulting from a release of oil or hazardous substance in concentrations that do not exceed concentrations that are capable of:
 - (1) Causing the biological resource or its offspring to have undergone at least 1 of the following adverse changes in viability: death, disease, behavioral abnormalities including avoidance behavior, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations; or
 - (2) Exceeding acceptable human health limits for edible portions of organisms; or
 - (3) Bioaccumulating either singly or in combination, at concentrations that cause, or can reasonably be expected to cause, injury to human health or biological resources including soil and sediment-dwelling organisms.

- (4) Being toxic substances that are either singly or in combination, at concentrations that cause, or can reasonably be expected to cause, injury to human health or biological resources including soil and sediment-dwelling organisms.
 - (5) Exceeding the following acceptable doses of ionizing radiation: for aquatic animals, 1 rad/d (10 mGy/d); for terrestrial plants, 1 rad/d (10 mGy/d); and for terrestrial animals, 0.1 rad/d (1 mGy/d). Such doses shall be calculated using procedures described in *AA Graded Approach for Evaluating Radiation Doses to Aquatic and Terrestrial Biota* (DOE-STD-1153-2002, U.S. Department of Energy, July, 2002).
- (c) "Agreed Order" means an order issued by the Department under this Chapter with which the potentially liable person receiving the order agrees to comply.
 - (d) "Appropriate reference site or region" means a location within the same medium or within the same basin or eco-region that has been determined by the Department to represent background conditions.
 - (e) "Attorney" or "Tribal Attorney" means the attorney authorized by the Council to carry out any duties as described in this Chapter.
 - (f) "Background" means the natural physico-chemical conditions associated with the volume of media in which the release occurred, prior to the release. In many instances, location immediately outside of the nature and extent of contamination can be used by the Department to determine background. In instances in which no such locations are available, the Department shall identify an "appropriate reference site or region".
 - (g) "Council" means the Spokane Tribal Council.
 - (h) "Cumulative Risk" means risk caused from post release doses from multiple pathways, multiple media (primary and secondary sources), and/or multiple hazardous substances.
 - (i) "Department" means the Department of Natural Resources of the Spokane Tribe of Indians.
 - (j) "Facility" means:
 - (1) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or
 - (2) Any site area or volume or media where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.
 - (k) "Federal Cleanup Law" means the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
 - (l) "Foreclosure and its equivalents" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the holder acquires title to or possession of a facility securing a loan or other obligation.
 - (m) "Hazardous Substance"
 - (1) "Hazardous Substance" means:
 - A. Any discarded, useless, unwanted, or abandoned substances, including but not limited to certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:
 - i. Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or
 - ii. Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

- B. Any substance described in 34.1.03(m)(1)(A) which:
 - i. Will persist in a hazardous form for several years or more at a disposal site and which in its persistent form:
 - a. presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of man or wildlife, and
 - b. is highly toxic to man or wildlife;
 - ii. If disposed of at a disposal site in such quantities as would present an extreme hazard to man or the environment.
 - C. any substance that, on the date of enactment of this Chapter is a hazardous substance under Section 101(14) of the federal cleanup law, 42 U.S.C. 9601(14), and
 - D. Petroleum or petroleum products, and
 - E. Any substance at levels that exceed acceptable human health or ecological risk levels as determined pursuant to 34-1.03 (a) and (b), respectively, and
 - F. Any substance or category of substances, including solid waste decomposition products, determined by the Department to present a threat to human health or the environment if released into the environment.
- (2) The term hazardous substance does not include crude oil or any fraction thereof or petroleum when:
- A. Contained in an underground storage tank from which there is not a release, if the tank is in compliance with all applicable federal and Tribal laws, or
 - B. Contained in an underground storage tank from which there is or has been a release and its owner or operator is working diligently toward a corrective action with a governmental entity having proper jurisdiction over the matter.
- (n) "Hazardous substances account" means an account of money set aside for uses described in Section 34-1.08.
- (o) "Holder" means a person who holds indicia of ownership primarily to protect a security interest. A holder includes the initial holder such as the loan originator, any subsequent holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other person who acts on behalf or for the benefit of a holder.
- (1) A holder can be a public or privately owned financial institution, receiver, conservator; loan guarantor, or other similar persons that loan money or guarantee repayment of a loan.
 - (2) Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.
- (p) "Incremental Risk" means the risk attributable to the release alone.
- (q) "Independent remedial actions" means remedial actions conducted without Department oversight or approval, and not under an order, agreed order, or consent decree.
- (r) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a facility securing a loan or other obligation, including any legal or equitable title to a facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents.
- (1) Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against the facility that are held primarily to protect a security interest.

- (s) "Nature and Extent of Contamination" is the medium-specific, 3 dimensional, physical demarcation determined by the Department which depicts wherever the hazardous substance or substances have come to be located.
- (1) In most instances, this volume is determined by comparing background physico-chemical conditions to the physico-chemical conditions in the vicinity of the alleged release.
- (t) "Operating a facility primarily to protect a security interest" occurs when all of the following are met:
- (1) Operating the facility where the borrower has defaulted on the loan or otherwise breached the security agreement;
 - (2) Operating the facility to preserve the value of the facility as an ongoing business;
 - (3) The operation is being done in anticipation of a sale, transfer, or assignment of the facility; and
 - (4) The operation is being done primarily to protect a security interest. Operating a facility for longer than 1 year prior to foreclosure or its equivalents shall be presumed to be operating the facility for other than to protect a security interest.
- (u) "Owner or operator" means:
- (1) Any person with any ownership interest in the facility or who exercises any control over the facility; or
 - (2) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;
 - (3) The term does not include:
 - A. The Tribe or any Tribal instrumentality which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the Tribe or Tribal instrumentality involuntarily acquires title.
 - i. This exclusion does not apply to an instrumentality of the Tribe which is subject to a waiver of sovereign immunity, which has caused or contributed to the release or threatened release of a hazardous substance from the facility;
 - B. A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure and its equivalent and holders who engage in any of the activities identified in Sections 34-1.03(v)(1)(E)-(G) shall not lose this exemption provided the holder complies with all of the following:
 - i. The holder properly maintains the environmental compliance measures already in place at the facility;
 - ii. The holder complies with the reporting requirements in the rules adopted under this Chapter;
 - iii. The holder complies with any order issued to the holder by the Department to abate an imminent or substantial endangerment;
 - iv. The holder allows the Department or potentially liable persons under an order, agreed order, or settlement agreement under this Chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;
 - v. Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the Department, or, if the Department has not identified such requirements for the facility, the remedial actions are conducted consistent with this Chapter; and
 - vi. The holder does not exacerbate an existing release.
 - C. The exemption in 34-1.03(u)(3)(B) does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under s 34-1.05(a)(2)-(5); provided, however, that a holder shall not lose this

- exemption if it establishes that any such new release has been remediated according to the requirements of this Chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release;
- D. A fiduciary in his, her, or its personal or individual capacity.
- i. This exemption does not preclude a claim against the assets of the estate or trust administered by the fiduciary or against a non-employee agent or independent contractor retained by a fiduciary.
 - ii. This exemption also does not apply to the extent that a person is liable under this Chapter independently of the person's ownership as a fiduciary or for actions taken in a fiduciary capacity which cause or contribute to a new release or exacerbate an existing release of hazardous substances.
 - iii. This exemption applies provided that, to the extent of the fiduciary's powers granted by law or by the applicable governing instrument granting fiduciary powers, the fiduciary complies with all of the following:
 - a. The fiduciary properly maintains the environmental compliance measures already in place at the facility;
 - b. The fiduciary complies with the reporting requirements in the rules adopted under this Chapter;
 - c. The fiduciary complies with any order issued to the fiduciary by the Department to abate an imminent or substantial endangerment;
 - d. The fiduciary allows the Department or potentially liable persons under an order, agreed order, or settlement agreement under this Chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;
 - e. Any remedial actions conducted by the fiduciary are in compliance with any preexisting requirements identified by the Department, or, if the Department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this Chapter; and
 - f. The fiduciary does not exacerbate an existing release.
- E. The exemption in Section 34-1.03(u)(3)(C) does not apply to fiduciaries who cause or contribute to a new release or threatened release or who are otherwise liable under Sections 34-1.05(a)(2)-(5); provided however, that a fiduciary shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this Chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release.
- i. The exemption in Section 34-1.03(u)(3)(C) also does not apply where the fiduciary's powers to comply with Section 34-1.03(u)(3)(C) are limited by a governing instrument created with the objective purpose of avoiding liability under this Chapter or of avoiding compliance with this Chapter; or
- F. Any person who has any ownership interest in, operates, or exercises control over real property where a hazardous substance has come to be located solely as a result of migration of the hazardous substance to the real property through the surface or ground water from a source off the property, if:
- i. The person can demonstrate that the hazardous substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the hazardous substance that has migrated onto the property;

- ii. The person has not caused or contributed to the release of the hazardous substance;
 - iii. The person does not engage in activities that damage or interfere with the operation of remedial actions installed on the person's property or engage in activities that result in exposure of humans or the environment to the contaminated surface or ground water that has migrated onto the property;
 - iv. If requested, the person allows the Department, potentially liable persons who are subject to an order, agreed order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the Department. The person may attempt to negotiate an access agreement before allowing access; and
 - v. Legal withdrawal of surface or ground water does not disqualify a person from the exemption in Section 34-1.03(u)(3)(D).
- (v) "Participation in management" means exercising decision-making control over the borrower's operation of the facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise.
 - (1) The term does not include any of the following:
 - A. A holder with the mere capacity or ability to influence, or the unexercised right to control facility operations;
 - B. A holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the facility for which indicia of ownership is held;
 - C. A holder who requires a borrower to come into compliance with any applicable laws or regulations at the facility for which indicia of ownership is held;
 - D. A holder who requires a borrower to conduct remedial actions including setting minimum requirements, but does not otherwise control or manage the borrower's remedial actions or the scope of the borrower's remedial actions except to prepare a facility for sale, transfer, or assignment;
 - E. A holder who engages in workout or policing activities primarily to protect the holder's security interest in the facility;
 - F. A holder who prepares a facility for sale, transfer, or assignment or requires a borrower to prepare a facility for sale, transfer, or assignment;
 - G. A holder who operates a facility primarily to protect a security interest or requires a borrower to continue to operate, a facility primarily to protect a security interest; and
 - H. A prospective holder who, as a condition of becoming a holder, requires an owner or operator to conduct an environmental audit, conduct an environmental site assessment, come into compliance with any applicable laws or regulations, or conduct remedial actions prior to holding a security interest is not participating in the management of the facility.
- (w) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency or a Tribal instrumentality subject to a waiver of sovereign immunity.
- (x) "Policing activities" means actions the holder takes to insure that the borrower complies with the terms of the loan or security interest or actions the holder takes or requires the borrower to take to maintain the value of the security.
 - (1) Policing activities include: Requiring the borrower to conduct remedial actions at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable Tribal, federal, state, and local environmental and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the facility including on-site inspections, or to

monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan or security interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

- (y) "Potentially Liable Person" means any person whom the Department finds, based on credible evidence, to be liable under Section 34-1.05 and may include a person who participated in the management of a facility.
 - (1) The Department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.
- (z) "Prepare a Facility for Sale, Transfer, or Assignment" means to secure access to the facility; perform routine maintenance on the facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the facility; conduct remedial actions to clean up releases at the facility; or to perform other similar activities intended to preserve the value of the facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in anticipation of a pending sale, transfer, or assignment, primarily to protect the holder's security interest in the facility.
 - (1) A holder can prepare a facility for sale, transfer, or assignment for up to 1 year prior to foreclosure and its equivalents and still stay within the security interest exemption in Section 34-1.03(u)(3)(B).
- (aa) "Primarily to Protect a Security Interest" means the indicia of ownership is held primarily for the purpose of securing payment or performance of an obligation.
 - (1) The term does not include indicia of ownership held primarily for investment purposes nor indicia of ownership held primarily for purposes other than as protection for a security interest.
 - (2) A holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest.
 - (3) Holding indicia of ownership after foreclosure or its equivalents for longer than 5 years shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest.
 - (4) For facilities that have been acquired through foreclosure or its equivalents prior to the date this Chapter is enacted and adopted by the Council, this 5 year period shall begin as of the date of enactment and adoption.
- (bb) "Public Notice" means, adequate notice mailed to all persons who have made timely request of the Department and to persons residing in the potentially affected vicinity of the proposed action; and published in the Tribal newspaper. Public Notice may include an opportunity for interested persons to comment.
- (cc) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.
- (dd) "Reservation Environment" means the natural environment within the exterior boundaries of the Spokane Indian Reservation and the natural environment of other lands held in trust by the U.S. Government for the Tribe or its members.
- (ee) "Reservation Population" means all persons residing within the Reservation Environment.
- (ff) "Remedy" or "Remedial action" means any action or expenditure consistent with the purpose of this Chapter to identify, eliminate, clean up, or minimize any threat of potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.
- (gg) "Risk" unless otherwise specified herein includes cumulative risk attributable to the release.

- (hh) "Risk Scenario" means a representative portrayal of the interactions between human and/or ecological receptors and their immediate environment.
- (1) Risk scenarios include development of exposure factors required to estimate dose to the target receptor.
 - (2) Unless otherwise specified by the Department or incorporated by amendment, all human health risk assessments shall employ *"The Spokane Tribe's Multipathway Subsistence Exposure Scenario and Screening Level RME"* (Harper et al. 2002) as the basis for the assessment. (Res. 2002-144).
- (ii) "Security Interest" means an interest in a facility created or established for the purpose of securing a loan or other obligation.
- (1) Security interests include deeds of trusts, sellers interest in real estate contract, liens, legal, or equitable title to a facility acquired incident to foreclosure and its equivalents, and title pursuant to lease financing transactions.
 - (2) Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, easements, and consignments, if the transaction creates or establishes an interest in a facility for the purpose of securing a loan or other obligation.
- (jj) "Sediment" means unconsolidated material eroded from parent rock, including soil and/or any man-made unconsolidated solid material of a particulate nature, which exists below the ordinary high water mark of any water body or wetland.
- (kk) "Screening-Level Risk Assessment" means point by point, contaminant by contaminant, comparison of non-Tribal risk-based thresholds to concentrations of contaminants measured within the nature and extent of contamination to identify areas or volumes of media that are a human health or ecological health concern to the Tribe. In this context, Screening-Level Risk Assessments shall not be used to screen-out pathways, media, or contaminants.
- (1) If the Department determines that such an assessment approach is warranted to assess human health the point of departure used in the human health assessment shall be:
 - A. For systemic toxicants, this exposure level is represented by a hazard index of far less than unity ($HI < 0.01$);
 - B. For known or suspected carcinogens, acceptable exposure levels are generally concentration levels that represent an excess upper bound life-time cancer risk to an individual of 10^{-6} using information on the relationship between dose and response.
- (ll) "Spokane Tribe" or "Spokane Tribe of Indians" means the Spokane Tribal government.
- (mm) "Total Risk" means risk attributable to the release as well as risk attributable to background.
- (nn) "Tribe" means the Spokane Tribal government.
- (oo) "Tribal Instrumentality" means a unit of Tribal government or a Tribal organization that is ultimately responsible to the Spokane Tribal Council.
- (pp) "Workout Activities" means those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security.
- (1) Workout activities include: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owed to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owed to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(qq) "Tribal Court" means the Tribal Court of the Spokane Tribe of Indians as established in Article VIII of the Tribe's Constitution.

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

34-1.04 Powers and Duties of Natural Resources.

(a) The Spokane Tribe of Indians' Department of Natural Resources ("Department") may exercise the following powers in addition to any other powers granted by Tribal or federal law:

- (1) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release.
 - A. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the Department's authorized employees, agents, or contractors may enter upon any property and conduct investigations.
 - B. The Department shall give reasonable notice before entering property unless an emergency prevents such notice.
 - C. The Department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the Department deems necessary;
- (2) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under Section 34-1.04(a)(1)) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the Department's authorized employees, agents, or contractors may enter upon property.
 - A. The Department shall give reasonable notice before entering property unless an emergency prevents such notice.
 - B. In conducting, providing for, or requiring remedial action, the Department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require monitoring adequate to assess the effectiveness of the remedial action;
- (3) Retain contractors and consultants to assist the Department in carrying out investigations and remedial actions;
- (4) Carry out all Tribal programs authorized under the federal cleanup and natural resource protection laws, and other federal laws;
- (5) Classify substances as hazardous substances for purposes of this Chapter;
- (6) Issue orders or enter into consent decrees or agreed orders that include, or issue written opinions under Section 34-1.04(a)(9) that may be conditioned upon, deed restrictions or other appropriate institutional controls as may be necessary to protect human health and the environment from a release or threatened release of a hazardous substance from a facility. Prior to establishing a deed restriction or other appropriate institutional control under this subsection, the Department shall notify and seek comment from the appropriate Tribal Department(s) with jurisdiction over the real property subject to such restriction;
- (7) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment;
- (8) Require holders to conduct remedial actions necessary to abate an imminent or substantial endangerment;
- (9) Provide informal advice and assistance to persons regarding the administrative and technical requirements of this Chapter.
 - A. This may include site-specific advice to persons who are conducting or otherwise interested in independent remedial actions.
 - B. Any such advice or assistance shall be advisory only, and shall not be binding on the Department.
 - C. As a part of providing this advice and assistance for independent remedial actions, the Department may prepare written opinions regarding whether the

independent remedial actions or proposals for those actions meet the substantive requirements of this Chapter or whether the Department believes further remedial action is necessary at the facility.

- D. The Department may collect, from persons requesting advice and assistance, the costs incurred by the Department in providing such advice and assistance; however, the Department shall, where appropriate, waive collection of costs in order to provide an appropriate level of technical assistance in support of public participation.
 - E. The Tribe, Department, and officers, agents, attorneys, and employees of the Tribe are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance; and
- (10) Make determinations or take any other actions necessary to carry out the provisions of this Chapter, including proposing that the Council amend this Chapter.
- (b) The Department shall to the best of its ability implement all provisions of this Chapter, and the Department shall:
- (1) Provide for public notice of determinations that substances are hazardous substances, investigative plans, clean up plans, or remedial plans and other significant actions taken under this Chapter;
 - (2) Require the reporting by an owner or operator of releases of hazardous substances to the environment that may be a threat to human health or the environment within 90 days of discovery, including such exemptions from reporting as the Department deems appropriate, however this requirement shall not modify any existing requirements provided for under other laws;
 - (3) Establish reasonable deadlines for initiating an investigation of a hazardous substance site after the Department receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site; and
 - (4) Enforce clean-up standards set forth in this and other Chapters of the Spokane Tribe of Indians Law and Order Code.
 - (5) Establish and periodically update a Prioritization Guideline and Schedule, based on funds available in the Hazardous Substances Account, for the reimbursement of reasonable costs as provided in 34-1.06(b).
- (c) The Department may, as available resources permit, establish a program to identify potential hazardous substance sites and to encourage persons to provide information about hazardous substance sites.

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

34-1.05 Standard of Liability-Settlement.

- (a) Except as provided in Section 34-1.05(c), the following persons are liable with respect to a facility:
- (1) The owner or operator of the facility at which a release occurs;
 - (2) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances;
 - (3) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facility, or otherwise generated hazardous substances disposed of or treated at the facility;
 - (4) Any Person:
 - A. who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by such person from which there is a release or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or

- B. who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that such a facility is not operated in accordance with Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq., as Amended and programs appropriately delegated under RCRA; and
 - (5) Any person who both sells a hazardous substance and is responsible for written instructions for its use if:
 - A. the substance is used according to the instructions; and
 - B. the use constitutes a release for which remedial action is required at the facility.
- (b) Each person who is liable under this Section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances.
- (1) The Tribal Attorney at the request of the Department, is empowered to recover all costs and damages from persons liable therefore.
- (c) The following persons are not liable under this Section:
- (1) Any person who can establish that the release or threatened release of a hazardous substance for which the person would be otherwise responsible was caused solely by:
 - A. An act of God;
 - B. An act of war; or
 - C. An act or omission of a third party (including but not limited to a trespasser) other than:
 - (2) An employee or agent of the person asserting the defense, or
 - (3) Any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting this defense to liability.
 - A. This defense only applies where the person asserting the defense has exercised the utmost care with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;
 - (4) Any person who is an owner, past owner, or purchaser of a facility and who can establish by a preponderance of the evidence that at the time the facility was acquired by the person, the person had no knowledge or reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the facility. This Section is limited as follows:
 - A. To establish that a person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability.
 - i. Any court interpreting Section 34-1.05(c)(4) shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;
 - B. The defense contained in Section 34-1.05(c)(4) is not available to any person who had actual knowledge of the release or threatened release of a hazardous substance when the person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;
 - C. The defense contained in Section 34-1.05(c)(4) is not available to any person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at the facility;

- (5) Any natural person who uses a hazardous substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that person is:
 - A. A resident of the dwelling;
 - B. A person who, without compensation, assists the resident in the use of the substance; or
 - C. A person who is employed by the resident but who is not an independent contractor;
 - (6) Any person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable Tribal and federal laws and regulations.
- (d) There may be no settlement by the Tribe with any person potentially liable under this Chapter except in accordance with this Subsection.
- (1) The Tribal Attorney may agree to a settlement with any potentially liable person only if the Department finds that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under Section 34-1.11 and with any remedial orders issued by the Department, subject to the following:
 - A. Whenever practicable and in the public interest the Tribal Attorney may expedite a settlement with a person whose contribution is insignificant in amount and toxicity.
 - B. Whenever practicable and in the public interest the Tribal Attorney may expedite a settlement with a person upon determining it probable that the cost of enforcing this Act against that person will exceed amounts that might be recovered in the enforcement action.
 - (2) A settlement agreement under this Subsection shall be entered as a consent decree issued by the Tribal Court.
 - (3) A settlement agreement may contain a covenant not to sue only of a scope commensurate with the settlement agreement in favor of any person with whom the Tribal Attorney has settled under this Section.
 - i. Any covenant not to sue shall contain a reopener clause which requires the Tribal Court to amend the covenant not to sue if factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment.
 - (4) A party who has resolved its liability to the Tribe under this Subsection shall not be liable for claims for contribution regarding matters addressed in the settlement.
 - A. The settlement does not discharge any of the other liable parties but it reduces the total potential liability of the others to the Tribe by the amount of the settlement.
- (e) If the Tribe has entered into a consent decree with an owner or operator under this Section, the Tribe shall not enforce this Chapter against any owner or operator who is a successor in interest to the settling party unless under the terms of the consent decree the Tribe could enforce against the settling party, if:
- A. The successor owner or operator is liable with respect to the facility solely due to that persons ownership interest or operator status acquired as a successor in interest to the owner or operator with whom the Tribe has entered into a consent decree; and
 - B. The stay of enforcement under this Subsection does not apply if the consent decree was based on circumstances unique to the settling party that do not exist with regard to the successor in interest, such as financial hardship. Such unique circumstances shall be specified in the consent decree.
- (2) Any person who is not subject to enforcement by the Tribe under Section 34-1.05(d)(5) is not liable for claims for contribution regarding matters addressed in the settlement.

- (f) In addition to the settlement authority provided under Section 34-1.05(d), the Tribal Attorney may agree to a settlement with a person not currently liable for remedial action at a facility who proposes to purchase, redevelop, or reuse the facility, provided that:
 - (1) The settlement will yield substantial new resources to facilitate cleanup;
 - (2) The settlement will expedite remedial action consistent with this Chapter; and
 - (3) Based on available information, the Department determines that
 - A. the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with remedial actions that may be needed at the site, or increase health risks to persons at or in the vicinity of the site.
 - B. The Department does not have adequate resources to participate in all property transactions involving contaminated property.
 - (4) The primary purpose of Section 34-1.05(e) is to promote the cleanup of hazardous substances.
 - (5) The Tribal Attorney may give priority to settlements that will provide a substantial public benefit, including, but not limited to the reuse of a vacant or abandoned manufacturing or industrial facility, or the development of a facility by a Tribal entity to address an important public purpose.
- (g) Nothing in this Chapter affects or modifies in any way any person's right to seek or obtain relief under Tribal law, or other applicable laws, including but not limited to damages for injury or loss resulting from a release or threatened release of a hazardous substance
 - (1) No settlement by the Department or remedial action ordered by the Tribal Court or the Department affects any person's right to obtain a remedy under Tribal law, or other applicable laws.

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

34-1.06 Enforcement.

- (a) With respect to any release, or threatened release, for which the Department does not conduct or contract for conducting remedial action and for which the Department believes remedial action is in the Tribe's and/or public's interest, the Director shall issue orders or agreed orders requiring potentially liable persons to provide the remedial action.
- (b) Any liable person who refuses, without sufficient cause, to comply with an order or agreed order of the Director is liable in an action brought by the Tribal Attorney for:
 - (1) Up to 3 times the amount of any costs incurred by the Tribe as a result of the party's refusal to comply; and
 - (2) A civil penalty of up to 25,000 dollars for each day the party refuses to comply.
- (c) The treble damages and civil penalty under this Subsection apply to all recovery actions filed on or after the date of enactment of this Chapter.
- (d) Any person who incurs costs complying with an order issued under Subsection (a) of this Section may petition the Department for reimbursement of those costs, *provided*, the petition contains a good faith showing that such person is not liable under Sections 34-1.03(y) and 34-1.05.
 - (1) If the Department determines that such person is not liable under Sections 34-1.03(y) and 34-1.05, reimbursements of reasonable costs shall be made subject to availability of funds in the Hazardous Substances Account in accordance with the Department's Prioritization Guideline and Schedule.
- (e) The Tribal Attorney shall seek, by filing an action if necessary, to recover the amounts spent by the Department for investigative and remedial actions and orders, and agreed orders, including amounts spent prior to the date of enactment of this Chapter.
- (f) The Tribal Attorney may bring an action to secure such relief as is necessary to protect human health and the environment under this Chapter.

- (g) Any person who fails to provide notification of releases consistent with 34-1.04(b)(2) or who submits false information is liable in an action brought by the Tribal Attorney for a civil penalty of up to \$5,000 per day for each day the party fails to comply.

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

34-1.07 Judicial Review.

- (a) The Department's investigative and remedial decisions under Sections 34-1.04 and 34-1.06, and its decisions regarding liable persons under Sections 34-1.03(y) and 34-1.05, shall be reviewable exclusively in Tribal Court and only at the following times:
- (1) In a cost recovery suit under Section 34-1.06(c);
 - (2) In a suit by the Department to enforce an order or an agreed order, or seek a civil penalty under this Chapter; and
 - (3) In a suit by the Department to compel investigative or remedial action.

- (b) The court shall uphold the Department's actions unless they were arbitrary and capricious.

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

34-1.08 Hazardous Substances Account.

- (a) There shall be established a hazardous substances account to be administered by the Department.

- (b) The following moneys shall be deposited into the hazardous substances account:

- (1) The costs of remedial actions recovered under this Chapter;
- (2) Penalties collected or recovered under this Chapter; and
- (3) Any other money appropriated or transferred to the account by the Department.

- A. Moneys in the account may be used only to carry out the purposes of this Chapter including but not limited to the following activities:

- i. The hazardous substance cleanup program required under this Chapter;
- ii. Matching funds required under any federal law;
- iii. Tribal programs for the safe reduction, recycling, or disposal of hazardous substances from households, small businesses, and agriculture;
- iv. Hazardous materials emergency response training; and
- v. Water and environment health protection and monitoring programs;
- vi. Reimbursement of costs pursuant to 34-1.06(b).

- (c) Moneys in the hazardous substances account that are not reimbursements under 34-1.06(b) may be spent only after approval of a budget by the Council. All earnings from investment of balances in the account shall be credited to the account.

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

34-1.09 Private Right of Action-Remedial Action Costs.

- (a) A person may bring a private right of action, including a claim for contribution or for declaratory relief against any other person liable under Section 34-1.05 for the recovery of remedial action costs, except that no private right of action may be brought against the following:

- (1) The Tribe or instrumentalities of the Tribe (except where specifically provided for by waiver of sovereign immunity); or
- (2) Persons or parties as provided in Sections 34-1.05(d)(4), (6).

- (b) Recovery shall be based on such equitable factors as the Tribal Court determines are appropriate. Natural resource damages paid to the Tribe under this Chapter may be recovered.

- (1) Remedial action costs shall include reasonable attorneys' fees and expenses.
- (2) Recovery of remedial action costs shall be limited to those remedial actions that, when evaluated as a whole, are the substantial equivalent of a Department-conducted or Department-supervised remedial action.
- (3) Substantial equivalence shall be determined by the Tribal Court with reference to this Chapter.
- (4) An action under this Section may be brought after remedial action costs are incurred but must be brought within 3 years from the date remedial action confirms cleanup standards are met.

- (5) The prevailing party in such an action shall recover its reasonable attorneys' fees and costs.

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

34-1.10 Remedial Actions-Exemption from Procedural Requirements.

- (a) A person conducting a remedial action at a facility under a consent decree, order, or agreed order, and the Department when it conducts a remedial action, are exempt from the procedural requirements of all otherwise applicable Tribal laws.
 - (1) The Department shall ensure compliance with the substantive provisions of all otherwise applicable Tribal laws.
 - (2) The Department shall establish procedures for ensuring that such remedial actions comply with the substantive requirements adopted pursuant to such laws.
 - (3) Establishment of such procedures may be generally applicable or on a case-by-case basis.
 - (4) The procedures shall be subject to this Chapter's public notice provisions, and prior to implementation shall be provided for comment to Tribal agencies that would otherwise implement the laws referenced in this Section.
 - (5) Nothing in this Section is intended to prohibit implementing agencies from charging a fee to the person conducting the remedial action to defray the costs of services rendered relating to the substantive requirements for the remedial action.
- (b) An exemption in this Section or in any other applicable Tribal law shall not apply if the Department determines that the exemption would result in loss of approval from a federal agency necessary for the Tribe to administer any federal cleanup or natural resource protection law.
 - (1) Such a determination by the Department shall not affect the applicability of the exemptions to other statutes specified in this Section.

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

34-1.11 Cleanup standards.

- (a) Surface water, groundwater, soil, sediment and other cleanup standards
 - (1) The cleanup standards enforced by the Department shall be those set forth in the federal cleanup law, unless the Tribe has adopted more stringent standards, in which case those standards shall apply.
 - (2) Tribal cleanup standards to be enforced pursuant to this Chapter shall be those standards set forth in Appendices A, B and C to this Chapter with respect to groundwater, soils and sediments, and the Tribal Surface Water Quality Standards with respect to surface water.
 - (3) Upon approval by Tribal Council Resolution, additional or modified cleanup standards shall be appended to this Chapter and enforced.
- (b) Application of standards
 - (1) Application of standard methods consistent with those described in *Risk Assessment Guidance for Superfund* (U.S. Environmental Protection Agency, 1989), in full consideration of cumulative risk as defined herein, is required.
 - (2) When assessing risks for a Tribally designated industrial or commercial site, in full consideration of cumulative risk as defined herein, the determination of commercial or industrial land use status shall be at the Department's discretion in consultation with the Tribal Planning Department.
 - (3) Commercial or industrial land use status shall not be granted in community wellhead protection zones as delineated by the Department nor shall it be granted in cases where in the opinion of the Department contamination from the site in question might be captured by a water source used for human consumption, including but not limited to wells and springs.
- (c) Should the nature and extent of contamination attributable to a given release include more than 1 medium, more than 1 contaminant, or more than 1 pathway, criteria based on cumulative risk shall be calculated using methods described in *Risk Assessment Guidance for Superfund*

(EPA/540/1-89/002, U.S. Environmental Protection Agency, December, 1989), assuming a reasonable maximal exposure (RME), and employing EPA Reference Doses (RfD) or dose-response slope factors described in Integrated Risk Information System ("IRIS") (primary source) and Health Effects Assessment Summary Tables ("HEAST") (secondary source).

- (1) Acceptable risk criteria shall be calculated for each hazardous substance ("k"), released from each medium ("j"), through each pathway ("i") by summing specific risks to render a cumulative estimation of risk as follows, regardless of target tissue or mode of action:

$$\sum_{i,j,k} R_{(i,j,k)}$$

Where i = Pathway, e.g., inhalation, dietary, incidental ingestion, dermal, etc.)

j = Media, e.g., surface water, ground water, soil, sediment, food/medicine, air, etc.

k = hazardous substance, e.g., analytes identified in the first column of the following tables.

Pathway ("i"), medium ("j"), and hazardous substance ("k")-specific risks (R_i , R_j , R_k , respectively) shall be calculated by employing the appropriate human health risk scenario which has been designed based on the future or current use of resources identified within the nature and extent of contamination.

- (d) Background level shall be determined by the Department based upon data and tests presented by the site owner, operator, the Department, or other governmental entity acceptable to the Department.
- (e) In cases involving multiple chemicals with multiple health effects the Department may use the federal cleanup law and regulations, rules and guidances related thereto as guidelines to determine aggregate cleanup levels that are protective of human health and the environment.
- (f) The Department may contract expertise, and may consult with state and federal agencies, institutes of higher learning, and other entities with expertise in toxic cleanup and human or environmental toxicology in order to determine clean up levels which are protective of human health and the environment.

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

34-1.12 Disposal of Hazardous Substances. Due to the emergency declared in 34-1.02, the disposal of hazardous substances on the Reservation shall be limited as follows to protect human health and the environment:

- (a) No new facility shall be constructed on the Reservation for permanent disposal of hazardous substances:
- (1) within 1000 feet of any wetland; or
 - (2) within 1000 feet of any intermittent stream, perennial stream, or other surface water that directly or indirectly flows to streams designated as Class A or Class AA the Spokane Tribal Water Quality Standards; or
 - (3) within 1000 feet of any aquifer recharge zone.
- (b) A new facility for the permanent disposal of hazardous substances may be constructed outside those areas identified in Subsection (a) only if:
- (1) constructed in compliance with applicable federal or Tribal law, or if more stringent with the laws of the State of Washington, for operating facilities for disposal of hazardous substances as defined in this Chapter; and
 - (2) the Department first approves a closure plan for the disposal facility that complies with the cleanup standards of this Chapter; and
 - (3) a performance bond in an amount that the Department determines to be sufficient to achieve the cleanup described in the approved closure plan and which may be accessed by the Department in the event the disposal facility operator fails to perform its duties under the closure plan.
- (c) A new facility for the temporary disposal of hazardous substances may be constructed within those areas listed in 34-1.12(a) only if:

- (1) the Department determines the temporary disposal facility is necessary for addressing an emergency that threatens human health or the environment; and
- (2) the Department determines that disposal at the temporary disposal facility will not exceed acceptable human health or ecological risk levels as determined pursuant to 34-1.03(a) and (b), respectively; and
- (3) except as provided below, the temporary facility shall be permanently closed consistent with this Chapter's cleanup standards no later than 2 years following the beginning of its operation.
 - A. the Department may extend the length of a temporary disposal facility's operation for up to 3 1-year periods, following a public hearing for each 1-year extension.
- (d) For the purpose of this Chapter, a new disposal facility is 1 that is not specifically authorized under applicable law for disposal of hazardous substances prior to this Chapter's enactment.
- (e) The limitations of this Section shall not apply to the permanent disposal of hazardous substances generated as a byproduct of mining operations, if:
 - (1) the hazardous substances are naturally occurring and have not been concentrated or chemically altered by human processes; and
 - (2) the disposal is part of a cleanup that complies with the requirements of Tribal cleanup standards or the federal cleanup law.

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

34-1.13 General Provisions

34-1.13.1 Sovereign Immunity. Nothing in this Chapter shall be construed to constitute a waiver of the sovereign immunity of the Tribe, or of any instrumentality, agent, officer, or employee of the Tribe.

Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

34-1.13.2 Captions. As used in this Chapter captions constitute no part of the law.

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

34-1.13.3 Construction. The provisions of this Chapter are to be liberally construed to effectuate the policies and purposes of this Chapter. In the event of conflict between the provisions of this Chapter and its Appendices, referenced documents, or any other Act, the provisions of this Chapter shall govern.

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

34-1.13.4 Effective Date. The effective date of this Chapter shall be the date this Chapter is enacted and adopted by the Council. This Chapter shall apply retroactively.

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

34-1.13.5 Severability. If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the Chapter or the application of the provision to other persons or circumstances is not affected.

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

APPENDIX A SPOKANE TRIBAL HAZARDOUS SUBSTANCES CONTROL

Ground water cleanup levels.

- (a) The following Table indicates the minimum cleanup levels for ground water, in terms of amount of individual hazardous substance per unit volume, for the hazardous substances listed.
- (b) These cleanup levels shall remain in effect until the Department of Natural Resources ("Department") amends them.
- (c) The Department also may establish more stringent cleanup levels for a specific site, when, based on a site-specific evaluation, the Department determines that such levels are necessary to protect human health and the environment.
- (d) For substances not listed below, refer to the state of Washington's current publication on "Model Toxics Control Act Cleanup Levels and Risk Calculations."
- (e) The following table of criteria has been developed based on acceptable risk and assuming that the receptor (a human child or adult) receives a reasonable maximal exposure (RME) from a

single pathway (in this instance, direct ingestion of ground water at a rate of 1.5 liters/day for the Child ages 0-6 and 3 liters/day for the adult ages 7-70) of the single hazardous substance, identified in the table, from the single medium (ground water) and assuming an acceptable exposure level:

- (f) If multiple pathways, multiple media (primary and secondary sources), or multiple hazardous substances are determined to be present by the Department, then criteria based on cumulative risk shall be calculated following the procedures described under the definition of "cumulative risk".

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

Table A1. Groundwater Cleanup Levels Estimated to be Protective of the Human Health, given the assumptions described in the test.

Hazardous Substance	CAS No.	Human Health (µg/L)
Acephate	30560-19-1	4E-02
Acetaldehyde	75-07-0	2.57E-02
Acetochlor	34256-82-1	2E-01
Acetone	67-64-1	1E+00
Acetone cyanohydrin	75-86-5	8E-03
Acetonitrile	75-05-8	6E-02
Acetophenone	98-86-2	1E+00
Acifluorfen	50594-66-6	1.30E-01
Acrolein	107-02-8	2E-01
Acrylamide	79-06-1	2E-03
Acrylic acid	79-10-7	5E+00
Acrylonitrile	107-13-1	1E-02
Alachlor	15972-60-8	1E-01
Alar	1596-84-5	1.50E+00
Aldicarb	116-06-3	1E-02
Aldicarb sulfone	1646-88-4	1E-02
Aldrin	309-00-2	3E-04
Ally	5585-64-8	2.50E+00
Allyl alcohol	107-18-6	5E-02
Allyl chloride	107-05-1	5E-01
Aluminum	7429-90-5	1E+01
Aluminum phosphide	20859-73-8	4E-03
Amdro	67485-29-4	3E-03
Ametryn	834-12-8	9E-02
m-Aminophenol	591-27-5	7E-01
4-Aminopyridine	504-24-5	2E-04
Amitraz	33089-61-1	2.50E-02
Ammonia	7664-41-7	NA
Ammonium sulfamate	7773-06-0	2E+00
Aniline	62-53-3	5.70E-02
Antimony and compounds	7440-36-0	4E-03
Antimony pentoxide	1314-60-9	5E-03
Antimony potassium tartrate	28300-74-5	9E-03
Antimony tetroxide	1332-81-6	4E-03
Antimony trioxide	1309-64-4	4E-03
Apollo	74115-24-5	1.30E-01
Aramite	140-57-8	2.50E-01
Arsenic (noncancer endpoint)	7440-38-2	3E-03
Arsenic (cancer endpoint)	7440-38-2	3E-03
Arsine (see arsenic for cancer endpoint)	7784-42-1	NA
Assure	76578-12-6	9E-02
Asulam	3337-71-1	5E-01

Atrazine	1912-24-9	3.50E-01
Avermectin B1	71751-41-2	4E-03
Azobenzene	103-33-3	1.10E+00
Barium and compounds	7440-39-3	7E-01
Baygon	114-26-1	4E-02
Bayleton	43121-43-3	3E-01
Baythroid	68359-37-5	2.50E-01
Benefin	1861-40-1	3E+00
Benomyl	17804-35-2	5E-01
Bentazon	25057-89-0	3E-01
Benzaldehyde	100-52-7	1E+00
Benzene	71-43-2	3E-02
Benzidine	92-87-5	3E-02
Benzoic acid	65-85-0	4E+01
Benzotrichloride	98-07-7	1.30E+02
Benzyl alcohol	100-51-6	3E+00
Benzyl chloride	100-44-7	1.70E+00
Beryllium and compounds	7440-41-7	2E-02
Bidrin	141-66-2	1E-03
Biphenthrin (Talstar)	82657-04-3	1.50E-01
1,1-Biphenyl	92-52-4	5E-01
Bis(2-chloroethyl)ether	111-44-4	1.10E+01
Bis(2-chloroisopropyl)ether	39638-32-9	4E-01
Bis(chloromethyl)ether	542-88-1	2.20E+03
Bis(2-chloro-1-methylethyl)ether	108-60-1	7E-01
Bis(2-ethylhexyl)phthalate (DEHP)	117-81-7	1.40E-01
Bisphenol A	80-05-7	5E-01
Boron	7440-42-8	9E-01
Boron trifluoride	7637-07-2	NA
Bromobenzene	108-86-1	2E-01
Bromodichloromethane	75-27-4	2E-01
Bromoform (tribromomethane)	75-25-2	7.90E-02
Bromomethane (Methyl bromide)	74-83-9	1.40E-02
4-Bromophenyl phenyl ether	101-55-3	NA
Bromophos	2104-96-3	5E-02
Bromoxynil	1689-84-5	2E-01
Bromoxynil octanoate	1689-99-2	2E-01
1,3-Butadiene	106-99-0	9.80E+00
1-Butanol	71-36-3	1E+00
Butylate	2008-41-5	5E-01
n-Butylbenzene	104-51-8	1E-01
sec-Butylbenzene	135-9-88	1E-01
tert-Butylbenzene	104-5-18	1E-01
Butyl benzyl phthalate	85-68-7	2E+00
Butylphthalyl butylglycolate	85-70-1	1E+01
Cacodylic acid	75-60-5	3E-02
Cadmium and compounds	7440-43-9	5E-03
Caprolactam	105-60-2	5E+00
Captafol	2425-06-1	2E-02
Captan	133-06-2	3.50E-02
Carbaryl	63-25-2	1E+00
Carbazole	86-74-8	2E-01
Carbofuran	1563-66-2	5E-02
Carbon disulfide	75-15-0	1E+00
Carbon tetrachloride	56-23-5	7E-03
Carbosulfan	55285-14-8	1E-01
Carboxin	5234-68-4	1E+00

Chloral	302-17-0	2E-02
Chloramben	133-90-4	1.50E-01
Chloranil	118-75-2	4.03E+00
Chlordane	57-74-9	5E-03
Chlorimuron-ethyl	90982-32-4	2E-01
Chlorine	7782-50-5	1E+00
Chlorine dioxide	10049-04-4	NA
Chloroacetaldehyde	107-20-0	NA
Chloroacetic acid	79-11-8	2E-02
2-Chloroacetophenone	532-27-4	8.60E-05
4-Chloroaniline	106-47-8	4E-02
Chlorobenzene	108-90-7	2E-01
Chlorobenzilate	510-15-6	2E-01
p-Chlorobenzoic acid	74-11-3	2E+00
4-Chlorobenzotrifluoride	98-56-6	2E-01
2-Chloro-1,3-butadiene	126-99-8	2E-01
1-Chlorobutane	109-69-3	4E+00
1-Chloro-1,1-difluoroethane (HCFC-142b)	75-68-3	1.43E+02
Chlorodifluoromethane	75-45-6	1.40E+02
2-Chloroethyl vinyl ether	110-75-8	NA
Chloroform	67-66-3	6.10E-02
Chloromethane	74-87-3	1.30E-01
4-Chloro-2-methylaniline	95-69-2	5.80E+00
4-Chloro-2-methylaniline hydrochloride	3165-93-3	4.60E+00
beta-Chloronaphthalene	91-58-7	8E-01
o-Chloronitrobenzene	88-73-3	2.50E-01
p-Chloronitrobenzene	100-00-5	1.80E-01
2-Chlorophenol	95-57-8	5E-02
2-Chloropropane	75-29-6	2.90E-01
Chlorothalonil	1897-45-6	1.10E-01
o-Chlorotoluene	95-49-8	2E-01
Chlorpropham	101-21-3	2E+00
Chlorpyrifos	2921-88-2	3E-02
Chlorpyrifos-methyl	5598-13-0	1E-01
Chlorsulfuron	64902-72-3	5E-01
Chlorthiophos	60238-56-4	8E-03
Total Chromium (1/6 ratio Cr VI/Cr III)	n/a	NA
Chromium VI	7440-47-3	5E-02
Cobalt	7440-48-4	6E-01
Coke Oven Emissions	8007-45-2	NA
Copper and compounds	7440-50-8	3.71E-01
Crotonaldehyde	123-73-9	1E-01
Cumene (isopropylbenzene)	98-82-8	1E+00
Cyanazine	21725-46-2	2E-02
Cyanides	n/a	NA
Barium cyanide	542-62-1	1E+00
Calcium cyanide	592-01-8	4E-01
Copper cyanide	544-92-3	5E-02
Cyanogen	460-19-5	4E-01
Cyanogen bromide	506-68-3	9E-01
Cyanogen chloride	506-77-4	5E-01
Free cyanide	57-12-5	2E-01
Hydrogen cyanide	74-90-8	2E-01
Potassium cyanide	151-50-8	5E-01
Potassium silver cyanide	506-61-6	2E+00
Silver cyanide	506-64-9	1E+00
Sodium cyanide	143-33-9	4E-01

Zinc cyanide	557-21-1	5E-01
Cyclohexanone	108-94-1	5E+01
Cyclohexylamine	108-91-8	2E+00
Cyhalothrin/Karate	68085-85-8	5E-02
Cypermethrin	52315-07-8	1E-01
Cyromazine	66215-27-8	7.50E-02
Dacthal	1861-32-1	1E-01
Dalapon	75-99-0	3E-01
Danitol	39515-41-8	2.50E-01
DDD	72-54-8	2.40E+00
DDE	72-55-9	3.40E+00
DDT	50-29-3	5E-03
Decabromodiphenyl ether	1163-19-5	1E-01
Demeton	8065-48-3	4E-04
Diallate	2303-16-4	6.10E-01
Diazinon	333-41-5	9E-03
Dibenzofuran	132-64-9	4E-02
1,4-Dibromobenzene	106-37-6	1E-01
Dibromochloromethane	124-48-1	2E-01
1,2-Dibromo-3-chloropropane	96-12-8	5.70E-04
1,2-Dibromoethane	106-93-4	5.70E-04
Dibutyl phthalate	84-74-2	1E+00
Dicamba	1918-00-9	3E-01
1,2-Dichlorobenzene	95-50-1	9E-01
1,3-Dichlorobenzene	541-73-1	3E-01
1,4-Dichlorobenzene	106-46-7	2.40E-01
3,3-Dichlorobenzidine	91-94-1	4.50E+00
1,4-Dichloro-2-butene	764-41-0	9.30E+01
Dichlorodifluoromethane	75-71-8	2E+00
1,1-Dichloroethane	75-34-3	1E+00
1,2-Dichloroethane (EDC)	107-06-2	2.86E-02
1,1-Dichloroethylene	75-35-4	9E-02
1,2-Dichloroethylene (cis)	156-59-2	1E-01
1,2-Dichloroethylene (trans)	156-60-5	2E-01
2,4-Dichlorophenol	120-83-2	3E-02
4-(2,4-Dichlorophenoxy)butyric Acid (2,4-DB)	94-82-6	8E-02
2,4-Dichlorophenoxyacetic Acid (2,4-D)	94-75-7	1E-01
1,2-Dichloropropane	78-87-5	1.10E-02
1,3-Dichloropropene	542-75-6	3E-03
2,3-Dichloropropanol	616-23-9	3E-02
Dichlorvos	62-73-7	5E-03
Dicofol	115-32-2	4.40E+00
Dicyclopentadiene	77-73-6	3E-01
Dieldrin	60-57-1	5E-04
Diethylene glycol, monobutyl ether	112-34-5	5.70E-02
Diethylene glycol, monoethyl ether	111-90-0	2E+01
Diethylformamide	617-84-5	1.10E-01
Di(2-ethylhexyl)adipate	103-23-1	1.20E-02
Diethyl phthalate	84-66-2	8E+00
Diethylstilbestrol	56-53-1	4.70E+04
Difenzoquat (Avenge)	43222-48-6	8E-01
Diflubenzuron	35367-38-5	2E-01
1,1-Difluoroethane	75-37-6	1.14E+02
Diisopropyl methylphosphonate	1445-75-6	8E-01
Dimethipin	55290-64-7	2E-01
Dimethoate	60-51-5	2E-03

3,3'-Dimethoxybenzidine	119-90-4	1.40E-01
Dimethylamine	124-40-3	5.70E-05
N-N-Dimethylaniline	121-69-7	2E-02
2,4-Dimethylaniline	95-68-1	7.50E+00
2,4-Dimethylaniline hydrochloride	21436-96-4	5.80E+00
3,3'-Dimethylbenzidine	119-93-7	9.20E+01
1,1-Dimethylhydrazine	57-14-7	2.60E+01
1,2-Dimethylhydrazine	540-73-8	3.70E+02
N,N-Dimethylformamide	68-12-2	1E+00
Dimethylphenethylamine	122-09-8	1E-02
2,4-Dimethylphenol	105-67-9	2E-01
2,6-Dimethylphenol	576-26-1	6E-03
3,4-Dimethylphenol	95-65-8	1E-02
Dimethyl phthalate	131-11-3	1E+02
Dimethyl terephthalate	120-61-6	1E+00
4,6-Dinitro-o-cyclohexyl phenol	131-89-5	2E-02
1,2-Dinitrobenzene	528-29-0	4E-03
1,3-Dinitrobenzene	99-65-0	1E-03
1,4-Dinitrobenzene	100-25-4	4E-03
2,4-Dinitrophenol	51-28-5	2E-02
Dinitrotoluene mixture	25321-14-6	6.80E+00
2,4-Dinitrotoluene (also see Dinitrotoluene mixture)	121-14-2	2E-02
2,6-Dinitrotoluene (also see Dinitrotoluene mixture)	606-20-2	1E-02
Dinoseb	88-85-7	1E-02
di-n-Octyl phthalate	117-84-0	2E-01
1,4-Dioxane	123-91-1	1.10E-01
Dioxin (2,3,7,8-TCDD)	1746-01-6	1.50E+06
Diphenamid	957-51-7	3E-01
Diphenylamine	122-39-4	2.50E-01
1,2-Diphenylhydrazine	122-66-7	8E+00
Diphenyl sulfone	127-63-9	9E-02
Diquat	85-00-7	2.20E-02
Direct black 38	1937-37-7	8.60E+01
Direct blue 6	2602-46-2	8.10E+01
Direct brown 95	16071-86-6	9.30E+01
Disulfoton	298-04-4	4E-04
1,4-Dithiane	505-29-3	1E-01
Diuron	330-54-1	2E-02
Dodine	2439-10-3	4E-02
Endosulfan	115-29-7	6E-02
Endothall	145-73-3	2E-01
Endrin	72-20-8	3E-03
Epichlorohydrin	106-89-8	2E-02
1,2-Epoxybutane	106-88-7	5.70E-02
EPTC (S-Ethyl dipropylthiocarbamate)	759-94-4	2.50E-01
Ethephon (2-chloroethyl phosphonic acid)	16672-87-0	5E-02
Ethion	563-12-2	5E-03
2-Ethoxyethanol	110-80-5	4E+00
2-Ethoxyethanol acetate	111-15-9	3E+00
Ethyl acetate	141-78-6	9E+00
Ethyl acrylate	140-88-5	4.80E-01
Ethylbenzene	100-41-4	1E+00
Ethyl chloride	75-00-3	4E+00
Ethylene cyanohydrin	109-78-4	3E+00
Ethylene diamine	107-15-3	2E-01

Ethylene glycol	107-21-1	2E+01
Ethylene glycol, monobutyl ether	111-76-2	5.70E-02
Ethylene oxide	75-21-8	1.02E+01
Ethylene thiourea (ETU)	96-45-7	8E-04
Ethyl ether	60-29-7	2E+00
Ethyl methacrylate	97-63-2	9E-01
Ethyl p-nitrophenyl phenylphosphorothioate	2104-64-5	1E-04
Ethylphthalyl ethyl glycolate	84-72-0	3E+01
Express	101200-48-0	8E-02
Fenamiphos	22224-92-6	2.50E-03
Fluometuron	2164-17-2	1.30E-01
Flouride (soluble)	16984-48-8	6E-01
Fluoridone	59756-60-4	8E-01
Flurprimidol	56425-91-3	2E-01
Flutolanil	66332-96-5	6E-01
Fluvalinate	69409-94-5	1E-01
Folpet	133-07-3	3.50E-02
Fomesafen	72178-02-0	1.90E+00
Fonofos	944-22-9	2E-02
Formaldehyde	50-00-0	1.50E+00
Formic Acid	64-18-6	2E+01
Fosetyl-al	39148-24-8	3E+01
Furan	110-00-9	1E-02
Furazolidone	67-45-8	3.80E+01
Furfural	98-01-1	3E-02
Furium	531-82-8	5E+02
Furmecyclox	60568-05-0	3E-01
Glufosinate-ammonium	77182-82-2	4E-03
Glycidaldehyde	765-34-4	4E-03
Glyphosate	1071-83-6	1E+00
Haloxypop-methyl	69806-40-2	5E-04
Harmony	79277-27-3	1.30E-01
Heptachlor	76-44-8	5E-03
Heptachlor epoxide	1024-57-3	1.30E-04
Hexabromobenzene	87-82-1	2E-02
Hexachlorobenzene	118-74-1	8E-03
Hexachlorobutadiene	87-68-3	2E-03
HCH (alpha)	319-84-6	6.30E+01
HCH (beta)	319-85-7	1.80E+01
HCH (gamma) Lindane	58-89-9	3E-03
HCH-technical	608-73-1	1.80E+01
Hexachlorocyclopentadiene	77-47-4	7E-02
Hexachlorodibenzo-p-dioxin mixture (HxCDD)	19408-74-3	6.20E+04
Hexachloroethane	67-72-1	1E-02
Hexachlorophene	70-30-4	3E-03
Hexahydro-1,3,5-trinitro-1,3,5-triazine	121-82-4	3E-02
1,6-Hexamethylene diisocyanate	822-06-0	2.86E-05
n-Hexane	110-54-3	6E-01
Hexazinone	51235-04-2	3.30E-01
Hydrazine, hydrazine sulfate	302-01-2	3E+01
Hydrogen chloride	7647-01-0	NA
Hydrogen sulfide	7783-06-4	3E-02
p-Hydroquinone	123-31-9	4E-01
Imazalil	35554-44-0	1.30E-01
Imazaquin	81335-37-7	2.50E+00

Iprodione	36734-19-7	4E-01
Iron	7439-89-6	3E+00
Isobutanol	78-83-1	3E+00
Isophorone	78-59-1	9.50E-03
Isopropalin	33820-53-0	1.50E-01
Isopropyl methyl phosphonic acid	1832-54-8	1E+00
Isoxaben	82558-50-7	5E-01
Kepone	143-50-0	1.80E+02
Lactofen	77501-63-4	2E-02
Lead ¹	7439-92-1	NA
Lead (tetraethyl)	78-00-2	1E-06
Linuron	330-55-2	2E-02
Lithium	7439-93-2	2E-01
Londax	83055-99-6	2E+00
Malathion	121-75-5	2E-01
Maleic anhydride	108-31-6	1E+00
Maleic hydrazide	123-33-1	5E+00
Malononitrile	109-77-3	2E-04
Mancozeb	8018-01-7	3E-01
Maneb	12427-38-2	5E-02
Manganese and compounds	7439-96-5	4.67E-01
Mephosfolan	950-10-7	9E-04
Mepiquat	24307-26-4	3E-01
2-Mercaptobenzothiazole	149-30-4	2.90E-01
Mercury and compounds	7487-94-7	3E-03
Mercury (elemental)	7439-97-6	NA
Mercury (methyl)	22967-92-6	1E-03
Merphos	150-50-5	3E-04
Merphos oxide	78-48-8	3E-04
Metalaxyl	57837-19-1	6E-01
Methacrylonitrile	126-98-7	1E-03
Methamidophos	10265-92-6	5E-04
Methanol	67-56-1	5E+00
Methidathion	950-37-8	1E-02
Methomyl	16752-77-5	2.50E-01
Methoxychlor	72-43-5	5E-02
2-Methoxyethanol	109-86-4	1E-02
2-Methoxyethanol acetate	110-49-6	2E-02
2-Methoxy-5-nitroaniline	99-59-2	4.60E-01
Methyl acetate	79-20-9	1E+01
Methyl acrylate	96-33-3	3E-01
2-Methylaniline (o-toluidine)	95-53-4	2.40E+00
2-Methylaniline hydrochloride	636-21-5	1.80E+00
Methyl chlorocarbonate	79-22-1	1E+01
2-Methyl-4-chlorophenoxyacetic acid	94-74-6	5E-03
4-(2-Methyl-4-chlorophenoxy) butyric acid	94-81-5	1E-01
2-(2-Methyl-4-chlorophenoxy) propionic acid	93-65-2	1E-02
2-(2-Methyl-1,4-chlorophenoxy) propionic acid	16484-77-8	1E-02
Methylcyclohexane	108-87-2	8.60E+00
4,4'-Methylenebisbenzeneamine	101-77-9	2.50E+00
4,4'-Methylene bis(2-chloroaniline)	101-14-4	7E-03
4,4'-Methylene bis(N,N'-dimethyl)aniline	101-61-1	4.60E-01
Methylene bromide	74-95-3	1E-01
Methylene chloride	75-09-2	7.50E-02
4,4'-Methylene diphenyl diisocyanate	101-68-8	1.70E-03

Methyl ethyl ketone	78-93-3	6E+00
Methyl hydrazine	60-34-4	1.10E+01
Methyl isobutyl ketone	108-10-1	8E-01
Methyl Mercaptan	74-93-1	5.70E-03
Methyl methacrylate	80-62-6	1.40E+01
2-Methyl-5-nitroaniline	99-55-8	3.30E-01
Methyl parathion	298-00-0	2.50E-03
2-Methylphenol	95-48-7	5E-01
3-Methylphenol	108-39-4	5E-01
4-Methylphenol	106-44-5	5E-02
Methyl phosphonic acid	993-13-5	2E-01
Methyl styrene (mixture)	25013-15-4	6E-02
Methyl styrene (alpha)	98-83-9	7E-01
Methyl tertbutyl ether (MTBE)	1634-04-4	NA
Metolaclor (Dual)	51218-45-2	1.50E+00
Metribuzin	21087-64-9	2.50E-01
Mirex	2385-85-5	2E-03
Molinate	2212-67-1	2E-02
Molybdenum	7439-98-7	5E-02
Monochloramine	10599-90-3	1E+00
Naled	300-76-5	2E-02
Napropamide	15299-99-7	1E+00
Nickel (soluble salts)	7440-02-0	2E-01
Nickel refinery dust	n/a	NA
Nickel subsulfide	12035-72-2	NA
Nitrapyrin	1929-82-4	1.50E-02
Nitrate	14797-55-8	NA
Nitric Oxide	10102-43-9	1E+00
Nitrite	14797-65-0	NA
2-Nitroaniline	88-74-4	6E-04
3-Nitroaniline	99-09-2	NA
4-Nitroaniline	100-01-6	NA
Nitrobenzene	98-95-3	5E-03
Nitrofurantoin	67-20-9	7E-01
Nitrofurazone	59-87-0	1.50E+01
Nitrogen dioxide	101102-44-0	1E+01
Nitroguanidine	556-88-7	1E+00
4-Nitrophenol	100-02-7	6.20E-01
2-Nitropropane	79-46-9	5.71E-02
N-Nitrosodi-n-butylamine	924-16-3	5.40E+01
N-Nitrosodiethanolamine	1116-54-7	2.80E+01
N-Nitrosodiethylamine	55-18-5	1.50E+03
N-Nitrosodimethylamine	62-75-9	5.10E+02
N-Nitrosodiphenylamine	86-30-6	4.90E-02
N-Nitroso di-n-propylamine	621-64-7	7E+01
N-Nitroso-N-methylethylamine	10595-95-6	2.20E+02
N-Nitrosopyrrolidine	930-55-2	2.10E+01
m-Nitrotoluene	99-08-1	1E-01
o-Nitrotoluene	99-08-1	1E-01
p-Nitrotoluene	99-99-0	1E-01
Norflurazon	27314-13-2	4E-01
NuStar	85509-19-9	7E-03
Octabromodiphenyl ether	32536-52-0	3E-02
Octahydro-1357-tetranitro-1357-tetrazocine (HMX)	2691-41-0	5E-01
Octamethylpyrophosphoramidate	152-16-9	2E-02
Oryzalin	19044-88-3	5E-01

Oxadiazon	19666-30-9	5E-02
Oxamyl	23135-22-0	2.50E-01
Oxyfluorfen	42874-03-3	3E-02
Paclobutrazol	76738-62-0	1.30E-01
Paraquat	4685-14-7	4.50E-02
Parathion	56-38-2	6E-02
Pebulate	1114-71-2	5E-01
Pendimethalin	40487-42-1	4E-01
Pentabromo-6-chloro cyclohexane	87-84-3	2.30E-01
Pentabromodiphenyl ether	32534-81-9	2E-02
Pentachlorobenzene	608-93-5	8E-03
Pentachloronitrobenzene	82-68-8	3E-02
Pentachlorophenol	87-86-5	3E-01
Perchlorate	7601-90-3	5E-03
Permethrin	52645-53-1	5E-01
Phenmedipham	13684-63-4	2.50E+00
Phenol	108-95-2	6E+00
Phenothiazine	92-84-2	2E-02
m-Phenylenediamine	108-45-2	6E-02
p-Phenylenediamine	106-50-3	1.90E+00
Phenylmercuric acetate	62-38-4	8E-04
2-Phenylphenol	90-43-7	1.94E-02
Phorate	298-02-2	2E-03
Phosmet	732-11-6	2E-01
Phosphine	7803-51-2	3E-03
Phosphoric acid	7664-38-2	NA
Phosphorus (white)	7723-14-0	2E-04
p-Phthalic acid	100-21-0	1E+01
Phthalic anhydride	85-44-9	2E+01
Picloram	1918-02-1	7E-01
Pirimiphos-methyl	23505-41-1	1E-01
Polybrominated biphenyls		7E-05
Polychlorinated biphenyls (PCBs)	1336-36-3	2E+01
Aroclor 1016 (see PCBs for cancer endpoint)	12674-11-2	7E-04
Aroclor 1254 (see PCBs for cancer endpoint)	11097-69-1	2E-04
Polynuclear aromatic hydrocarbons (PAHs)		NA
Acenaphthene	83-32-9	6E-01
Anthracene	120-12-7	3E+00
Benz[a]anthracene	56-55-3	7.30E+00
Benzo[b]fluoranthene	205-99-2	7.30E+00
Benzo[k]fluoranthene	207-08-9	7.30E-01
Benzo[a]pyrene	50-32-8	7.30E+01
Chrysene	218-01-9	7.30E-02
Dibenz[ah]anthracene	53-70-3	7.30E+01
Fluoranthene	206-44-0	4E-01
Fluorene	86-73-7	4E-01
Indeno[1,2,3-cd]pyrene	193-39-5	7.30E+00
Naphthalene	91-20-3	2E-01
Pyrene	129-00-0	3E-01
Prochloraz	67747-09-5	9E-02
Profluralin	26399-36-0	6E-02
Prometon	1610-18-0	1.50E-01
Prometryn	7287-19-6	4E-02
Pronamide	23950-58-5	7.50E-01
Propachlor	1918-16-7	1.30E-01

Propanil	709-98-8	5E-02
Propargite	2312-35-8	2E-01
Propargyl alcohol	107-19-7	2E-02
Propazine	139-40-2	2E-01
Propham	122-42-9	2E-01
Propiconazole	60207-90-1	1.30E-01
iso-Propylbenzene	104-5-18	1E-01
n-Propylbenzene	104-51-8	1E-01
Propylene glycol	57-55-6	2E+02
Propylene glycol, monoethyl ether	111-35-3	7E+00
Propylene glycol, monomethyl ether	107-98-2	7E+00
Propylene oxide	75-56-9	8.60E-02
Pursuit	81335-77-5	2.50E+00
Pydrin	51630-58-1	2.50E-01
Pyridine	110-86-1	1E-02
Quinalphos	13593-03-8	5E-03
Quinoline	91-22-5	1.20E+02
RDX (Cyclonite)	121-82-4	3E-02
Resmethrin	10453-86-8	3E-01
Ronnel	299-84-3	5E-01
Rotenone	83-79-4	4E-02
Savey	78587-05-0	2.50E-01
Selenious Acid	7783-00-8	5E-02
Selenium	7782-49-2	5E-02
Selenourea	630-10-4	5E-02
Sethoxydim	74051-80-2	9E-01
Silver and compounds	7440-22-4	5E-02
Simazine	122-34-9	5E-02
Sodium azide	26628-22-8	4E-02
Sodium diethyldithiocarbamate	148-18-5	3E-01
Sodium fluoroacetate	62-74-8	2E-04
Sodium metavanadate	13718-26-8	1E-02
Strontium, stable	7440-24-6	6E+00
Strychnine	57-24-9	3E-03
Styrene	100-42-5	2E+00
Systhane	88671-89-0	2.50E-01
2,3,7,8-TCDD (dioxin)	1746-01-6	1.50E+06
Tebuthiuron	34014-18-1	7E-01
Temephos	3383-96-8	2E-01
Terbacil	5902-51-2	1.30E-01
Terbufos	13071-79-9	2.50E-04
Terbutryn	886-50-0	1E-02
1,2,4,5-Tetrachlorobenzene	95-94-3	3E-03
1,1,1,2-Tetrachloroethane	630-20-6	2.60E-01
1,1,2,2-Tetrachloroethane	79-34-5	2E+00
Tetrachloroethylene (PCE)	127-18-4	1E-01
2,3,4,6-Tetrachlorophenol	58-90-2	3E-01
P,a,a,a-Tetrachlorotoluene	5216-25-1	2E+02
Tetrachlorovinphos	961-11-5	2.40E-01
Tetraethyldithiopyrophosphate	3689-24-5	5E-03
Tetrahydrofuran	109-99-9	8.57E-01
Thallic oxide	1314-32-5	7E-04
Thallium acetate	563-68-8	9E-04
Thallium carbonate	6533-73-9	8E-04
Thallium chloride	7791-12-0	8E-04
Thallium nitrate	10102-45-1	9E-04
Thallium selenite	12039-52-0	9E-04

Thallium sulfate	7446-18-6	8E-04
Thiobencarb	28249-77-6	1E-01
Thiocyanate	N/A	1E+00
2-(Thiocyanomethylthio)- benzothiazole (TCMTB)	21564-17-0	3E-01
Thiofanox	39196-18-4	3E-03
Thiophanate-methyl	23564-05-8	8E-01
Thiram	137-26-8	5E-02
Tin (inorganic, see tributyltin oxide for organic tin)	n/a	6E+00
Toluene	108-88-3	2E+00
Toluene-2,4-diamine	95-80-7	3.20E+01
Toluene-2,5-diamine	95-70-5	6E+00
Toluene-2,6-diamine	823-40-5	2E+00
p-Toluidine	106-49-0	1.90E+00
Toxaphene	8001-35-2	1.10E+01
Tralomethrin	66841-25-6	7.50E-02
Triallate	2303-17-5	1.30E-01
Triasulfuron	82097-50-5	1E-01
1,2,4-Tribromobenzene	615-54-3	5E-02
Tributyltin oxide (TBTO)	56-35-9	3E-03
2,4,6-Trichloroaniline	634-93-5	3.40E-01
2,4,6-Trichloroaniline hydrochloride	33663-50-2	2.90E-01
1,2,4-Trichlorobenzene	120-82-1	1E-01
1,1,1-Trichloroethane	71-55-6	3.50E-01
1,1,2-Trichloroethane	79-00-5	4E-02
Trichloroethylene (TCE)	79-01-6	6E-02
Trichlorofluoromethane	75-69-4	3E+00
2,4,5-Trichlorophenol	95-95-4	1E+00
2,4,6-Trichlorophenol	88-06-2	1.10E-01
2,4,5-Trichlorophenoxyacetic Acid	93-76-5	1E-01
2-(2,4,5-Trichlorophenoxy) propionic acid	93-72-1	8E-02
1,1,2-Trichloropropane	598-77-6	5E-02
1,2,3-Trichloropropane	96-18-4	6E-02
1,2,3-Trichloropropene	96-19-5	5E-02
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	3E+02
Tridiphane	58138-08-2	3E-02
Triethylamine	121-44-8	2E-02
Trifluralin	1582-09-8	7.50E-02
1,2,4-Trimethylbenzene	95-63-6	5E-01
1,3,5-Trimethylbenzene	108-67-8	5E-01
Trimethyl phosphate	512-56-1	3.70E-01
1,3,5-Trinitrobenzene	99-35-4	3E-01
Trinitrophenylmethylnitramine	479-45-8	1E-01
2,4,6-Trinitrotoluene	118-96-7	5E-03
Uranium Total	Utotal	3E-02
Vanadium	7440-62-2	7E-02
Vanadium pentoxide	1314-62-1	9E-02
Vanadium sulfate	13701-70-7	2E-01
Vernam	1929-77-7	1E-02
Vinclozolin	50471-44-8	2.50E-01
Vinyl acetate	108-05-4	1E+01
Vinyl bromide (bromoethene)	593-60-2	8.57E-03
Vinyl chloride	75-01-4	1.90E+01
Warfarin	81-81-2	3E-03
m-Xylene	108-38-3	2E+01
o-Xylene	95-47-6	2E+01

p-Xylene	106-42-3	NA
Zinc	7440-66-6	3E+00
Zinc phosphide	1314-84-7	3E-03
Zineb	12122-67-7	5E-01
Uranium-235 ²	U-235+D	2.59E-04
Uranium-238 ²	U-238+D	2.32E-04
Radium-226 ²	Ra-226+D	4.42E-05
Radium-228 ²	Ra-228+D	1.95E-05
Lead-210 ²	Pb-210+D	6.40E-06
Thorium-228 ²	Th-228+D	8.05E-05

¹ PRGs Based on EPA Models, IEUBK (1994) and TRW (1996)

² PRGs are calculated for the Parent and Progeny (Daughters "D") in Activity concentrations of pCi/mL

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

APPENDIX B SPOKANE TRIBAL HAZARDOUS SUBSTANCES CONTROL

Soil cleanup levels.

- (a) The following Table indicates the minimum cleanup levels for soil, in terms of amount of individual hazardous substance per unit mass, for the hazardous substances listed.
- (b) These cleanup levels shall remain in effect until the Department of Natural Resources ("Department") amends them.
- (c) The Department may also establish more stringent cleanup levels for a specific site, when, based on a site-specific evaluation, the Department determines that such levels are necessary to protect human health and the environment.
- (d) For substances not listed below, refer to the state of Washington's current publication on "Model Toxics Control Act Cleanup Levels and Risk Calculations."
- (e) The following table of criteria has been developed based on acceptable risk and assuming that the receptor (a human child or adult) receives a reasonable maximal exposure (RME) from a single pathway (in this instance, direct ingestion of soil or sediment at a constant rate of 400 mg/d for the Child ages 0-6 and 3 liters/day for the adult ages 7-70) of the single hazardous substance, identified in the table, from the single medium (ground water) and assuming an acceptable exposure level:
- (f) If multiple pathways, multiple media (primary and secondary sources), or multiple hazardous substances are determined to be present by the Department, then criteria based on cumulative risk shall be calculated following the procedures described under the definition of "cumulative risk".

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

Table B1. Soil/Sediment Cleanup Levels Estimated to be Protective of the Human Health, given the assumptions described in the text.

Hazardous Substance	CAS No.	Human Health (mg/kg)
Acephate	30560-19-1	1.50E+02
Acetaldehyde	75-07-0	9.64E+01
Acetochlor	34256-82-1	7.50E+02
Acetone	67-64-1	3.75E+03
Acetone cyanohydrin	75-86-5	3E+01
Acetonitrile	75-05-8	2.25E+02
Acetophenone	98-86-2	3.75E+03
Acifluorfen	50594-66-6	4.88E+02

Acrolein	107-02-8	7.50E+02
Acrylamide	79-06-1	7.50E+00
Acrylic acid	79-10-7	1.88E+04
Acrylonitrile	107-13-1	3.75E+01
Alachlor	15972-60-8	3.75E+02
Alar	1596-84-5	5.63E+03
Aldicarb	116-06-3	3.75E+01
Aldicarb sulfone	1646-88-4	3.75E+01
Aldrin	309-00-2	1.13E+00
Allyl	5585-64-8	9.38E+03
Allyl alcohol	107-18-6	1.88E+02
Allyl chloride	107-05-1	1.88E+03
Aluminum	7429-90-5	3.75E+04
Aluminum phosphide	20859-73-8	1.50E+01
Amdro	67485-29-4	1.13E+01
Ametryn	834-12-8	3.38E+02
m-Aminophenol	591-27-5	2.63E+03
4-Aminopyridine	504-24-5	7.50E-01
Amitraz	33089-61-1	9.38E+01
Ammonia	7664-41-7	NA
Ammonium sulfamate	7773-06-0	7.50E+03
Aniline	62-53-3	2.14E+02
Antimony and compounds	7440-36-0	1.50E+01
Antimony pentoxide	1314-60-9	1.88E+01
Antimony potassium tartrate	28300-74-5	3.38E+01
Antimony tetroxide	1332-81-6	1.50E+01
Antimony trioxide	1309-64-4	1.50E+01
Apollo	74115-24-5	4.88E+02
Aramite	140-57-8	9.38E+02
Arsenic (noncancer endpoint)	7440-38-2	1.13E+01
Arsenic (cancer endpoint)	7440-38-2	1.13E+01
Arsine (see arsenic for cancer endpoint)	7784-42-1	NA
Assure	76578-12-6	3.38E+02
Asulam	3337-71-1	1.88E+03
Atrazine	1912-24-9	1.31E+03
Avermectin B1	71751-41-2	1.50E+01
Azobenzene	103-33-3	4.13E+03
Barium and compounds	7440-39-3	2.63E+03
Baygon	114-26-1	1.50E+02
Bayleton	43121-43-3	1.13E+03
Baythroid	68359-37-5	9.38E+02
Benefin	1861-40-1	1.13E+04
Benomyl	17804-35-2	1.88E+03
Bentazon	25057-89-0	1.13E+03
Benzaldehyde	100-52-7	3.75E+03
Benzene	71-43-2	1.13E+02
Benzidine	92-87-5	1.13E+02
Benzoic acid	65-85-0	1.50E+05
Benzotrithloride	98-07-7	4.88E+05
Benzyl alcohol	100-51-6	1.13E+04
Benzyl chloride	100-44-7	6.38E+03
Beryllium and compounds	7440-41-7	7.50E+01
Bidrin	141-66-2	3.75E+00
Biphenthrin (Talstar)	82657-04-3	5.63E+02
1,1-Biphenyl	92-52-4	1.88E+03
Bis(2-chloroethyl)ether	111-44-4	4.13E+04
Bis(2-chloroisopropyl)ether	39638-32-9	1.50E+03

Bis(chloromethyl)ether	542-88-1	8.25E+06
Bis(2-chloro-1-methylethyl)ether	108-60-1	2.63E+03
Bis(2-ethylhexyl)phthalate (DEHP)	117-81-7	5.25E+02
Bisphenol A	80-05-7	1.88E+03
Boron	7440-42-8	3.38E+03
Boron trifluoride	7637-07-2	NA
Bromobenzene	108-86-1	7.50E+02
Bromodichloromethane	75-27-4	7.50E+02
Bromoform (tribromomethane)	75-25-2	2.96E+02
Bromomethane (Methyl bromide)	74-83-9	5.25E+01
4-Bromophenyl phenyl ether	101-55-3	NA
Bromophos	2104-96-3	1.88E+02
Bromoxynil	1689-84-5	7.50E+02
Bromoxynil octanoate	1689-99-2	7.50E+02
1,3-Butadiene	106-99-0	3.68E+04
1-Butanol	71-36-3	3.75E+03
Butylate	2008-41-5	1.88E+03
n-Butylbenzene	104-51-8	3.75E+02
Sec-Butylbenzene	135-9-88	3.75E+02
Tert-Butylbenzene	104-5-18	3.75E+02
Butyl benzyl phthalate	85-68-7	7.50E+03
Butylphthalyl butylglycolate	85-70-1	3.75E+04
Cacodylic acid	75-60-5	1.13E+02
Cadmium and compounds	7440-43-9	1.88E+01
Caprolactam	105-60-2	1.88E+04
Captafol	2425-06-1	7.50E+01
Captan	133-06-2	1.31E+02
Carbaryl	63-25-2	3.75E+03
Carbazole	86-74-8	7.50E+02
Carbofuran	1563-66-2	1.88E+02
Carbon disulfide	75-15-0	3.75E+03
Carbon tetrachloride	56-23-5	2.63E+01
Carbosulfan	55285-14-8	3.75E+02
Carboxin	5234-68-4	3.75E+03
Chloral	302-17-0	7.50E+01
Chloramben	133-90-4	5.63E+02
Chloranil	118-75-2	1.51E+04
Chlordane	57-74-9	1.88E+01
Chlorimuron-ethyl	90982-32-4	7.50E+02
Chlorine	7782-50-5	3.75E+03
Chlorine dioxide	10049-04-4	NA
Chloroacetaldehyde	107-20-0	NA
Chloroacetic acid	79-11-8	7.50E+01
2-Chloroacetophenone	532-27-4	3.23E-01
4-Chloroaniline	106-47-8	1.50E+02
Chlorobenzene	108-90-7	7.50E+02
Chlorobenzilate	510-15-6	7.50E+02
p-Chlorobenzoic acid	74-11-3	7.50E+03
4-Chlorobenzotrifluoride	98-56-6	7.50E+02
2-Chloro-1,3-butadiene	126-99-8	7.50E+02
1-Chlorobutane	109-69-3	1.50E+04
1-Chloro-1,1-difluoroethane (HCFC-142b)	75-68-3	5.36E+05
Chlorodifluoromethane	75-45-6	5.25E+05
2-Chloroethyl vinyl ether	110-75-8	NA
Chloroform	67-66-3	2.29E+02
Chloromethane	74-87-3	4.88E+02
4-Chloro-2-methylaniline	95-69-2	2.18E+04

4-Chloro-2-methylaniline hydrochloride	3165-93-3	1.73E+04
beta-Chloronaphthalene	91-58-7	3E+03
o-Chloronitrobenzene	88-73-3	9.38E+02
p-Chloronitrobenzene	100-00-5	6.75E+02
2-Chlorophenol	95-57-8	1.88E+02
2-Chloropropane	75-29-6	1.09E+03
Chlorothalonil	1897-45-6	4.13E+02
o-Chlorotoluene	95-49-8	7.50E+02
Chlorpropham	101-21-3	7.50E+03
Chlorpyrifos	2921-88-2	1.13E+02
Chlorpyrifos-methyl	5598-13-0	3.75E+02
Chlorsulfuron	64902-72-3	1.88E+03
Chlorthiophos	60238-56-4	3E+01
Total Chromium (1/6 ratio Cr VI/Cr III)	n/a	NA
Chromium VI	7440-47-3	1.88E+02
Cobalt	7440-48-4	2.25E+03
Coke Oven Emissions	8007-45-2	NA
Copper and compounds	7440-50-8	1.39E+03
Crotonaldehyde	123-73-9	3.75E+02
Cumene (isopropylbenzene)	98-82-8	3.75E+03
Cyanazine	21725-46-2	7.50E+01
Cyanides	NA	NA
Barium cyanide	542-62-1	3.75E+03
Calcium cyanide	592-01-8	1.50E+03
Copper cyanide	544-92-3	1.88E+02
Cyanogen	460-19-5	1.50E+03
Cyanogen bromide	506-68-3	3.38E+03
Cyanogen chloride	506-77-4	1.88E+03
Free cyanide	57-12-5	7.50E+02
Hydrogen cyanide	74-90-8	7.50E+02
Potassium cyanide	151-50-8	1.88E+03
Potassium silver cyanide	506-61-6	7.50E+03
Silver cyanide	506-64-9	3.75E+03
Sodium cyanide	143-33-9	1.50E+03
Zinc cyanide	557-21-1	1.88E+03
Cyclohexanone	108-94-1	1.88E+05
Cyclohexylamine	108-91-8	7.50E+03
Cyhalothrin/Karate	68085-85-8	1.88E+02
Cypermethrin	52315-07-8	3.75E+02
Cyromazine	66215-27-8	2.81E+02
Dacthal	1861-32-1	3.75E+02
Dalapon	75-99-0	1.13E+03
Danitol	39515-41-8	9.38E+02
DDD	72-54-8	9E+03
DDE	72-55-9	1.28E+04
DDT	50-29-3	1.88E+01
Decabromodiphenyl ether	1163-19-5	3.75E+02
Demeton	8065-48-3	1.50E+00
Diallate	2303-16-4	2.29E+03
Diazinon	333-41-5	3.38E+01
Dibenzofuran	132-64-9	1.50E+02
1,4-Dibromobenzene	106-37-6	3.75E+02
Dibromochloromethane	124-48-1	7.50E+02
1,2-Dibromo-3-chloropropane	96-12-8	2.14E+00
1,2-Dibromoethane	106-93-4	2.14E+00
Dibutyl phthalate	84-74-2	3.75E+03
Dicamba	1918-00-9	1.13E+03

1,2-Dichlorobenzene	95-50-1	3.38E+03
1,3-Dichlorobenzene	541-73-1	1.13E+03
1,4-Dichlorobenzene	106-46-7	9E+02
3,3-Dichlorobenzidine	91-94-1	1.69E+04
1,4-Dichloro-2-butene	764-41-0	3.49E+05
Dichlorodifluoromethane	75-71-8	7.50E+03
1,1-Dichloroethane	75-34-3	3.75E+03
1,2-Dichloroethane (EDC)	107-06-2	1.07E+02
1,1-Dichloroethylene	75-35-4	3.38E+02
1,2-Dichloroethylene (cis)	156-59-2	3.75E+02
1,2-Dichloroethylene (trans)	156-60-5	7.50E+02
2,4-Dichlorophenol	120-83-2	1.13E+02
4-(2,4-Dichlorophenoxy)butyric Acid (2,4-DB)	94-82-6	3E+02
2,4-Dichlorophenoxyacetic Acid (2,4-D)	94-75-7	3.75E+02
1,2-Dichloropropane	78-87-5	4.13E+01
1,3-Dichloropropene	542-75-6	1.13E+01
2,3-Dichloropropanol	616-23-9	1.13E+02
Dichlorvos	62-73-7	1.88E+01
Dicofol	115-32-2	1.65E+04
Dicyclopentadiene	77-73-6	1.13E+03
Dieldrin	60-57-1	1.88E+00
Diethylene glycol, monobutyl ether	112-34-5	2.14E+02
Diethylene glycol, monoethyl ether	111-90-0	7.50E+04
Diethylformamide	617-84-5	4.13E+02
Di(2-ethylhexyl)adipate	103-23-1	4.50E+01
Diethyl phthalate	84-66-2	3E+04
Diethylstilbestrol	56-53-1	1.76E+08
Difenzoquat (Avenge)	43222-48-6	3E+03
Diflubenzuron	35367-38-5	7.50E+02
1,1-Difluoroethane	75-37-6	4.28E+05
Diisopropyl methylphosphonate	1445-75-6	3E+03
Dimethipin	55290-64-7	7.50E+02
Dimethoate	60-51-5	7.50E+00
3,3'-Dimethoxybenzidine	119-90-4	5.25E+02
Dimethylamine	124-40-3	2.14E-01
N,N-Dimethylaniline	121-69-7	7.50E+01
2,4-Dimethylaniline	95-68-1	2.81E+04
2,4-Dimethylaniline hydrochloride	21436-96-4	2.18E+04
3,3'-Dimethylbenzidine	119-93-7	3.45E+05
1,1-Dimethylhydrazine	57-14-7	9.75E+04
1,2-Dimethylhydrazine	540-73-8	1.39E+06
N,N-Dimethylformamide	68-12-2	3.75E+03
Dimethylphenethylamine	122-09-8	3.75E+01
2,4-Dimethylphenol	105-67-9	7.50E+02
2,6-Dimethylphenol	576-26-1	2.25E+01
3,4-Dimethylphenol	95-65-8	3.75E+01
Dimethyl phthalate	131-11-3	3.75E+05
Dimethyl terephthalate	120-61-6	3.75E+03
4,6-Dinitro-o-cyclohexyl phenol	131-89-5	7.50E+01
1,2-Dinitrobenzene	528-29-0	1.50E+01
1,3-Dinitrobenzene	99-65-0	3.75E+00
1,4-Dinitrobenzene	100-25-4	1.50E+01
2,4-Dinitrophenol	51-28-5	7.50E+01
Dinitrotoluene mixture	25321-14-6	2.55E+04
2,4-Dinitrotoluene (also see Dinitrotoluene mixture)	121-14-2	7.50E+01
2,6-Dinitrotoluene (also see Dinitrotoluene mixture)	606-20-2	3.75E+01

mixture)		
Dinoseb	88-85-7	3.75E+01
di-n-Octyl phthalate	117-84-0	7.50E+02
1,4-Dioxane	123-91-1	4.13E+02
Dioxin (2,3,7,8-TCDD)	1746-01-6	5.63E+09
Diphenamid	957-51-7	1.13E+03
Diphenylamine	122-39-4	9.38E+02
1,2-Diphenylhydrazine	122-66-7	3E+04
Diphenyl sulfone	127-63-9	3.38E+02
Diquat	85-00-7	8.25E+01
Direct black 38	1937-37-7	3.23E+05
Direct blue 6	2602-46-2	3.04E+05
Direct brown 95	16071-86-6	3.49E+05
Disulfoton	298-04-4	1.50E+00
1,4-Dithiane	505-29-3	3.75E+02
Diuron	330-54-1	7.50E+01
Dodine	2439-10-3	1.50E+02
Endosulfan	115-29-7	2.25E+02
Endothall	145-73-3	7.50E+02
Endrin	72-20-8	1.13E+01
Epichlorohydrin	106-89-8	7.50E+01
1,2-Epoxybutane	106-88-7	2.14E+02
EPTC (S-Ethyl dipropylthiocarbamate)	759-94-4	9.38E+02
Ethephon (2-chloroethyl phosphonic acid)	16672-87-0	1.88E+02
Ethion	563-12-2	1.88E+01
2-Ethoxyethanol	110-80-5	1.50E+04
2-Ethoxyethanol acetate	111-15-9	1.13E+04
Ethyl acetate	141-78-6	3.38E+04
Ethyl acrylate	140-88-5	1.80E+03
Ethylbenzene	100-41-4	3.75E+03
Ethyl chloride	75-00-3	1.50E+04
Ethylene cyanohydrin	109-78-4	1.13E+04
Ethylene diamine	107-15-3	7.50E+02
Ethylene glycol	107-21-1	7.50E+04
Ethylene glycol, monobutyl ether	111-76-2	2.14E+02
Ethylene oxide	75-21-8	3.83E+04
Ethylene thiourea (ETU)	96-45-7	3E+00
Ethyl ether	60-29-7	7.50E+03
Ethyl methacrylate	97-63-2	3.38E+03
Ethyl p-nitrophenyl phenylphosphorothioate	2104-64-5	3.75E-01
Ethylphthalyl ethyl glycolate	84-72-0	1.13E+05
Express	101200-48-0	3E+02
Fenamiphos	22224-92-6	9.38E+00
Fluometuron	2164-17-2	4.88E+02
Flouride (soluble)	16984-48-8	2.25E+03
Fluoridone	59756-60-4	3E+03
Flurprimidol	56425-91-3	7.50E+02
Flutolanil	66332-96-5	2.25E+03
Fluvalinate	69409-94-5	3.75E+02
Folpet	133-07-3	1.31E+02
Fomesafen	72178-02-0	7.13E+03
Fonofos	944-22-9	7.50E+01
Formaldehyde	50-00-0	5.63E+03
Formic Acid	64-18-6	7.50E+04
Fosetyl-al	39148-24-8	1.13E+05
Furan	110-00-9	3.75E+01
Furazolidone	67-45-8	1.43E+05

Furfural	98-01-1	1.13E+02
Furium	531-82-8	1.88E+06
Furmecyclox	60568-05-0	1.13E+03
Glufosinate-ammonium	77182-82-2	1.50E+01
Glycidaldehyde	765-34-4	1.50E+01
Glyphosate	1071-83-6	3.75E+03
Haloxypop-methyl	69806-40-2	1.88E+00
Harmony	79277-27-3	4.88E+02
Heptachlor	76-44-8	1.88E+01
Heptachlor epoxide	1024-57-3	4.88E-01
Hexabromobenzene	87-82-1	7.50E+01
Hexachlorobenzene	118-74-1	3E+01
Hexachlorobutadiene	87-68-3	7.50E+00
HCH (alpha)	319-84-6	2.36E+05
HCH (beta)	319-85-7	6.75E+04
HCH (gamma) Lindane	58-89-9	1.13E+01
HCH-technical	608-73-1	6.75E+04
Hexachlorocyclopentadiene	77-47-4	2.63E+02
Hexachlorodibenzo-p-dioxin mixture (HxCDD)	19408-74-3	2.33E+08
Hexachloroethane	67-72-1	3.75E+01
Hexachlorophene	70-30-4	1.13E+01
Hexahydro-1,3,5-trinitro-1,3,5-triazine	121-82-4	1.13E+02
1,6-Hexamethylene diisocyanate	822-06-0	1.07E-01
n-Hexane	110-54-3	2.25E+03
Hexazinone	51235-04-2	1.24E+03
Hydrazine, hydrazine sulfate	302-01-2	1.13E+05
Hydrogen chloride	7647-01-0	NA
Hydrogen sulfide	7783-06-4	1.13E+02
p-Hydroquinone	123-31-9	1.50E+03
Imazalil	35554-44-0	4.88E+02
Imazaquin	81335-37-7	9.38E+03
Iprodione	36734-19-7	1.50E+03
Iron	7439-89-6	1.13E+04
Isobutanol	78-83-1	1.13E+04
Isophorone	78-59-1	3.56E+01
Isopropalin	33820-53-0	5.63E+02
Isopropyl methyl phosphonic acid	1832-54-8	3.75E+03
Isoxaben	82558-50-7	1.88E+03
Kepone	143-50-0	6.75E+05
Lactofen	77501-63-4	7.50E+01
Lead ¹	7439-92-1	NA
Lead (tetraethyl)	78-00-2	3.75E-03
Linuron	330-55-2	7.50E+01
Lithium	7439-93-2	7.50E+02
Londax	83055-99-6	7.50E+03
Malathion	121-75-5	7.50E+02
Maleic anhydride	108-31-6	3.75E+03
Maleic hydrazide	123-33-1	1.88E+04
Malononitrile	109-77-3	7.50E-01
Mancozeb	8018-01-7	1.13E+03
Maneb	12427-38-2	1.88E+02
Manganese and compounds	7439-96-5	1.75E+03
Mephosfolan	950-10-7	3.38E+00
Mepiquat	24307-26-4	1.13E+03
2-Mercaptobenzothiazole	149-30-4	1.09E+03
Mercury and compounds	7487-94-7	1.13E+01
Mercury (elemental)	7439-97-6	NA

Mercury (methyl)	22967-92-6	3.75E+00
Merphos	150-50-5	1.13E+00
Merphos oxide	78-48-8	1.13E+00
Metalaxyl	57837-19-1	2.25E+03
Methacrylonitrile	126-98-7	3.75E+00
Methamidophos	10265-92-6	1.88E+00
Methanol	67-56-1	1.88E+04
Methidathion	950-37-8	3.75E+01
Methomyl	16752-77-5	9.38E+02
Methoxychlor	72-43-5	1.88E+02
2-Methoxyethanol	109-86-4	3.75E+01
2-Methoxyethanol acetate	110-49-6	7.50E+01
2-Methoxy-5-nitroaniline	99-59-2	1.73E+03
Methyl acetate	79-20-9	3.75E+04
Methyl acrylate	96-33-3	1.13E+03
2-Methylaniline (o-toluidine)	95-53-4	9E+03
2-Methylaniline hydrochloride	636-21-5	6.75E+03
Methyl chlorocarbonate	79-22-1	3.75E+04
2-Methyl-4-chlorophenoxyacetic acid	94-74-6	1.88E+01
4-(2-Methyl-4-chlorophenoxy) butyric acid	94-81-5	3.75E+02
2-(2-Methyl-4-chlorophenoxy) propionic acid	93-65-2	3.75E+01
2-(2-Methyl-1,4-chlorophenoxy) propionic acid	16484-77-8	3.75E+01
Methylcyclohexane	108-87-2	3.23E+04
4,4'-Methylenebisbenzeneamine	101-77-9	9.38E+03
4,4'-Methylene bis(2-chloroaniline)	101-14-4	2.63E+01
4,4'-Methylene bis(N,N'-dimethyl)aniline	101-61-1	1.73E+03
Methylene bromide	74-95-3	3.75E+02
Methylene chloride	75-09-2	2.81E+02
4,4'-Methylene diphenyl diisocyanate	101-68-8	6.38E+00
Methyl ethyl ketone	78-93-3	2.25E+04
Methyl hydrazine	60-34-4	4.13E+04
Methyl isobutyl ketone	108-10-1	3E+03
Methyl Mercaptan	74-93-1	2.14E+01
Methyl methacrylate	80-62-6	5.25E+04
2-Methyl-5-nitroaniline	99-55-8	1.24E+03
Methyl parathion	298-00-0	9.38E+00
2-Methylphenol	95-48-7	1.88E+03
3-Methylphenol	108-39-4	1.88E+03
4-Methylphenol	106-44-5	1.88E+02
Methyl phosphonic acid	993-13-5	7.50E+02
Methyl styrene (mixture)	25013-15-4	2.25E+02
Methyl styrene (alpha)	98-83-9	2.63E+03
Methyl tertbutyl ether (MTBE)	1634-04-4	0E+00
Metolaclor (Dual)	51218-45-2	5.63E+03
Metribuzin	21087-64-9	9.38E+02
Mirex	2385-85-5	7.50E+00
Molinate	2212-67-1	7.50E+01
Molybdenum	7439-98-7	1.88E+02
Monochloramine	10599-90-3	3.75E+03
Naled	300-76-5	7.50E+01
Napropamide	15299-99-7	3.75E+03
Nickel (soluble salts)	7440-02-0	7.50E+02
Nickel refinery dust	NA	NA
Nickel subsulfide	12035-72-2	NA
Nitrapyrin	1929-82-4	5.63E+01
Nitrate	14797-55-8	NA
Nitric Oxide	10102-43-9	3.75E+03

Nitrite	14797-65-0	NA
2-Nitroaniline	88-74-4	2.25E+00
3-Nitroaniline	99-09-2	NA
4-Nitroaniline	100-01-6	NA
Nitrobenzene	98-95-3	1.88E+01
Nitrofurantoin	67-20-9	2.63E+03
Nitrofurazone	59-87-0	5.63E+04
Nitrogen dioxide	101102-44-0	3.75E+04
Nitroguanidine	556-88-7	3.75E+03
4-Nitrophenol	100-02-7	2.33E+03
2-Nitropropane	79-46-9	2.14E+02
N-Nitrosodi-n-butylamine	924-16-3	2.03E+05
N-Nitrosodiethanolamine	1116-54-7	1.05E+05
N-Nitrosodiethylamine	55-18-5	5.63E+06
N-Nitrosodimethylamine	62-75-9	1.91E+06
N-Nitrosodiphenylamine	86-30-6	1.84E+02
N-Nitroso di-n-propylamine	621-64-7	2.63E+05
N-Nitroso-N-methylethylamine	10595-95-6	8.25E+05
N-Nitrosopyrrolidine	930-55-2	7.88E+04
m-Nitrotoluene	99-08-1	3.75E+02
o-Nitrotoluene	99-08-1	3.75E+02
p-Nitrotoluene	99-99-0	3.75E+02
Norflurazon	27314-13-2	1.50E+03
NuStar	85509-19-9	2.63E+01
Octabromodiphenyl ether	32536-52-0	1.13E+02
Octahydro-1357-tetranitro-1357- tetrazocine (HMX)	2691-41-0	1.88E+03
Octamethylpyrophosphoramidate	152-16-9	7.50E+01
Oryzalin	19044-88-3	1.88E+03
Oxadiazon	19666-30-9	1.88E+02
Oxamyl	23135-22-0	9.38E+02
Oxyfluorfen	42874-03-3	1.13E+02
Pacllobutrazol	76738-62-0	4.88E+02
Paraquat	4685-14-7	1.69E+02
Parathion	56-38-2	2.25E+02
Pebulate	1114-71-2	1.88E+03
Pendimethalin	40487-42-1	1.50E+03
Pentabromo-6-chloro cyclohexane	87-84-3	8.63E+02
Pentabromodiphenyl ether	32534-81-9	7.50E+01
Pentachlorobenzene	608-93-5	3E+01
Pentachloronitrobenzene	82-68-8	1.13E+02
Pentachlorophenol	87-86-5	1.13E+03
Perchlorate	7601-90-3	1.88E+01
Permethrin	52645-53-1	1.88E+03
Phenmedipham	13684-63-4	9.38E+03
Phenol	108-95-2	2.25E+04
Phenothiazine	92-84-2	7.50E+01
m-Phenylenediamine	108-45-2	2.25E+02
p-Phenylenediamine	106-50-3	7.13E+03
Phenylmercuric acetate	62-38-4	3E+00
2-Phenylphenol	90-43-7	7.28E+01
Phorate	298-02-2	7.50E+00
Phosmet	732-11-6	7.50E+02
Phosphine	7803-51-2	1.13E+01
Phosphoric acid	7664-38-2	NA
Phosphorus (white)	7723-14-0	7.50E-01
p-Phthalic acid	100-21-0	3.75E+04

Phthalic anhydride	85-44-9	7.50E+04
Picloram	1918-02-1	2.63E+03
Pirimiphos-methyl	23505-41-1	3.75E+02
Polybrominated biphenyls		2.63E-01
Polychlorinated biphenyls (PCBs)	1336-36-3	7.50E+04
Aroclor 1016 (see PCBs for cancer endpoint)	12674-11-2	2.63E+00
Aroclor 1254 (see PCBs for cancer endpoint)	11097-69-1	7.50E-01
Polynuclear aromatic hydrocarbons (PAHs)		NA
Acenaphthene	83-32-9	2.25E+03
Anthracene	120-12-7	1.13E+04
Benz[a]anthracene	56-55-3	2.74E+04
Benzo[b]fluoranthene	205-99-2	2.74E+04
Benzo[k]fluoranthene	207-08-9	2.74E+03
Benzo[a]pyrene	50-32-8	2.74E+05
Chrysene	218-01-9	2.74E+02
Dibenz[ah]anthracene	53-70-3	2.74E+05
Fluoranthene	206-44-0	1.50E+03
Fluorene	86-73-7	1.50E+03
Indeno[1,2,3-cd]pyrene	193-39-5	2.74E+04
Naphthalene	91-20-3	7.50E+02
Pyrene	129-00-0	1.13E+03
Prochloraz	67747-09-5	3.38E+02
Profluralin	26399-36-0	2.25E+02
Prometon	1610-18-0	5.63E+02
Prometryn	7287-19-6	1.50E+02
Pronamide	23950-58-5	2.81E+03
Propachlor	1918-16-7	4.88E+02
Propanil	709-98-8	1.88E+02
Propargite	2312-35-8	7.50E+02
Propargyl alcohol	107-19-7	7.50E+01
Propazine	139-40-2	7.50E+02
Propham	122-42-9	7.50E+02
Propiconazole	60207-90-1	4.88E+02
Iso-Propylbenzene	104-5-18	3.75E+02
n-Propylbenzene	104-51-8	3.75E+02
Propylene glycol	57-55-6	7.50E+05
Propylene glycol, monoethyl ether	111-35-3	2.63E+04
Propylene glycol, monomethyl ether	107-98-2	2.63E+04
Propylene oxide	75-56-9	3.23E+02
Pursuit	81335-77-5	9.38E+03
Pydrin	51630-58-1	9.38E+02
Pyridine	110-86-1	3.75E+01
Quinalphos	13593-03-8	1.88E+01
Quinoline	91-22-5	4.50E+05
RDX (Cyclonite)	121-82-4	1.13E+02
Resmethrin	10453-86-8	1.13E+03
Ronnel	299-84-3	1.88E+03
Rotenone	83-79-4	1.50E+02
Savey	78587-05-0	9.38E+02
Selenious Acid	7783-00-8	1.88E+02
Selenium	7782-49-2	1.88E+02
Selenourea	630-10-4	1.88E+02
Sethoxydim	74051-80-2	3.38E+03
Silver and compounds	7440-22-4	1.88E+02
Simazine	122-34-9	1.88E+02
Sodium azide	26628-22-8	1.50E+02
Sodium diethyldithiocarbamate	148-18-5	1.13E+03

Sodium fluoroacetate	62-74-8	7.50E-01
Sodium metavanadate	13718-26-8	3.75E+01
Strontium, stable	7440-24-6	2.25E+04
Strychnine	57-24-9	1.13E+01
Styrene	100-42-5	7.50E+03
Sythane	88671-89-0	9.38E+02
2,3,7,8-TCDD (dioxin)	1746-01-6	5.63E+09
Tebuthiuron	34014-18-1	2.63E+03
Temephos	3383-96-8	7.50E+02
Terbacil	5902-51-2	4.88E+02
Terbufos	13071-79-9	9.38E-01
Terbutryn	886-50-0	3.75E+01
1,2,4,5-Tetrachlorobenzene	95-94-3	1.13E+01
1,1,1,2-Tetrachloroethane	630-20-6	9.75E+02
1,1,2,2-Tetrachloroethane	79-34-5	7.50E+03
Tetrachloroethylene (PCE)	127-18-4	3.75E+02
2,3,4,6-Tetrachlorophenol	58-90-2	1.13E+03
P,a,a,a-Tetrachlorotoluene	5216-25-1	7.50E+05
Tetrachlorovinphos	961-11-5	9E+02
Tetraethyldithiopyrophosphate	3689-24-5	1.88E+01
Tetrahydrofuran	109-99-9	3.21E+03
Thallic oxide	1314-32-5	2.63E+00
Thallium acetate	563-68-8	3.38E+00
Thallium carbonate	6533-73-9	3E+00
Thallium chloride	7791-12-0	3E+00
Thallium nitrate	10102-45-1	3.38E+00
Thallium selenite	12039-52-0	3.38E+00
Thallium sulfate	7446-18-6	3E+00
Thiobencarb	28249-77-6	3.75E+02
Thiocyanate	N/A	3.75E+03
2-(Thiocyanomethylthio)- benzothiazole (TCMTB)	21564-17-0	1.13E+03
Thiofanox	39196-18-4	1.13E+01
Thiophanate-methyl	23564-05-8	3E+03
Thiram	137-26-8	1.88E+02
Tin (inorganic, see tributyltin oxide for organic tin)	n/a	2.25E+04
Toluene	108-88-3	7.50E+03
Toluene-2,4-diamine	95-80-7	1.20E+05
Toluene-2,5-diamine	95-70-5	2.25E+04
Toluene-2,6-diamine	823-40-5	7.50E+03
p-Toluidine	106-49-0	7.13E+03
Toxaphene	8001-35-2	4.13E+04
Tralomethrin	66841-25-6	2.81E+02
Triallate	2303-17-5	4.88E+02
Triasulfuron	82097-50-5	3.75E+02
1,2,4-Tribromobenzene	615-54-3	1.88E+02
Tributyltin oxide (TBTO)	56-35-9	1.13E+01
2,4,6-Trichloroaniline	634-93-5	1.28E+03
2,4,6-Trichloroaniline hydrochloride	33663-50-2	1.09E+03
1,2,4-Trichlorobenzene	120-82-1	3.75E+02
1,1,1-Trichloroethane	71-55-6	1.31E+03
1,1,2-Trichloroethane	79-00-5	1.50E+02
Trichloroethylene (TCE)	79-01-6	2.25E+02
Trichlorofluoromethane	75-69-4	1.13E+04
2,4,5-Trichlorophenol	95-95-4	3.75E+03
2,4,6-Trichlorophenol	88-06-2	4.13E+02

2,4,5-Trichlorophenoxyacetic Acid	93-76-5	3.75E+02
2-(2,4,5-Trichlorophenoxy) propionic acid	93-72-1	3E+02
1,1,2-Trichloropropane	598-77-6	1.88E+02
1,2,3-Trichloropropane	96-18-4	2.25E+02
1,2,3-Trichloropropene	96-19-5	1.88E+02
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	1.13E+06
Tridiphane	58138-08-2	1.13E+02
Triethylamine	121-44-8	7.50E+01
Trifluralin	1582-09-8	2.81E+02
1,2,4-Trimethylbenzene	95-63-6	1.88E+03
1,3,5-Trimethylbenzene	108-67-8	1.88E+03
Trimethyl phosphate	512-56-1	1.39E+03
1,3,5-Trinitrobenzene	99-35-4	1.13E+03
Trinitrophenylmethylnitramine	479-45-8	3.75E+02
2,4,6-Trinitrotoluene	118-96-7	1.88E+01
Uranium Total	Utotal	1.13E+02
Vanadium	7440-62-2	2.63E+02
Vanadium pentoxide	1314-62-1	3.38E+02
Vanadium sulfate	13701-70-7	7.50E+02
Vernam	1929-77-7	3.75E+01
Vinclozolin	50471-44-8	9.38E+02
Vinyl acetate	108-05-4	3.75E+04
Vinyl bromide (bromoethene)	593-60-2	3.21E+01
Vinyl chloride	75-01-4	7.13E+04
Warfarin	81-81-2	1.13E+01
m-Xylene	108-38-3	7.50E+04
o-Xylene	95-47-6	7.50E+04
p-Xylene	106-42-3	NA
Zinc	7440-66-6	1.13E+04
Zinc phosphide	1314-84-7	1.13E+01
Zineb	12122-67-7	1.88E+03
Uranium-235 ²	U-235+D	6E-04
Uranium-238 ²	U-238+D	4.66E-04
Radium-226 ²	Ra-226+D	1.34E-04
Radium-228 ²	Ra-228+D	4.27E-05
Lead-210 ²	Pb-210+D	3.68E-05
Thorium-228 ²	Th-228+D	1.21E-04

¹ PRGs Based on EPA Models, IEUBK (1994) and TRW (1996)

² PRGs are calculated for the Parent and Progeny (Daughters "D") in Activity concentrations of pCi/g

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

SPOKANE TRIBAL HAZARDOUS SUBSTANCES CONTROL ACT APPENDIX C

Sediment cleanup levels for the Protection of Human Health and Sediment-Dwelling Organisms

The following discussion and Table, indicate the minimum numerical cleanup levels for contamination in sediments caused by the listed hazardous substances.

- (a) The Tribe has employed the exact same exposure factors and assumptions, herein, that were used to calculate cleanup levels for soils that are protective of Human Health (Appendix B).
- (b) Therefore, cleanup levels for sediments that are protective of human health are equivalent to those of soils, and have not been repeated herein (Consult Appendix B).
- (c) Table 1 indicates the sediment cleanup levels for the protection of sediment-dwelling organisms. These standards are modeled after those employed by the Confederated Tribes of the Colville Indian Reservation (CTCIR).

- (d) To the extent that there are 2 sediment standards for the same compound (in some instances both human health and sediment-dwelling organism based standards) the lower standard shall control.
- (e) Response actions must also comply with the following narrative standards for sediments.
- (f) In the case of a substance for which there is no numerical standard listed in the Table, concentrations of hazardous substances in sediments must meet criteria described for acceptable ecological risk
- (g) These numerical sediment cleanup levels and narrative sediment cleanup levels shall remain in effect until the Department of Natural Resources("Department") amends them.
- (h) The Department may also establish more stringent cleanup levels for a specific site, when, based on a site-specific evaluation, the Department determines that such levels are necessary to protect human health and the environment.

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

Table C1. Sediment Cleanup Levels Estimated to be Protective of Bottom Dwelling Organisms (after Confederated Tribes of the Colville Reservation)

Hazardous Substance	CAS No.	Sediment Cleanup Levels (µg/kg DW)
Metals		
Arsenic	7440-38-2	9.79
Cadmium	7440-43-9	0.99
Chromium	7440-47-3	43.4
Copper	7440-50-8	31.6
Lead	7439-92-1	35.8
Mercury	7439-97-6	0.18
Nickel	7440-02-0	22.7
Zinc	7440-66-6	121
Polycyclic Aromatic Hydrocarbons		
Anthracene	120-12-7	57.2
Fluorene	59756-60-4	77.4
Naphthalene	91-20-3	176
Phenanthrene	85-01-8	204
Benz[a]anthracene	56-55-3	108
Benzo(a)pyrene	50-32-8	150
Chrysene	218-01-9	166
Fluoranthene	206-44-0	423
Pyrene	129-00-0	195
Total PAHs	NA	1610
Polychlorinated Biphenyls		
Total PCBs	1336-36-3	59.8
Organochlorine Pesticides		
Chlordane	12789-03-6	3.24
Dieldrin	60-57-1	1.9
Sum DDD	NA	4.88
Sum DDE	NA	3.16
Sum DDT	NA	4.16
Total DDTs	NA	5.28
Endrin	72-20-8	2.22
Heptachlor Epoxide	1024-57-3	2.47
Lindane (gamma-BHC)	58-89-9	2.37

Legislative History-Adopted 12/22/03, Resolu. 2004-085; Readopted 8/01/06, Resolu. 2006-524.

CHAPTER 35 - SPOKANE TRIBE OF INDIANS FOR PROFIT CORPORATION CODE

Section 35-1 Title; Definitions; Purposes

35-1.01 Short Title. This Code shall be known and may be cited as the "Spokane Tribe of Indians Corporation Code."

Legislative History-Enacted, 5/19/03, Resolu. 2003-337

35-1.02 Definitions.

- (a) "Articles of Incorporation" include the original Articles of Incorporation and all amendments thereof and include Articles of Merger.
- (b) "Authorized shares" means the aggregate number of shares, whether with or without par value, which the corporation is authorized to issue.
- (c) "Corporation" means a corporation subject to the provisions of this Code.
- (d) "Court," except where otherwise specified, means the Spokane Tribal Court having jurisdiction over civil actions.
- (e) "Electronic transmission" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.
- (f) "Incorporator" means a signer of the original Articles of Incorporation.
- (g) "Registered office" means that office maintained by the corporation on the Reservation, the address of which is on file with the Tribe.
- (h) "Reservation" means the lands within the exterior boundaries of the Spokane Indian Reservation over which the Spokane Tribe has jurisdiction.
- (i) "Shareholder" means 1 who is a holder of record of shares in a corporation.
- (j) "Shares" are the units into which the shareholders' right to participate in the control of the corporation, in its surplus or profits, or in the distribution of its assets, are divided.
- (k) "Tribe" means the Spokane Tribe of Indians.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-1.03 Authorized Purposes for Organization of Corporation. Corporations for profit may be organized under this Code for any lawful purpose or purposes.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-1.04 General Powers. Each corporation shall have the power:

- (a) To have perpetual succession by its corporate name unless a limited period of duration is stated in its Articles of Incorporation;
- (b) To sue and be sued, complain, and defend in its corporate name;
- (c) To have a corporate seal and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;
- (d) To purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, and to own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest therein, wherever situated;
- (e) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;
- (f) To lend money to, and otherwise assist, its employees in compliance with corporate bylaws;
- (g) To make contracts and incur liabilities; to borrow money at such rates of interest as the corporation may determine without regard to the restrictions of any usury law; to issue its notes, bonds, and other obligations; and to secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income.
- (h) To make guarantees respecting the contracts, securities, or obligations of any person; including, but not limited to, any shareholder, affiliated or unaffiliated individual, domestic or foreign

corporation, partnership, association, joint venture, or trust, if such guarantee may reasonably be expected to benefit, directly or indirectly, the guarantor corporation.

- (1) As to the enforceability of the guarantee, the decision of the Board of Directors that the guarantee may be reasonably expected to benefit, directly or indirectly, the guarantor corporation shall be binding in respect to the issue of benefit to the guarantor corporation;
- (i) To invest its surplus funds from time to time and to lend money for its corporate purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned;
- (j) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this Code within and without the Reservation and to exercise in any reservation, state, territory, district, or possession of the United States, or in any foreign country, the powers granted by this Code, subject to the laws of such reservation, state, territory, district, or possession of the United States, or such foreign country;
- (k) To elect or appoint officers and agents of the corporation, and to define their duties and fix their compensation;
- (l) To make and alter Bylaws, not inconsistent with its Articles of Incorporation or with the laws of the Tribe, for the administration and regulation of the affairs of the corporation;
- (m) To make contributions to charitable organizations;
- (n) To cease its corporate activities and surrender its corporate franchise;
- (o) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed; and
- (p) To adopt provisions in its Articles of Incorporation or Bylaws providing for the indemnification of officers and directors, provided that any such provision shall not provide for any indemnification related to matters as to which any such director or officer shall be adjudged to be liable for negligence, misconduct, or nonfeasance in the performance of duty.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-1.05 Corporate Name. The corporate name:

- (a) Shall contain the word "corporation," "company," "incorporated," or "limited," or shall contain an abbreviation of 1 of such words;
- (b) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than 1 or more of the purposes contained in its Articles of Incorporation;
- (c) Shall not be the same as, or deceptively similar to, the name of any other entity licensed to do business by the Tribe.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-1.06 Incorporators. One or more natural persons of the age of 18 years or more may act as incorporators of a corporation by signing and filing in the Office of the Tribal Commerce Articles of Incorporation for such corporation.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-1.07 Construction. Any interpretation and administration of this Code may be coordinated with the RCW Washington Business Corporation Act.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

Section 35-2 Organic Documents

35-2.01 Articles of Incorporation-Contents.

- (a) The Articles of Incorporation shall set forth:
 - (1) The name of the corporation;
 - (2) The period of duration, which may be perpetual;
 - (3) The aggregate number of shares which the corporation shall have the authority to issue and the par value of each of said shares, or a statement that all of said shares are without par value;

- (4) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation;
- (5) Any provision limiting or denying to shareholders the right to cumulatively vote their shares;
- (6) Any provision regarding restrictions on alienation of stock by shareholders;
- (7) Any provision, not inconsistent with law, which the incorporators elect to set forth in the Articles of Incorporation for the regulation of the internal affairs of the corporation;
- (8) The address, including street and number, if any, of its principal office, and the name of its initial registered agent at such address;
- (9) The number of directors constituting the initial Board of Directors and the names and addresses, including street and number, if any, of the persons who are to serve as directors until the first annual meeting of shareholders; or until their successors be elected and qualified.

A. The minimum number of directors constituting the Board shall be 1;

- (10) The name and address, including street and number, if any, of each incorporator.

- (b) It shall not be necessary to set forth in the Articles of Incorporation any of the corporate powers enumerated in this Code. Whenever a provision of the Articles of Incorporation is inconsistent with a bylaw, the provision of the Articles of Incorporation shall be controlling.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-2.02 Effect of Issuance of Certificate of Incorporation. Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Code, except as against the Tribe in a proceeding to cancel or revoke the certificate of incorporation.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-2.03 Organization Meeting of Directors. After the issuance of the certificate of incorporation, an organizational meeting of the Board of Directors named in the Articles of Incorporation shall be held at the call of a majority of the directors so named to complete the organization of the company by appointing officers, adopting Bylaws, and carrying on any other business brought before the meeting.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-2.04 Bylaws.

- (a) The power to make, alter, amend, or repeal the Bylaws of the corporation shall be vested in the Board of Directors unless reserved to the shareholders by the Articles of Incorporation.
- (b) The Bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with this Code or the Articles of Incorporation.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

Section 35-3 Stock and Shareholders

35-3.01 Authorized Shares.

- (a) The Articles of Incorporation must prescribe the classes of shares and the number of shares of each class that the Corporation is authorized to issue.
- (b) If more than 1 class of shares is authorized, the Articles of Incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, voting powers, and relative rights of that class must be described in the Articles of Incorporation.
- (c) Preferences, limitations, voting powers, or relative rights of or on any class or series of shares or the holders thereof may be made dependent upon facts ascertainable outside the Articles of Incorporation, if the manner in which such facts shall operate on the preferences, limitations, voting powers, or relative rights of such class or series of shares or the holders thereof is set forth in the Articles of Incorporation.
- (d) All shares of a class must have preferences, limitations, voting powers, and relative rights identical with those of other shares of the same class.

- (e) The Articles of Incorporation must authorize 1 or more classes of shares that together have unlimited voting rights, and 1 or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.
- (f) The Articles of Incorporation may authorize 1 or more classes of shares that:
 - (1) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this title;
 - (2) Are redeemable or convertible as specified in the articles of incorporation:
 - A. at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;
 - B. for cash, indebtedness, securities, or other property;
 - C. in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;
 - (3) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or
 - (4) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the Corporation.
- (g) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (f) of this section is not exhaustive.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-3.02 Shares-Power to Issue.

- (a) Each corporation may issue the number of shares stated in its Articles of Incorporation.
- (b) Any issuance of shares must be authorized by the Board of Directors.
 - (1) Shares may be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.
- (c) A good faith determination by the Board of Directors that the consideration received or to be received for the shares to be issued is adequate is conclusive insofar as the adequacy of consideration relates to whether the shares are validly issued, fully paid, and nonassessable.
 - (1) When the Board of Directors has made such a determination and the corporation has received the consideration, the shares issued therefore are fully paid and nonassessable.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-3.03 Share Options.

- (a) Unless the Articles of Incorporation provide otherwise, a corporation may issue rights, options, or warrants for the purchase of shares of the corporation.
- (b) The Board of Directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the terms and conditions relating to their exercise, including the time or times, the conditions precedent, and the consideration for which and the holders by whom the rights, options, or warrants may be exercised.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-3.04 Stock Certificates.

- (a) The shares of a corporation shall be represented by certificates signed by the president, a vice-president, or the secretary or treasurer.
- (b) At a minimum, each share certificate must state on its face: the name of the issuing corporation; the name of the person to whom issued; and the number and class of shares and the designation of the series, if any, the certificate represents.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-3.05 Restriction on Transfer of Shares.

- (a) The Articles of Incorporation, Bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued

before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

- (b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate.

- (1) Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-3.06 Liability Shareholders. A shareholder of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which said shares were issued or to be issued.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-3.07 Voting of Shares; Exclusion of Shares of Corporation's Own Stock; Determination of Number of Outstanding Shares.

- (a) Unless otherwise provided in the Articles of Incorporation, each outstanding share shall be entitled to 1 vote on each matter submitted to a vote at a meeting of shareholders.

- (b) Shares of its own stock belonging to a corporation shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding shares at any given time, but shares of its own stock held by it in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding shares at any given time.

- (c) A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy.

- (1) Every proxy shall be revocable at the pleasure of the person executing it or his personal representatives or assigns; but the parties to a valid pledge or to an executory contract of sale may agree in writing as to which of them shall vote the stock pledged or sold until the contract of pledge or sale is fully executed.

- (d) In all elections for directors, every shareholder entitled to vote shall have the right to vote, in person or by proxy, the number of shares owned by him, for as many persons as there are directors to be elected.

- (1) If so provided in the Articles of Incorporation, shareholders may cumulate votes by multiplying the number of votes they are entitled to cast by the number of directors to be elected and to cast the product for a single candidate or distribute the product among 2 or more candidates.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-3.08 Shareholders' Meetings.

- (a) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the Bylaws.

- (1) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's Bylaws does not affect the validity of any corporate action.

- (b) Special meetings of the shareholders may be called by the president, the secretary, the Board of Directors, the holders of not less than 1/5 of all the outstanding shares entitled to vote, or by such other officers or persons as may be provided in the Articles of Incorporation or the Bylaws.

- (c) Meetings of shareholders may be held at such place within or without the boundaries of the Reservation as may be provided in the Bylaws.

- (1) In the absence of any such provision, all meetings shall be held at the principal office of the corporation.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-3.09 Notice.

- (a) Except as provided herein, written or printed notice stating the place, day, and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, in the absence of a provision in the Bylaws specifying a different period of notice, be delivered not less than 10 nor more than 50 days before the date of the meeting.
 - (1) Notice may be given by mail, personal delivery, or electronic transmission.
- (b) If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the records of the corporation, with postage thereon prepaid.
 - (1) Notices that are electronically transmitted shall be effective when sent. Notices sent by personal delivery shall be effective when received.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-3.10 Waiver of Notice.

- (a) A shareholder may waive any notice required by this Code, the Articles of Incorporation, or Bylaws before or after the date and time of the meeting that is the subject of such notice. Except as provided by subsections (b) and (c) of this section, the waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.
- (b) A shareholder's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.
- (c) A shareholder waives objection to consideration of a particular matter at a meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-3.11 Action Without Meeting.

- (a) Action required or permitted by this title to be taken at a shareholders' meeting may be taken without a meeting or a vote if the action is taken by all shareholders entitled to vote on the action.
- (b) The taking of action by shareholders without a meeting or vote must be evidenced by 1 or more written consents describing the action taken, signed by all shareholders and delivered to the corporation for inclusion in the minutes or filing with the corporate records.
- (c) A shareholder may withdraw consent only by delivering a written notice of withdrawal to the corporation prior to the time when consents sufficient to authorize taking the action have been delivered to the corporation.
- (d) Unless the written shareholder consent specifies a later effective date, action taken under this section is effective when consents sufficient to authorize taking the action have been delivered to the corporation.
- (e) A consent signed under this section has the effect of a meeting vote and may be described as such in any document, except that, if the action requires the filing of a certificate under any other section of this title, the certificate so filed shall state, in lieu of any statement required by that section concerning any vote of shareholders, that written consent has been obtained in accordance with this section.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-3.12 Shareholder Participation By Means of Communication Equipment.

- (a) If the Articles of Incorporation or Bylaws so provide, shareholders may participate in any meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each other during the meeting.
- (b) A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-3.13 Quorum of Shareholders Required.

- (a) Unless otherwise provided in the Articles of Incorporation or Bylaws, a majority of the outstanding shares having voting power, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders; *provided that* in no event shall a quorum consist of less than 1/3 of the outstanding shares having voting power.
- (b) The shareholders present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.
- (c) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present when any business may be transacted that may have been transacted at the meeting as originally called.
- (d) If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number is required by this Code, the Articles of Incorporation, or Bylaws, and except that, in elections of directors, those receiving the greatest number of votes shall be deemed elected even though not receiving a majority.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-3.14 Distributions.

- (a) The Board of Directors of a corporation may declare and the corporation may make distributions to its shareholders, subject to the restrictions by the Articles of Incorporation and the limitations in subsection (b) of this section.
- (b) No distribution may be made if, after giving it effect:
 - (1) The corporation would not be able to pay its debts as they become due in the usual course of business; or
 - (2) The corporation's total assets would be less than the sum of its total liabilities plus, unless the Articles of Incorporation permit otherwise, the amount that would be needed if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.
- (c) For purposes of determinations under subsection (b) of this section:
 - (1) The Board of Directors may base a determination that a distribution is not prohibited under subsection (b) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances; and
 - (2) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-3.15 Shareholders' Right of Inspection. A shareholder of a corporation or his agent may inspect and copy during usual business hours the following documents:

- (a) Articles of Incorporation and Bylaws;
- (b) Minutes of the proceedings of the shareholders and directors;
- (c) Financial statements for the last 3 years;
- (d) All communications to shareholders within the past 3 years; and
- (e) Names and addresses of current directors and officers.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-3.16 Statement of Affairs.

- (a) Once during each calendar year, each shareholder may present to any officer of the corporation a written request for a statement of its affairs.

- (b) Within 20 days after a request is made for a statement of a corporation's affairs, the corporation shall prepare and have available on file at its principal office a statement, verified under oath by its president or treasurer or 1 of its vice-presidents or assistant treasurer, which sets forth in reasonable detail the corporation's assets and liabilities as of a reasonably current date.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

Section 35-4 Board of Directors

35-4.01 Board of Directors-Powers Authorized; Qualifications.

- (a) The business and affairs of a corporation shall be managed by a Board of Directors.
- (1) Directors need not be shareholders in the corporation unless the Articles of Incorporation or Bylaws so provide.
- (2) The Articles of Incorporation or Bylaws may prescribe other qualifications for directors.
- (b) Unless otherwise provided in the Articles of Incorporation or Bylaws, the Board of Directors, by the affirmative vote of a majority of the directors then in office, and irrespective of any personal interest of any director, shall have authority to establish reasonable compensation of all directors for services to the corporation as directors, officers, or otherwise.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-4.02 Number; Election.

- (a) The number of directors of a corporation shall not be less than 3.
- (b) Subject to such limitation, the number of directors shall be fixed by the Bylaws, except as to the number constituting the first Board of Directors, which number shall be fixed by the Articles of Incorporation.
- (c) In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the Articles of Incorporation.
- (d) The names and addresses of the members of the first Board of Directors shall be stated in the Articles of Incorporation.
- (e) Such persons shall hold office until the first annual meeting of shareholders, until their successors shall have been elected and qualified.
- (f) Each director shall hold office for the term for which he is elected or until his successor shall have been elected and qualified.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-4.03 Classification.

- (a) The Bylaws may provide that the directors be divided into either 2 or 3 classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election.
- (b) At each annual meeting after such classification, the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting; if there be 2 classes, or until the third succeeding annual meeting; if there be 3 classes.
- (c) No classification of directors shall be effective prior to the first annual meeting of shareholders.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-4.04 Resignation of Directors.

- (a) A director may resign at any time by delivering written notice to the Board of Directors, its chairperson, the president, or the secretary.
- (b) A resignation shall be effective when the notice is delivered unless the notice specifies a later effective date.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-4.05 Removal of Directors By Shareholders.

- (a) The shareholders may remove 1 or more directors with or without cause unless the Articles of Incorporation provide that directors may be removed only for cause.
- (b) If cumulative voting is authorized, and if less than the entire Board is to be removed, no director may be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal.
 - (1) If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director.
- (c) A director may be removed by the shareholders only at a special meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or 1 of the purposes, of the meeting is removal of the director.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-4.06 Vacancies.

- (a) Any directorship to be filled by reason of an increase in the number of directors may be filled by election at an annual meeting or at a special meeting of shareholders entitled to vote called for that purpose.
- (b) Any vacancy occurring in the Board of Directors for any cause other than by reason of an increase in the number of directors may be filled by affirmative vote of a majority of the remaining directors, though less than a quorum of the Board of Directors, unless the Articles of Incorporation otherwise provide.
- (c) A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-4.07 Quorum; Meetings.

- (a) A majority of the number of directors fixed by the Bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the Articles of Incorporation shall constitute a quorum for the transaction of business unless a greater number is required by the Articles of Incorporation or the Bylaws.
- (b) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by the Articles of Incorporation or the Bylaws.
- (c) Unless the Articles of Incorporation or Bylaws provide otherwise, any or all directors may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating can hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-4.08 Action Without A Meeting.

- (a) Unless the Articles of Incorporation or Bylaws provide otherwise, action required or permitted by this Code to be taken at a Board of Directors' meeting may be taken without a meeting if the action is taken by all members of the Board.
- (b) The action must be evidenced by 1 or more written consents describing the action taken, signed by each director either before or after the action is taken, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.
- (c) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a later effective date.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-4.09 Committees; Powers.

- (a) Unless prohibited by the Articles of Incorporation, the Board of Directors may create 1 or more committees of directors.

- (b) Each committee shall consist of at least 2 members, who serve at the pleasure of the Board.
- (c) To the extent specified by the Board of Directors or in the Articles of Incorporation or Bylaws, each committee may exercise the authority of the Board of Directors.
- (d) Provisions of this Code regarding giving notice, action without a meeting, waiver of notice, quorum, and voting requirements of the Board of Directors shall apply to the committees and their members as well.
- (e) The designation of such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors or any member thereof any responsibility imposed upon it or him by law.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-4.10 Place of Meetings: Special Meetings. Meetings of the Board of Directors, regular or special, may be held at such place within or without the boundaries of the Reservation as may be provided in the Bylaws or by Resolution adopted by a majority of the Board of Directors.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-4.11 Notice of Meetings: Waiver of Notice.

- (a) Meetings of the Board of Directors shall be held upon such notice as is prescribed in the Bylaws.
- (b) Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.
- (c) Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-4.12 Waiver of Notice.

- (a) A director may waive any notice required by this Code, the Articles of Incorporation, or Bylaws before or after the date and time stated in the notice, and such waiver shall be equivalent to the giving of such notice. Except as provided by subsection (b) of this section, the waiver must be in writing, signed by the director entitled to the notice, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.
- (b) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-4.13 General Standards for Directors.

- (a) A director shall discharge the duties of a director, including duties as member of a committee:
 - (1) In good faith;
 - (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - (3) In a manner the director reasonably believes to be in the best interests of the corporation.
- (b) In discharging the duties of a director, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
 - (1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
 - (2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or
 - (3) A committee of the Board of Directors of which the director is not a member if the director reasonably believes the committee merits confidence.

- (c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.
- (d) A director is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-4.14 Liability For Unlawful Distributions.

- (a) A director who votes for or assents to a distribution made in violation of Section 35-3.14 of this Code or the Articles of Incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating Section 35-3.14 of this Code or the Articles of Incorporation if it is established that the director did not perform the director's duties in compliance with Section 35-3.14.
- (b) In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-4.15 Officers-Powers Authorized.

- (a) The officers of a corporation shall consist of the president and secretary and such other officers as may be prescribed by the Bylaws, each of whom shall be elected by the Board of Directors at such time and in such manner as may be prescribed by the Bylaws.
- (b) Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the Board of Directors or chosen in such other manner as may be prescribed by the Bylaws.
- (c) If the Bylaws so provide, any 2 or more offices may be held by the same person.
- (d) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the Bylaws, or as may be determined by Resolution of the Board of Directors not inconsistent with the Bylaws.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-4.16 Removal. Any officer or agent elected or appointed by the Board of Directors may be removed by a majority vote of the Board of Directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-4.17 Same-Execution of Documents. Notwithstanding any contrary provision of law, an individual who holds more than 1 office in a corporation may act in more than 1 capacity to execute, acknowledge, or verify any instrument required to be executed, acknowledged, or verified by more than 1 officer.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-4.18 Books and Records; Requirements for Right to Examine and Make Extracts There from.

- (a) Each corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its shareholders and Board of Directors; and shall keep at its principal place of business or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each.
- (b) Nothing herein contained shall impair the power of the court upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel by mandamus or otherwise the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

Section 35-5 Merger and Plan of Share Exchange

35-5.01 Merger.

- (a) One or more corporations may merge into another corporation if the Board of Directors of each corporation adopts and its shareholders, if required by Section 35-5.03 of this Code, approve a plan of merger.
- (b) The plan of merger must set forth:
 - (1) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;
 - (2) The terms and conditions of the merger; and
 - (3) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.
- (c) The plan of merger may set forth:
 - (1) Amendments to the Articles of Incorporation of the surviving corporation; and
 - (2) Other provisions relating to the merger.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-5.02 Share Exchange.

- (a) A corporation may acquire all of the outstanding shares of 1 or more classes or series of another corporation if the Board of Directors of each corporation adopts and its shareholders, if required by Section 35-5.03 of this Code, approve the exchange.
- (b) The plan of exchange must set forth:
 - (1) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;
 - (2) The terms and conditions of the exchange;
 - (3) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.
- (c) The plan of exchange may set forth other provisions relating to the exchange.
- (d) This section does not limit the power of a corporation to acquire all or part of the shares of 1 or more classes or series of another corporation through a voluntary exchange or otherwise.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-5.03 Action On Plan of Merger or Share Exchange.

- (a) After adopting a plan of merger or share exchange, the Board of Directors of each corporation party to the merger, and the Board of Directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection (f) of this section, or share exchange for approval by its shareholders.
- (b) For a plan of merger or share exchange to be approved:
 - (1) The Board of Directors must recommend the plan of merger or share exchange to the shareholders, unless the Board of Directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and
 - (2) The shareholders entitled to vote must approve the plan.
- (c) The Board of Directors may condition its submission of the proposed merger or share exchange on any basis.
- (d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with Section 35-3.09 of this Code.
- (e) The notice also must state that the purpose, or 1 of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

- (f) Unless this Code or the Articles of Incorporation require a greater vote, the plan of merger or plan of share exchange to be authorized must be approved by 2/3 of all the votes entitled to be cast on the plan.
- (g) The Articles of Incorporation may provide for a lesser vote than that provided in this subsection, so long as the vote provided for is not less than a majority of all the votes entitled to be cast on the plan of merger or share exchange.
- (h) Action by the shareholders of the surviving corporation on a plan of merger is not required if:
 - (1) The Articles of Incorporation of the surviving corporation will not differ from its Articles of Incorporation before the merger; and
 - (2) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights immediately after the merger;
- (i) After a merger or share exchange is authorized, and at any time before Articles of Merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the Board of Directors.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-5.04 Merger of Subsidiary.

- (a) A parent corporation owning at least 90 percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.
- (b) The Board of Directors of the parent shall adopt a plan of merger that sets forth:
 - (1) The names of the parent and subsidiary; and
 - (2) The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or part.
- (c) Within 10 days after the corporate action is taken, the parent shall mail a copy of the plan of merger to each shareholder of the subsidiary.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-5.05 Articles of Merger or Share Exchange. After a plan of merger or share exchange is approved by the shareholders, or adopted by the Board of Directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the Tribal Commerce Department for filing Articles of Merger or Share Exchange setting forth:

- (a) The plan of merger or share exchange;
- (b) If shareholder approval was not required, a statement to that effect; or
- (c) If approval of the shareholders of 1 or more corporations party to the merger or share exchange was required, a statement that the merger or share exchange was duly approved by the shareholders.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-5.06 Effect of Merger or Share Exchange.

- (a) When a merger takes effect:
 - (1) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;
 - (2) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;
 - (3) The surviving corporation has all liabilities of each corporation party to the merger;
 - (4) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

- (5) The Articles of Incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and
- (6) The former holders of the shares of every corporation party to the merger are entitled only to the rights provided in the Articles of Merger or to their rights under Article VII.

(b) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the Articles of Share Exchange or to their rights under Article VII.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

Section 35-6 Sale of Assets

35-6.01 Sale of Assets in Regular Course of Business.

(a) A corporation may on the terms and conditions and for the consideration determined by the Board of Directors:

- (1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business; or
- (2) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business.

(b) Unless the Articles of Incorporation require it, approval by the shareholders of a transaction described in subsection (a) of this section is not required.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-6.02 Sale of Assets Other Than in the Regular Course of Business.

(a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, other than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's Board of Directors, if the Board of Directors proposes and its shareholders approve the proposed transaction.

(b) For a transaction to be authorized:

- (1) The Board of Directors must recommend the proposed transaction to the shareholders unless the Board of Directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction.
- (2) The shareholders entitled to vote must approve the transaction.

(c) The Board of Directors may condition its submission of the proposed transaction on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with Article III, Section 9.

- (1) The notice must also state that the purpose, or 1 of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(e) Unless this Code or the Articles of Incorporation require a greater vote, the transaction to be authorized must be approved by two-thirds (2/3) of all the votes entitled to be cast on the plan. The Articles of Incorporation may provide for a lesser vote than that provided in this subsection, so long as the vote provided for is not less than a majority of all the votes entitled to be cast on the transaction to be authorized.

(f) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further shareholder action.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

Section 35-7 Dissenters' Rights

35-7.01 Definitions. As used in this chapter:

- (a) "Fair value," with respect to a dissenter's shares, means the value of the shares immediately before the effective date of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.
- (b) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-7.02 Right to Dissent.

- (a) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:
 - (1) Consummation of a plan of merger to which the corporation is a party (i) if shareholder approval is required for the merger by Section 35-5.01 of this Code or the Articles of Incorporation and the shareholder is entitled to vote on the merger, or (ii) if the corporation is a subsidiary that is merged with its parent under Section 35-5.04 of this Code;
 - (2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;
 - (3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within 1 year after the date of sale;
- (b) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this Code, the Articles of Incorporation, or the Bylaws, or is fraudulent with respect to the shareholder or the corporation.
- (c) The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any 1 of the following events:
 - (1) The proposed corporate action is abandoned or rescinded;
 - (2) The shareholder's demand for payment is withdrawn with the written consent of the corporation.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-7.03 Notice of Dissenters' Rights.

- (a) If proposed corporate action creating dissenters' rights is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this Code.
- (b) If corporate action creating dissenters' rights is taken without a vote of shareholders, the corporation, within 10 days after the effective date of such corporate action, shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice referred to in Section 35-7.05 of this Code.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-7.04 Notice of Intent to Demand Payment.

- (a) If proposed corporate action creating dissenters' rights is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights must:
 - (1) deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed action is effected; and

(2) not vote such shares in favor of the proposed action.

(b) A shareholder who does not satisfy the requirements of subsection (a) of this section is not entitled to payment for the shareholder's shares under this chapter.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-7.05 Dissenters' Notice.

(a) If proposed corporate action creating dissenters' rights is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of Section 35-7.04 of this Code.

(b) The dissenters' notice must be sent within 10 days after the effective date of the corporate action, and must:

(1) State where the payment demand must be sent and where and when certificates for shares must be deposited; and

(2) Set a date by which the corporation must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the date the notice in subsection (a) of this section is delivered.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-7.06 Duty to Demand Payment.

(a) A shareholder sent a dissenters' notice must demand payment and deposit the shareholder's certificates in accordance with the terms of the notice.

(b) The shareholder who demands payment and deposits the shareholder's share certificates under subsection (a) of this section retains all other rights of a shareholder until the proposed corporate action is affected.

(c) A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for the shareholder's shares under this chapter.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-7.07 Payment.

(a) Within 30 days of the later of the effective date of the proposed corporate action, or the date the payment demand is received, the corporation shall pay each dissenter who complied with Section 35-7.06 of this Code the amount the corporation estimates to be the fair value of the shareholder's shares, plus accrued interest.

(b) The payment must be accompanied by:

(1) The corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(2) An explanation of how the corporation estimated the fair value of the shares;

(3) An explanation of how the interest was calculated; and

(4) A statement of the dissenter's right to demand payment under Section 35-7.08 of this Code.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-7.08 Procedure if Shareholder Dissatisfied With Payment or Offer.

(a) A dissenter may notify the corporation in writing of the dissenter's own estimate of the fair value of the dissenter's shares and amount of interest due and demand payment of the dissenter's estimate, less any payment under Section 35-7.07 of this Code, and demand payment of the dissenter's estimate of the fair value of the dissenter's shares and interest due, if:

(1) The dissenter believes that the amount paid under Section 35-7.07 of this Code is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated;

(2) The corporation fails to make payment under Section 35-7.07 of this Code within 60 days after the date set for demanding payment; or

(3) The corporation does not affect the proposed action and does not return the deposited certificates within 60 days after the date set for demanding payment.

(b) A dissenter waives the right to demand payment under this section unless the dissenter notifies the corporation of the dissenter's demand in writing under subsection (a) of this section within 30 days after the corporation made or offered payment for the dissenter's shares.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-7.09 Court Action.

(a) If a demand for payment under Section 35-7.08 of this Code remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest.

(1) If the corporation does not commence the proceeding within the 60 day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(b) The corporation shall commence the proceeding in the court.

(c) (1) The court may appoint 1 or more persons as appraisers to receive evidence and recommend a fair valuation to the court. The appraisers have the powers described in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(d) which the court finds the fair value of the dissenter's shares, plus interest, exceeds the amount paid by the corporation.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-7.10 Court Costs and Counsel Fees.

(a) The court in a proceeding commenced under Section 35-7.09 of this Code shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court.

(1) The court shall assess the costs against the corporation, except that the court may assess the costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under Section 35-7.08 of this Code.

(b) The court may also assess the fees and expenses of counsel and experts for the respective parties in amounts the court finds equitable:

(1) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of this Code.

(2) Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided herein.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

Section 35-8 Dissolution

35-8.01 Dissolution By Board of Directors and Shareholders.

(a) A corporation's Board of Directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(1) The Board of Directors must recommend dissolution to the shareholders unless the Board of Directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(2) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e) of this section.

(c) The Board of Directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with Section 35-3.09 of this Code.

(1) The notice also must state that the purpose, or 1 of the purposes, of the meeting is to consider dissolving the corporation.

- (e) Unless this Code or the Articles of Incorporation require a greater vote, the proposal to dissolve must be approved by 2/3 of all the votes entitled to be cast on the plan.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-8.02 Articles of Dissolution.

- (a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Tribal Commerce Department for filing Articles of Dissolution setting forth:

- (1) The name of the corporation;
- (2) The date dissolution was authorized; and
- (3) If shareholder approval was required for dissolution, a statement that dissolution was duly approved by the shareholders.

- (b) A corporation is dissolved upon the effective date of its Articles of Dissolution.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-8.03 Effect of Dissolution.

- (a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

- (1) Collecting its assets;
- (2) Disposing of its properties that will not be distributed in kind to its shareholders;
- (3) Discharging or making provision for discharging its liabilities;
- (4) Distributing its remaining property among its shareholders according to their interests; and
- (5) Doing every other act necessary to wind up and liquidate its business and affairs.

- (b) Dissolution of a corporation does not:

- (1) Transfer title to the corporation's property;
- (2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
- (3) Prevent commencement of a proceeding by or against the corporation in its corporate name;
- (4) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
- (5) Terminate the authority of the registered agent of the corporation.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-8.04 Known Claims Against a Dissolved Corporation.

- (a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

- (b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

- (1) Describe information that must be included in a claim;
- (2) Provide a mailing address where a claim may be sent;
- (3) State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
- (4) State that the claim will be barred if not received by the deadline.

- (c) A claim against the dissolved corporation is barred:

- (1) If a claimant who was given written notice under subsection (2) of this section does not deliver the claim to the dissolved corporation by the deadline; or
- (2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

- (d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-8.05 Dissolution By Shareholders-Grounds.

- (a) The superior courts may dissolve a corporation in a proceeding by a shareholder if it is established that:
- (1) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;
 - (2) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
 - (3) The shareholders are deadlocked in voting power and have failed, for a period that includes at least 2 consecutive annual meeting dates, to elect successors to directors whose terms have expired, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;
 - (4) The corporate assets are being misapplied or wasted; or
 - (5) The corporation has ceased all business activity and has failed, within a reasonable time, to dissolve, to liquidate its assets, or to distribute its remaining assets among its shareholders;
- (b) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

Section 35-9 Registered Agent

35-9.01 Registered Agent Required. Each corporation shall have and continuously maintain on the Reservation a registered agent, which agent may be: either an individual resident on the Reservation or a corporation authorized by the Articles of Incorporation to act as such agent and authorized to transact business on the Reservation.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-9.02 Change.

- (a) A corporation may change its registered agent by filing with the Tribe a statement setting forth:
- (1) The name of the corporation;
 - (2) The name and address of its then registered agent;
 - (3) The name and address of its successor registered agent;
 - (4) The date upon which such change shall take effect; and
 - (5) That such change was authorized by Resolution duly adopted by its Board of Directors or was authorized by an officer of the corporation duly empowered to make such change.
- (b) The change of registered agent shall become effective upon the filing of such statement by the Tribe.
- (c) Any registered agent of a corporation may resign as such agent upon filing a written notice thereof with the Tribe, which shall forthwith mail a copy thereof to the corporation at its principal office on the Reservation as shown on the records of the Tribe.
- (1) The appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the Tribe or upon the appointment of a successor agent becoming effective, whichever occurs first.
 - (2) No fee or charge of any kind shall be imposed with respect to a filing under this subsection.
- (d) A registered agent may change his or her address by filing with the Tribe a statement setting forth:
- (1) The name of the registered agent;

- (2) The present address, including street and number, if any, of such registered agent;
 - (3) The names of the corporation or corporations represented by such registered agent at such address;
 - (4) The address, including street and number, if any, to which the office of such registered agent is to be changed; and
 - (5) The date upon which such change will take place.
- (e) The change of address of such registered agent as to the corporation named in such statement shall become effective upon the filing of such statement by the Tribe or on the date set forth in such statement as the date on which such change of location of such registered office will take place, whichever is later.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-9.03 Registered Agent as Agent For Service; Service When No Registered Agent.

- (a) The registered agent so appointed by a corporation shall be an agent of such corporation upon whom process against the corporation may be served, and upon whom any notice demand required or permitted by law to be served upon the corporation may be served.
- (1) Service of any process, notice, or demand upon a corporate agent, as such agent, may be made by delivering a copy of such process, notice, or demand to the president, vice-president, the secretary, or an assistant secretary of such corporate agent.
- (b) Whenever a corporation shall fail to appoint or maintain a registered agent on the Reservation, or whenever any such registered agent cannot with reasonable diligence be found at his or her office on the Reservation, then the Tribe shall be an agent of such corporation upon whom any process against such corporation may be served and upon whom any notice or demand required or permitted by law to be served upon such corporation may be served. Service upon the Tribe of any such process, notice, or demand shall be made by delivering to and leaving with the Tribe, or with any clerk having charge of its office, duplicate copies of such process, notice, or demand.
- (1) In the event any such process, notice, or demand is so served, the Tribe shall immediately cause 1 of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its principal office.
- (c) The Tribe shall keep a record of all processes, notices, and demands served upon it under this section, and shall record therein the time of such service and its action with respect thereto.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-9.04 Penalties Failure to Maintain Registered Agent. Any corporation incorporated or reincorporated under this Code which fails or refuses to maintain a registered agent on the Reservation, in accordance with the provisions of this Code, shall be subject to a civil fine by the Tribal Court.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

Section 35-10 Filings; Amendments

35-10.01 Articles of Incorporation Procedure for Filing.

- (a) An original of the Articles of Incorporation shall be delivered to the Tribal Commerce Department.
- (b) The certificate of incorporation, together with the original of the Articles of Incorporation affixed thereto by the Tribe, shall be delivered to the incorporators or their representatives.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-10.02 Amendment of Articles of Incorporation B Contents Restricted; Purposes. A corporation may amend its Articles of Incorporation, from time to time, in any and as many respects as may be desired; *provided, that* its Articles of Incorporation as amended contain only such provisions as might be lawfully contained in original Articles of Incorporation if made at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, or cancellation.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-10.03 Procedure. Amendments to the Articles of Incorporation shall be made in the following manner:

- (a) The Board of Directors shall adopt a Resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;
- (b) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this Code for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting;
- (c) At such meeting a vote of the shareholders entitled to vote shall be taken on the proposed amendment.
- (d) The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least 2/3 of the outstanding shares entitled to vote.
- (e) Any number of amendments may be submitted to the shareholders, and voted upon by them, at 1 meeting.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-10.04 Articles of Amendment-Contents.

- (a) The Articles of Amendment shall be executed by the corporation and shall set forth:
 - (1) The name of the corporation;
 - (2) The amendment so adopted;
 - (3) The date of the adoption of the amendment by the shareholders;
 - (4) The number of shares outstanding and the number of shares entitled to vote;
 - (5) The number of shares voted for and against such amendment, respectively;
 - (6) If such amendment provides for an exchange, reclassification, or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected;
 - (7) If such amendment effects a change in the amount of stated capital, or paid-in surplus, or both, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital and the amount of paid-in surplus as changed by such amendment.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-10.05 Procedure for Filing.

- (a) The original of the Articles of Amendment shall be delivered to the Tribal Commerce Department.
- (b) The certificate of amendment with the original of the Articles of Amendment affixed thereto shall be delivered to the corporation or its representative.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-10.06 Effect of Certificate of Amendment.

- (a) Upon the issuance of the certificate of amendment, the amendment shall become effective and the Articles of Incorporation shall be deemed to be amended accordingly.
- (b) No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which the corporation shall be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-10.07 Filing Requirements.

- (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies from these requirements, to be entitled to filing by the Tribal Commence Department.
- (b) The document must contain the information required by this Code.
 - (1) It may contain other information as well.

- (c) The document must be typewritten or printed, and must meet such legibility or other standards as may be prescribed by the Tribal Commence Department.
- (d) Unless otherwise indicated in this title, all documents submitted for filing must be executed:
 - (1) By the chairperson of the board of directors, by its president, or by another of its officers;
 - (2) If directors have not been selected or the corporation has not been formed, by an incorporator; or
 - (3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.
- (e) The person executing the document shall sign it and state beneath or opposite the signature the name of the person and the capacity in which the person signs.
 - (1) The document may but need not contain: (a) The corporate seal; (b) an attestation by the secretary or an assistant secretary; or (c) an acknowledgment, verification, or proof.
- (f) If the Tribal Commence Department has prescribed a mandatory form for any document, the document must be in or on the prescribed form.
- (g) The document must be delivered to the office of the Tribal Commence Department for filing and must be accompanied by 1 exact or conformed copy, the correct filing fee or charge, including license fee, penalty and service fee, and any attachments which are required for the filing.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-10.08 Filing Duty of Tribal Commerce Department.

- (a) If a document delivered to the office of the Tribal Commence Department for filing satisfies the requirements this Code, the Tribal Commence Department shall file it.
- (b) The Tribal Commence Department files a document by stamping or otherwise endorsing "Filed," together with the Tribal Commence Department's name and official title and the date of filing, on both the original and the document copy.
- (c) After filing a document, the Tribal Commence Department shall deliver the document copy to the corporation or its representative.
- (d) If the Tribal Commence Department refuses to file a document, the Tribal Commence Department shall return it to the corporation or its representative, together with a brief written explanation of the reason for the refusal.
- (e) The Tribal Commence Department's duty to file documents under this section is ministerial. Filing or refusal to file a document does not:
 - (1) Affect the validity or invalidity of the document in whole or part;
 - (2) Relate to the correctness or incorrectness of information contained in the document; or
 - (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

Section 35-11 Tribal Commerce Department; Fees and Charges

35-11.01 Tribal Commerce Department; Duties and Functions.

- (a) The Tribal Commerce Department shall be charged with the administration and enforcement of this Code.
 - (1) Said Department is authorized to employ such personnel as may be necessary for the administration of this Code.
- (b) Every certificate and other document or paper executed by the Department, in pursuance of any authority conferred upon it by this Code, and sealed with the seal of the Tribe, and all copies of such papers as well as of documents and other papers filed in accordance with the provisions of this Code, when certified by it and authenticated by said seal, shall have the same force and effect as evidence as would the originals thereof in any action or proceeding in any court and before a public officer, or official body.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-11.02 Fees and Charges.

- (a) There are hereby imposed the following fees and charges:
- (1) Fees for filing documents and issuing certificates;
 - (2) License fees;
 - (3) Miscellaneous charges.
 - (4) The Tribal Commerce Department shall charge for:
 - (5) Filing Articles of Incorporation, \$20;
 - (6) Filing amendment to Articles of Incorporation, \$20;
 - (7) Filing Articles of Merger or consolidation, \$20;
 - (8) Filing Articles of Dissolution, \$10;
 - (9) Filing statement of change of address of registered agent, \$1;
 - (10) Filing any other statement or report of a corporation, \$1;
 - (11) For furnishing a certified copy of any document/instrument, report, or paper relating to a corporation, \$5;
 - (12) For furnishing a certificate as to the status of a corporation or as to the existence or nonexistence of facts relating to corporations, \$10.

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

35-11.03 Penalties-Nonpayment of Fees.

- (a) The Tribal Commerce Department shall not file any articles, statements, certificates, reports, applications, notices, or other papers relating to any corporation organized under the provisions of this Code until all fees and charges provided to be paid in connection therewith shall have been paid to it or while the corporation is in default in the payment of any fees, charges, or penalties herein provided to be paid by or assessed against it.

- (1) Nothing in this section shall prevent the filing, without the payment of all such fees, charges, and penalties, of a written notice of resignation by a registered agent of a corporation.

- (b) No corporation required to pay a fee, charge, or penalty under this Code shall maintain on the Reservation any action at law or suit in equity until all such fees, charges, and penalties have been paid in full.

Legislative History: Enacted,10/14/04, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

**ARTICLES OF INCORPORATION
OF**

The undersigned, for the purpose of forming a corporation under the Spokane Tribe of Indians Corporation Code, hereby certifies and adopts the following Articles of Incorporation to be issued by the Spokane Tribe of Indians:

**ARTICLE I
GENERAL**

The Indian people of the Spokane Indian Reservation are duly organized under a Constitution as a federally recognized Indian Tribe know as the Spokane Tribe of Indians. The Tribal Council of the Spokane Tribe is the governing body of the Tribe and has retained inherent authority as both the body politic and body corporate of the Tribe to incorporate Tribal businesses. The Tribal Council has adopted the Spokane Tribe of Indians Corporation Code to further enable the incorporation of Tribal businesses. The terms of the Corporation Code, these Articles of Incorporation and the Bylaws of this Corporation provide for the internal regulation and management of the affairs of this corporation.

**ARTICLE II
NAME; DURATION**

The name of this Corporation shall be _____ . The period of duration for this Corporation shall be perpetual.

**ARTICLE III
STATUS**

This Corporation is organized, incorporated and granted its corporate powers, privileges and immunities under the laws of the Spokane Tribe as a Tribally chartered Tribal business corporation. This Corporation is a distinct legal entity and not the Spokane Tribe of Indians and its corporate activities, transactions, obligations, liabilities and property are not those of the said Tribe. Nothing in these Articles of Incorporation shall be deemed to have waived or to permit the Corporation to waive the Spokane Tribe of Indian's sovereign immunity from suit. This Corporation shall have the same immunity from taxation under federal law as the Spokane Tribe of Indians.

**ARTICLE IV
CORPORATE PURPOSES**

The purposes of this Corporation are as follows:

1. To engage in any type of lawful business, enterprise or venture related to _____.
2. To promote the economic development of the Spokane Tribe of Indians; and
3. To enable the Tribe to be self-sufficient and to provide economic support for the members of the Tribe.

**ARTICLE V
CORPORATE POWERS**

This Corporation shall have the power:

1. To have perpetual succession by its corporate name unless a limited period of duration is stated in its Articles of Incorporation;
2. To sue and be sued, in its corporate name in courts of competent jurisdiction within the United States. The United States Federal Courts shall be among the courts of competent jurisdiction. *Provided, however,* that this power does not authorize the levy of any judgment, lien, garnishment or attachment upon any property or income of this Corporation other than corporate property and income specifically mortgaged, pledge or assigned as collateral for its corporation debts or liabilities. *Provided further,* however, that solely for the purposes of suit brought against the corporation by a federal agency or its contractor relating to this Corporation's affairs with that agency or contractor, the levy of any judgment, lien, garnishment or attachment may also be had against corporate property and income not specifically mortgaged, pledged or assigned for that purpose;
3. To have a corporate seal and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;
4. To purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, and to own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest therein, wherever situated;
5. To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;
6. To lend money to, and otherwise assist, its employees;
7. To make contracts and incur liabilities; to borrow money at such rates of interest as the corporation may determine without regard to the restrictions of any usury law; to issue its notes, bonds, and other obligations; and to secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income.
8. To make guarantees respecting the contracts, securities, or obligations of any person; including, but not limited to, any shareholder, affiliated or unaffiliated individual, domestic or foreign corporation, partnership, association, joint venture, or trust, if such guarantee may reasonably be expected to benefit, directly or indirectly, the guarantor corporation. As to the enforceability of the guarantee, the decision of the Board of Directors that the guarantee may be reasonably

expected to benefit, directly or indirectly, the guarantor corporation shall be binding in respect to the issue of benefit to the guarantor corporation;

10. To invest its surplus funds from time to time and to lend money for its corporate purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned;
11. To conduct its business, carry on its operations, and have offices and exercise the powers granted by this Code within and without the Reservation and to exercise in any reservation, state, territory, district, or possession of the United States, or in any foreign country, the powers granted by this Code, subject to the laws of such reservation, state, territory, district, or possession of the United States, or such foreign country;
12. To elect or appoint officers and agents of the corporation, and to define their duties and fix their compensation;
13. To make and alter Bylaws, not inconsistent with its Articles of Incorporation or with the laws of the Tribe, for the administration and regulation of the affairs of the corporation;
14. To make contributions to charitable organizations;
15. To cease its corporate activities and surrender its corporate franchise;
16. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed; and
17. To adopt provisions in its Articles of Incorporation or Bylaws providing for the indemnification of officers and directors, provided that any such provision shall not provide for any indemnification delated to matters as to which any such director or officer shall be adjudged to be liable for negligence, misconduct, or nonfeasance in the performance of duty.

ARTICLE VI SHARES

The aggregate number of shares which this Corporation shall have authority to issue is _____ (_____) shares of common stock with _____ Dollar (\$_____) par value per share.

ARTICLE VII REPORTS BY BOARD OF DIRECTORS

This Corporation shall keep and maintain accurate books, records and minutes of proceedings by its Board of Directors; accurate financial records and copies of its annual reports for the past 5 years. The Board of Directors shall prepare a written annual report of its corporate affairs which shall contain a statement of the corporation's current assets and liabilities; a summary of significant events affecting corporate business affairs during the past 12 months; and a projection of next year's business activities.

ARTICLE VIII DISTRIBUTIONS

The Board of Directors of a corporation may declare and the corporation may make distributions to its shareholders, subject to the restrictions by the Articles of Incorporation and the limitations in subsection (b) of this section. No distribution may be made if, after giving it effect this Corporation would not be able to pay its debts as they become due in the usual course of business or this Corporation's total assets would be less than the sum of its total liabilities plus, unless these Articles of Incorporation permit otherwise, the amount that would be needed if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

ARTICLE IX REGISTERED AGENT

The registered agent of this Corporation and the street address of the registered office of this Corporation are as follows:

Registered Agent

Registered Office Address

The mailing address of this Corporation shall be _____.

**ARTICLE X
PREEMPTIVE RIGHTS**

Shareholders of this Corporation shall have preemptive rights to acquire additional shares offered for sale by this Corporation.

**ARTICLE XI
CUMULATIVE VOTING**

Shareholders of this Corporation shall have cumulative voting rights.

**ARTICLE XII
DIRECTORS**

The names and addresses of the initial directors of this Corporation are as follows:

<u>Name</u>	<u>Address</u>
_____	_____
_____	_____
_____	_____

The directors shall be divided into 2 or 3 classes as determined by the Board; provided, however, at least 2 directors shall be elected at each annual meeting of shareholders

**ARTICLE XIII
AMENDMENT OF ARTICLES OF INCORPORATION**

Amendments to the Articles of Incorporation shall be made in the following manner:

1. The Board of Directors shall adopt a Resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;
2. At such meeting a vote of the shareholders entitled to vote shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least 2/3 of the outstanding shares entitled to vote.

[ARTICLE XIII - Optional]

**ARTICLE XIV
MAJORITY SHAREHOLDER APPROVAL**

If a vote of the shareholders is required to authorize any of the following matters, such matters need be approved only by a majority of all votes of each voting group entitled to be cast on the matter:

1. Plan of Merger or Plan of Share Exchange.
2. Sale, lease, exchange, or other disposition of all or substantially all of the property of the Corporation, other than in the usual and regular course of business.

**ARTICLE XV
INCORPORATOR**

The name and address of the incorporator is _____.

IN WITNESS WHEREOF, the incorporator hereinabove named has executed these Articles of Incorporation this ____ day of _____, _____.

_____, Incorporator

CONSENT TO APPOINTMENT AS REGISTERED AGENT

I, _____, hereby consent to serve as Registered Agent for _____.

I understand that, as agent for the Corporation, it will be my responsibility to receive service of process in the name of the Corporation; to forward all mail to the Corporation; and to immediately notify the office of the Secretary of State in the event of my resignation, or of any changes in the registered office address of the Corporation for which I am agent.

Date: _____
_____, Registered Agent

Registered Office Address:

Legislative History-Enacted, 5/19/03, Resolu. 2003-337; Readopted 8/01/06, Resolu. 2006-524.

CHAPTER 36 NON-PROFIT CORPORATIONS

Section 36-1 Short Title

36-1.01 Short Title. This Code shall be known and may be cited as the Spokane Tribal Nonprofit Corporations Chapter.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-2 Definitions

36-2.01 Definitions.

- (a) "Articles of Incorporation" means the original articles of incorporation and all amendments thereto, including articles of merger or consolidation, and in the case of a corporation created by a special Code or Resolutions of the Tribal Council, means such special Code or Resolution and any amendments thereto.
- (b) "Board of Directors" means the group of persons vested with the management of the affairs of a corporation irrespective of the name by which such group is designated.
- (c) "By-laws" means the Code or Codes of Rules adopted for the regulation or management of the affairs of a corporation irrespective of the names or names by which such rules are designated.
- (d) "Corporation" or "Domestic Corporation" means a corporation chartered under the provisions of this Chapter.
- (e) "Court" means except, where otherwise specified, the Spokane Tribal Court.
- (f) "Insolvent" means that a corporation is unable to pay its debts as they become due in the usual course of its affairs.
- (g) "Member" means a person having membership rights in a corporation in accordance with the provisions of its articles of incorporation or by-laws.
- (h) "Not for Profit Corporation" means a corporation no part of the income of which is distributable to its members, directors, or officers; except nothing in this Chapter shall be construed as prohibiting the payment of reasonable compensation for services rendered and the making of distribution upon dissolution or final liquidation as permitted in this Chapter.
- (i) "Reservation" means the Spokane Indian Reservation.
- (j) "Tribal Department of Commerce" means the Department of the Spokane Tribal government designated to perform any function vested in it by this Chapter.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-3 Applicability

36-3.01 Applicability. The provisions of this Chapter shall apply to all corporations organized hereunder or which elect to accept the provisions of this Chapter.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-4 Purpose

36-4.01 Purpose. Corporations may be organized under this Chapter for any lawful purpose or purposes including, but not limited to, 1 or more of the following purposes: benevolent; religious, missionary; educational; scientific; research; literary; musical; social; athletic; patriotic; political; civil; professional; commercial; industrial; business; or trade association; mutual or civic improvement; promotion of the Arts.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-5 General Powers

36-5.01 General Powers. Each corporation shall have the power:

- (a) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;
- (b) To sue and be sued, complain and defend, in its corporate name;
- (c) To have a corporate seal which may be altered at pleasure and to use the same by causing it, or a facsimile thereof, to be impressed or affixed in any other manner reproduced;

- (d) To purchase, take, receive, lease, take by gift or bequest or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;
- (e) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;
- (f) To lend money to and otherwise assist its employees other than its officers and directors;
- (g) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, corporations, whether or not incorporated under this Chapter and whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligation of the United States, or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof or any Tribe;
- (h) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchise and income;
- (i) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;
- (j) To conduct its affairs, carry on its operations, hold property, and have offices and exercise the powers granted by this Chapter;
- (k) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation;
- (l) To make and alter by-laws, not inconsistent with its articles of incorporation or with the laws, Codes, and regulations of the Spokane Tribe and the United States, for the administration and regulation of the affairs of the corporation; and
- (m) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for religious, charitable, scientific research, or educational purposes, or for other purposes for which the corporation is organized.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-6 Defense of Ultra vires

36-6.01 Defense of Ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

- (a) In a proceeding by a member or a director against the corporation to enjoin the doing of any act, or the transfer of real or personal property by or to the corporation.
 - (1) If the act or transfer sought to be enjoined is being, or is to be, performed pursuant to any contract to which the corporation is a party, the Court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, as the case may be, compensation for the loss or damages sustained by either of them which may result from the action of the Court in setting aside and enjoining the performance of the contract shall not be awarded by the Court as a loss or damages sustained.
- (b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or trustee of the corporation; and
- (c) In a proceeding by the Department of Commerce as provided in this Chapter, to dissolve the corporation or in a proceeding by the Department of Commerce to enjoin the corporation from the transaction of authorized acts.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-7 Corporate Name

36-7.01 Corporate Name. The Corporate Name:

- (a) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than 1 or more of the purposes contained in its articles of incorporation; and
- (b) Shall not be the same as, or deceptively similar to the name of any corporation, whether for profit or not for profit organized under this Chapter or any other Code or Resolution of the Tribe to transact business or conduct affairs in the Reservation.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-8 Registered Office and Registered Agent

36-8.01 Registered Office and Registered Agent. Each corporation shall have and continuously maintain on this Reservation:

- (a) A registered office, and;
- (b) A registered agent.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-9 Registered Agent as an Agent for Service

36-9.01 Registered Agent as an Agent for Service.

- (a) The registered agent appointed by a corporation as provided in this Chapter shall be an agent of such corporation upon whom a process, notice, or demand required or permitted by law to be served upon the corporation may be served.
- (b) Whenever a corporation shall fail to appoint or maintain a registered agent in this Reservation or whenever its registered agent cannot, with reasonable diligence, be found at the registered office, then the Tribal Secretary shall be an agent of such corporation upon whom any such process, notice, or demand shall be made by delivering to and leaving with them, or with any clerk having charge of their office, duplicate copies of such process, notice or demand.
 - (1) In the event that any such process, notice or demand is served on the Tribal Secretary, he shall immediately cause 1 of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office.
- (c) The Tribal Secretary shall keep a record of all processes, notices, and demands served upon them under this Section, and shall keep a record therein the time of such service and their action with respect thereto.
- (d) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-10 Members

36-10.01 Members.

- (a) A corporation may have members or may have no members.
- (b) If the corporation has members, the manner of election or appointment and the qualifications and rights of the members shall be set forth in the articles of incorporation or the by-laws.
- (c) If the corporation has no members, that fact shall be set forth in the articles of incorporation.
- (d) A corporation may issue certificates evidencing membership therein.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-11 By-laws

36-11.01 By-laws.

- (a) The initial by-laws of a corporation shall be adopted by its Board of Directors.
- (b) The power to alter, amend, or repeal the by-laws or adopt new by-laws shall be vested in the Board of Directors unless otherwise provided in the articles of incorporation or the by-laws.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-12 Meetings of Members

36-12.01 Meetings of Members.

- (a) Meetings of members may be held at such place within or without the Reservation as may be provided in the by-laws or, where not inconsistent with the by-laws, in the notice of the meeting.
- (b) An annual meeting of the members shall be held at such time as may be provided in the by-laws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.
- (c) Special meetings of the members may be called by the president, the secretary, the Board of Directors, or by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the by-laws.
 - (1) In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having at least 1/20 of the votes to the cast at such meeting.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-13 Notice of Meeting Members

36-13.01 Notice of Meeting Members.

- (a) Written or printed notice stating the place, day and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall in the absence of a provision in the by-laws specifying a different period of notice, be delivered not less than 10 or more than fifty 50 days before the date of the meeting, either personally or by mail; or at the direction of the president, or the secretary or the officers or persons calling the meeting, to each member entitled to vote at such meeting.
- (b) If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-14 Voting

36-14.01 Voting.

- (a) Members shall not be entitled to vote except, as the right to vote shall be conferred by the articles of incorporation.
- (b) A member may vote in person, or unless the articles of incorporation or the by-laws otherwise provide, may vote by proxy executed in writing by the member or his duly authorized attorney-in-fact.
 - (1) No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy.
 - (2) Where the articles of incorporation or the by-laws so provide, voting on all matters including the election of directors or officers where they are to be elected by the members may be conducted by mail.
- (c) The articles of incorporation or the by-laws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give 1 candidate a number of votes equal to his vote multiplied by the number of directors to be elected or by distributing such votes on the same principle among any number of such candidates.
- (d) If a corporation has no members or if the members have no right to vote, the directors shall have the sole voting power and shall have all of the authority and may take any action herein permitted by members.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-15 Quorum

36-15.01 Quorum.

- (a) The by-laws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members.
- (b) In the absence of any such provisions, members having at least 1/10 of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this Chapter, the articles of incorporation or the by-laws.
- (c) Unless otherwise provided by the articles of incorporation or the by-laws, the members present at a duly organized meeting may continue to do business until adjournment notwithstanding the withdrawal of enough members to leave less than a quorum.
- (d) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present, when any business may be transacted that may have been transacted at the meeting as originally called.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-16 Board of Directors

36-16.01 Board of Directors.

- (a) The affairs of a corporation shall be managed by a Board of Directors. Directors need not be residents of the Reservation or members of the corporation unless the articles of incorporation or the by-laws so require.
- (b) The articles of incorporation or the by-laws may prescribe other qualifications for directors.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-17 Number, Election, Classification and Removal of Directors

36-17.01 Number, Election, Classification and Removal of Directors.

- (a) The number of directors of a corporation shall be not less than 3.
 - (1) Subject to such limitation, the number of directors shall be fixed by the by-laws, except as to the number of the first Board of Directors, which number shall be fixed by the articles of incorporation.
 - (2) The number of directors may be increased or decreased from time to time by amendment to the by-laws unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation.
 - (3) No decrease in number shall have the effect of shortening the term of any incumbent director.
 - (4) In the absence of a by-law fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.
- (b) The names and addresses of the members of the first Board of Directors shall be stated in the articles of incorporation.
 - (1) Such persons shall hold office until the first annual election of directors or for such period as may be specified in the articles of incorporation or the by-laws.
 - (2) Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the by-laws.
 - (3) In the absence of a provision fixing the term of office, the term of office of a director shall be 1 year.
- (c) Directors may be divided into classes; the terms of office of the several classes need not be uniform.
 - (1) Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified, exception the case of ex officio directors.

- (d) A director may be removed from office pursuant to any procedure therefore provided in the articles of incorporation or the by-laws, and if none be provided, may be removed at a meeting called expressly for that purpose, with or without cause, by such vote as would suffice for his election.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-18 Vacancies

36-18.01 Vacancies.

- (a) Any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the then members of the Board of Directors, though less than a quorum of the board, unless the articles of incorporation or the by-laws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control.
- (b) A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-19 Quorum of Directors

36-19.01 Quorum of Directors.

- (a) A majority of the number of directors fixed by the by-laws, or in the absence of a by-law fixing the number of directors, then of the number stated in the articles of incorporation shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation, or the by-laws, but in no event shall a quorum consist of less than 1/3 of the number of directors so stated or fixed.
- (b) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by this Chapter or by the articles of incorporation or by-laws.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-20 Committees

36-20.01 Committees.

- (a) If the articles of incorporation or the by-laws provide, the Board of Directors, by Resolution adopted by a majority of the directors in office, each of which shall consist of 2 or more directors, which committees, to the extent provided in said Resolution, in the articles of incorporation or in the by-laws of the corporation, shall have and exercise the authority of the Board of Directors in the management of the corporation.
- (b) Other committees not having the exercising the authority of the Board of Directors in the management of the corporation may be designated and appointed by Resolution adopted by a majority of the directors present at a meeting at which a quorum is present.
- (c) The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual director, of any responsibility imposed upon it or him by law.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-21 Place and Notice of Directors' Meetings

36-21.01 Place and Notice of Directors' Meetings.

- (a) Meetings of the Board of Directors, regular or special, may be held at such place within or without the Reservation, and upon such notice as may be prescribed by the by-laws, or where not inconsistent with the by-laws, by Resolution of the Board of Directors.
- (b) A director's attendance at any meeting shall constitute a waiver of notice of such meeting, excepting such attendance at a meeting by the director for the purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

- (c) Neither the business to be transacted, nor the purpose of any regular or special meeting of the Board of Directors need be specified in the notice or waiver of such notice, of such meeting, unless otherwise provided in the articles of incorporation or the by-laws.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-22 Officers

36-22.01 Officers.

- (a) The officers of a corporation shall consist of a president, a secretary, and a treasurer, and may include 1 or more vice-presidents, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding 3 years as may be prescribed in the articles of incorporation or the by-laws.
- (1) In the absence of any such provision, all officers shall be elected or appointed annually by the Board of Directors.
- (2) If the by-laws so provide, any 2 or more offices may be held by the same person, except the offices of president and secretary.
- (b) The articles of incorporation or the by-laws may provide that any 1 or more officers of the corporation or other organizations shall be ex officio members of the Board of Directors.
- (c) The officers of a corporation may be designated by such other titles as may be provided in the articles of incorporation or the by-laws.
- (d) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be determined re Resolution of the Board of Directors not inconsistent with the by-laws.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-23 Removal of Officers

36-23.01 Removal of Officers.

- (a) Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint such officer or agent whenever, in their judgment, the best interest of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.
- (b) Election or appointment of an officer or agent shall not itself create contract rights.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-24 Books and Records

36-24.01 Books and Records.

- (a) Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, Board of Directors, and committees having any of the authority of the Board of Directors; and shall keep at its registered office or principle office on the Reservation, a record of the names and addresses of its members entitled to vote.
- (b) All books and records of a corporation may be inspected by any member having voting rights, or his agent or attorney for any proper purpose at any reasonable time.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-25 Shares of Stock and Dividends Prohibited

36-25.01 Shares of Stock and Dividends Prohibited.

- (a) A corporation organized under this Chapter shall not authorize or issue shares of stock.
- (b) No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors, or officers.
- (c) A corporation may pay compensation, including pensions, in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in

conformity with its purposes, and upon dissolution or final liquidation, may make distribution to its members or others as permitted by this Chapter.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-26 Loans to Directors and Officers Prohibited

36-26.01 Loans to Directors and Officers Prohibited.

- (a) No loans shall be made by a corporation organized under this Chapter to its directors or officers.
- (b) The directors of a corporation who vote for or assent to the making of a loan to a director or an officer of the corporation, and any officer participating in the making of such a loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-27 Incorporators

36-27.01 Incorporators. Three or more natural persons of the age of 21 years or more may act as incorporators of a corporation by signing, certifying, and delivering in duplicate to the Tribal Secretary, articles of incorporation for such corporation.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-28 Articles of Incorporation

36-28.01 Articles of Incorporation.

- (a) The articles of incorporation shall set forth:
 - (1) The name of the corporation;
 - (2) The period of duration, which may be perpetual;
 - (3) The purpose or purposes for which the corporation is organized;
 - (4) If the corporation is to have no members, a statement to that effect;
 - (5) If the corporation is to have members, any provision which the incorporators elect to set forth in the articles of incorporation stating the qualifications and rights of members and conferring, limiting, or denying the right to vote;
 - (6) If the directors or any of them are not to be elected or appointed by members, a statement of the manner in which such directors shall be elected or appointed, or that the manner of such election or appointment of such directors shall be provided in the by-laws.
 - (7) Any provisions, not inconsistent with this Chapter or any other law or Code of the Spokane Tribe which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation and any provisions which under this Chapter is required or permitted to be set forth in the by-laws;
 - (8) The address, including street and number, if any, of its initial registered office, and the name of its initial registered agent at such address;
 - (9) The number of directors constituting the initial board of directors, and the names and addresses, including street and number, if any, of the persons who are to serve as the initial directors until the first annual meeting or until their successors be elected and qualify; and
 - (10) The name and address, including street and number, if any of each incorporator.
- (b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Chapter.
- (c) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the by-laws shall be controlling.
 - (1) Whenever a provision of the articles of incorporation is inconsistent with the by-law, the provision of the articles of incorporation shall be controlling.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-29 Filing of Articles Incorporation

36-29.01 Filing of Articles Incorporation.

- (a) Duplicate originals of the articles of incorporation shall be delivered to the Tribal Department of Commerce.
 - (1) The Tribal Department of Commerce may by regulation set fees for filing articles and other filings under this Chapter.
- (b) If the Tribal Department of Commerce finds that the articles of incorporation conform to law, they shall, when all fees and charges have been paid as under this Chapter prescribed:
 - (1) Endorse on each of such duplicate originals the work "Filed" and the month, day, and year of filing thereof;
 - (2) File 1 of such duplicate original in their office;
 - (3) Issue a certificate of incorporation to which they shall affix the other duplicate original; and
 - (4) Deliver the certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto, to the incorporators or their representative.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-30 Effect of Issuant of Certificate of Incorporation

36-30.01 Effect of Issuant of Certificate of Incorporation.

- (a) Upon the incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the corporation have been complied with and that the corporation has been incorporated under this Chapter, except as against the Spokane Tribe in a proceeding to cancel or revoke the certificate of incorporation.
- (b) A corporation organized under this Chapter shall in all matters be subject to the jurisdiction of the Spokane Tribe and the Spokane Tribal Court.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-31 Organization Meeting

36-31.01 Organization Meeting.

- (a) After the issuance of the certificate of incorporation, an organization meeting of the Board of Directors named in the articles of incorporation shall be held within the Reservation at the call of a majority of the directors so named for the purpose of adopting by-laws, unless the power to adopt by-laws has been reserved by the articles of incorporation to the members, in which event the by-laws shall be adopted by the members; electing officers; and the transaction of such other business as may come before the meeting.
 - (1) The directors calling the meeting shall give at least 5 days notice thereof by mail to each director so named; which notice shall state the time and place of the meeting; provided, however, that if all the directors shall waive notice in writing and fix a time and place for said organization meeting, no notice shall be required of such meeting.
- (b) A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least 5 days notice, for such purposes as shall be stated in the notice of the meeting.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-32 Right to Amend Articles of Incorporation

36-32.01 Right to Amend Articles of Incorporation. A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired; provided that its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-33 Procedure to Amend Articles of Incorporation

36-33.01 Procedure to Amend Articles of Incorporation. Amendment to the articles of incorporation shall be made in the following manner:

- (a) Where there are members having voting rights, the Board of Directors shall adopt a Resolution setting forth the proposed amendment and directing that it is to be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting;
- (b) Written or printed notice setting forth the proposed amendment or a summary of the changes to be affected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Chapter for the giving of notice of meetings of members.
 - (1) If the meeting is an annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting;
- (c) The proposed amendment shall be adopted upon receiving the affirmative vote of at least 2/3 of the votes entitled to be cast by members present or represented by proxy at such meeting;
- (d) Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the Board of Directors upon receiving the vote of a majority of the Directors in office; and
- (e) Any number of amendments may be submitted and voted upon at any 1 meeting.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-34 Articles of Amendment

36-34.01 Articles of Amendment. The articles of amendment shall be executed in duplicate by the corporation; by its president or vice-president, and the corporate seal shall be there to affixed, attested by its secretary or an assistant secretary, and shall set forth:

- (a) The name of the corporation;
- (b) The amendment so adopted;
- (c) Where there are members having voting rights;
 - (1) A statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least 2/3 of the votes entitled to be cast by members present or represented by proxy at such meeting; or
 - (2) A statement that such amendment was adopted by consent in writing signed by all members entitled to vote with respect thereto.
- (d) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the Board of Directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-35 Filing of Articles of Amendment

36-35.01 Filing of Articles of Amendment.

- (a) Duplicate originals of the articles of amendment shall be delivered to the Tribal Secretary.
- (b) If the Tribal Department of Commerce finds that the articles of amendment conform to law, they shall, when all fees and charges have been paid as in this Chapter prescribed:
 - (1) Endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;
 - (2) File 1 of such duplicate originals in their office;
 - (3) Issue a certificate of amendment to which they shall affix the other duplicate original; and
 - (4) Deliver the certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto, to the corporation or its representative.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-36 Effect of Certificate of Amendment

36-36.01 Effect of Certificate of Amendment.

- (a) Upon the issuance of the certificate of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.
- (b) No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-37 Voluntary Dissolution

36-37.01 Voluntary Dissolution. A corporation may dissolve and wind up its affairs in the following manner:

- (a) Where there are members having voting rights, the Board of Directors shall adopt a Resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights, which may be either an annual meeting or a special meeting.
 - (1) Written or printed notice stating that the purpose, or 1 of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time frame and in the manner provided in this Chapter, for the giving of notice of meetings to members.
 - (2) A Resolution to dissolve the corporation shall be adopted upon receiving at least 2/3 of the votes entitled to be cast by members present or represented by proxy at such meetings;
- (b) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the Board of Directors upon the adoption of a Resolution to dissolve by the vote of a majority of the directors in office; and
- (c) Upon adoption of such Resolution by the members, or by the Board of Directors where there are no members or members with voting rights, the corporation shall cease to conduct its affairs except insofar as may be necessary for the winding up thereof; shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation and shall proceed to collect its assets and apply and distribute them as provided in this Chapter.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-38 Distribution of Assets

36-38.01 Distribution of Assets. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

- (a) All liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provisions shall be made therefore;
- (b) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements;
- (c) Assets received and held by the corporation subject to limitations, permitting their use only for charitable, religious, missionary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred, or conveyed to 1 or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this Chapter;
- (d) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws to the extent that the articles of incorporation or by-laws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others; and

- (e) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, as may be specified if a plan of distribution is adopted as provided in this Chapter.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-39 Plan for Distribution

36-39.01 Plan for Distribution. A plan providing for the distribution of assets, not inconsistent with the provisions of this Chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this Chapter requires a plan for distribution, in the following manner:

- (a) Where there are members having voting rights the Board of Directors shall adopt a Resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at the meeting of members having voting rights, which may be either an annual or special meeting.
 - (1) Written or printed notice stating that the purpose, or 1 of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such a meeting within the time and in the manner provided in this Chapter for the giving of notice of meetings of members.
 - (2) A Resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two 2/3 of the votes entitled to be cast by members present or represented by proxy at such meeting;
- (b) Where there are no members, or no members having voting rights, a Resolution to revoke the voluntary dissolution proceeding shall be adopted at a meeting of the Board of Directors upon receiving the vote of a majority of the directors in office; and
- (c) Upon adoption of such Resolution by the members, or by the Board of Directors, where there are no members or no members with voting rights, the corporation may there upon again conduct its affairs.
 - (1) If the articles of dissolution have been delivered to the Tribal Secretary, notice of such revocation shall be given to them in writing.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-40 Articles of Dissolution

36-40.01 Articles of Dissolution. If voluntary dissolution proceedings have not been revoked; when all debts, liabilities, and obligations of the corporation shall have been made therefore, and all of the remaining property and assets of the corporation shall have been transferred, conveyed, or distributed in accordance with the provisions of this Chapter, articles of dissolution shall be executed in duplicate by the corporation; by its president or a vice-president, and the corporation seal shall be thereto affixed and attested by its secretary or an assistant secretary, and such statement shall set forth:

- (a) The name of the corporation;
- (b) Where there are members having voting rights;
 - (1) A statement setting forth the date of the meeting of members at which the Resolution to dissolve was adopted, that a quorum was present at such meeting, and that such Resolution received at least 2/3 of the votes entitled to be cast by members or represented by proxy at such meetings; or
 - (2) A statement that such Resolution was adopted by consent in writing signed by all members entitled to vote with respect thereto;
- (c) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the Board of Directors at which the Resolution to dissolve received the vote of a majority of the directors in office;
- (d) That all debts, liabilities, and obligations of the corporation have been paid and discharged or that adequate provision has been made therefore;
- (e) That all the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with the provisions of this Chapter; and

- (f) That there are no suits pending against the corporation in any Court, or that adequate provisions have been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-41 Filing of Articles of Dissolution

36-41.01 Filing of Articles of Dissolution.

- (a) Duplicate originals of such articles of dissolution shall be delivered to the Tribal Department of Commerce.
- (b) If the Tribal Department of Commerce finds that such articles of dissolution conform to law, it shall, when all fees and charges have been paid as in this Chapter prescribed:
- (1) Endorse on each of such duplicate original the word "filed", and the month, day, and year of such filing thereof;
 - (2) File 1 of such duplicate original in their office;
 - (3) Issue a certificate of dissolution to which they shall affix the other duplicate original; and
 - (4) Deliver the certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto, to the representative of the dissolved corporation.
- (c) Upon the issuance of such certificate of dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by members, directors, and officers as provided in this Chapter.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-42 Involuntary Dissolution

36-42.01 Involuntary Dissolution.

- (a) A corporation may be dissolved involuntarily by a decree of the Court in an action instituted by the Tribal Department of Commerce in the name of the Spokane Tribe, when it is made to appear to the Court that:
- (1) The franchise of the corporation was procured through fraud; or
 - (2) The corporation has continued to exceed or abuse the authority conferred upon it by this Chapter; or
 - (3) The corporation has failed for 90 days to appoint and maintain a registered agent as provided in this Chapter; or
 - (4) The corporation has failed for 90 days after change of its registered office or registered agent to deliver to the Tribal Department of Commerce statement of such change.
- (b) At least 30 days before any action for the involuntary dissolution of a corporation shall be filed by the Tribal Department of Commerce, it shall notify the corporation by certified or registered mail addressed to such corporation at its registered office, a notice of their intention to file such suit and the reasons therefore.
- (1) If, before action is filed, the corporation shall submit satisfactory evidence that said franchise was not procured through fraud or that the corporation has not exceeded or abused such authority or shall appoint or maintain a registered agent as provided in this Chapter, or deliver to the Tribal Department of Commerce, the required statement of change or registered agent, the Tribal Department of Commerce shall not file an action against such a corporation for such cause.
 - (2) If, after action is filed, for a reason stated in paragraph 3 or 4 of the preceding subsection the corporation shall, as the case may be, appoint or maintain a registered agent as provided in this Chapter, or shall deliver to the Tribal Department of Commerce, the required statement of change of registered agent, and shall pay the costs of such action, the action for such cause shall abate.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-43 Jurisdiction of Court to Liquidate Assets and Affairs of Corporation

36-43.01 Jurisdiction of Court to Liquidate Assets and Affairs of Corporation. The Spokane Tribal Court shall have full power to liquidate the assets and affairs of a corporation. In any action by a member or director when it is made to appear:

- (a) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by that reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or
- (b) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or
- (c) That the corporate assets are being misapplied or wasted; or
- (d) That the corporation is unable to carry out its purposes.
- (e) In an action by a creditor:
 - (1) When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or
 - (2) When the corporation has admitted in writing and the claims of the creditor is due and owing and it is established that the corporation is insolvent;
- (f) Upon application by a corporation to have its dissolution continued under the supervision of the Court;
- (g) When an action has been commenced by the Tribal Secretary to dissolve a corporation and it is made to appear that liquidation of its affairs should precede the entry of a decree of dissolution;
- (h) It shall not be necessary to make directors or members parties to any such action or proceeding unless relief is sought against them personally.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-44 Procedure in Liquidation of Corporation by Court

36-44.01 Procedure in Liquidation of Corporation by Court.

- (a) In proceedings to liquidate the assets and affairs of a corporation, the Court shall have the power to issue injunctions, to appoint receivers pendente lite, with such powers and duties as the Court, from time to time may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on its affairs of the corporation until a full hearing can be had.
- (b) After a hearing had upon such notice as the Court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the Court, the Court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation.
 - (1) Such liquidating receiver or receivers shall have authority subject to the order of the Court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale.
 - (2) The order appointing such liquidating receiver or receivers shall state their powers and duties. Such power and duties may be increased or diminished at any time during the proceedings.
- (c) The assets of the corporation of the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:
 - (1) All costs and expenses of the Court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made therefore;
 - (2) Assets held by the corporation upon conditions requiring return, transfer, or conveyance which conditions occurs by reason of dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with such requirements;

- (3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to 1 or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the Court may direct;
 - (4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws to the extent that the articles of incorporation or by-laws determine the distributive rights of the members or any class or classes of members, or provide for distribution to others; and
 - (3) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution has been adopted, as the Court may direct.
- (d) The Court shall have power to allow, from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorney in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.
- (e) A receiver of a corporation appointed under the provisions of this Section shall have authority to sue and defend in all courts in his own name as receiver of such corporation.
- (1) The Court appointing such receiver shall, for the purposes of this Chapter have exclusive jurisdiction of the corporation and its property, wherever situated.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-45 Qualification of Receiver

36-45.01 Qualification of Receivers. A receiver shall in all cases be a natural person or a domestic corporation authorized to act as receiver, and shall in all cases give such bond as the Court may direct with such sureties as the Court may require.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-46 Filing of Claims in Liquidation Proceedings

36-46.01 Filing of Claims in Liquidation Proceedings.

- (a) In proceeds to liquidate the assets and affairs of a corporation, the Court may require all creditors of the corporation to file with the Clerk of Court or with the receiver, in such form as the Court may prescribe, proofs under oath of their respective claims, it shall fix a date which shall be not less than 4 months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed.
- (b) Prior to the date so fixed, the Court may extend the time for the filing of claims.
- (c) Creditors and claimants failing to file proofs or claims on or before the date so fixed may be barred, by order of the Court, from participating in the distribution of the assets of the corporation.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-47 Discontinuance of Liquidation Proceedings

36-47.01 Discontinuance of Liquidation Proceedings.

- (a) The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is made to appear that cause for liquidation no longer exists.
- (b) In such event the Court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-48 Decree of Involuntary Dissolution

36-48.01 Decree of Involuntary Dissolution. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the Court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-49 Filing of Decree of Dissolution

36-49.01 Filing of Decree of Dissolution.

(a) In case the Court shall enter a decree dissolving a corporation, it shall be the duty of the Clerk of Court to cause a certified copy of the decree to be delivered to the Tribal Department of Commerce, who shall file the same.

(b) No fee shall be charged by the Tribal Department of Commerce for the filing thereof.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-50 Deposits with Department of Commerce

36-50.01 Deposits with Department of Commerce. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any persons who are unknown or cannot be found, or who are under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and be deposited with the Tribal Department of Commerce and shall be paid over to such person or to his legal representative upon proof satisfactory to the Court of his rights thereto.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-51 Annual Report of Domestic and Foreign Corporations

36-51.01 Annual Report of Domestic and Foreign Corporations.

(a) Each domestic corporation shall prepare an annual report setting forth:

- (1) The name of the corporation;
- (2) The address of its registered office and the name of its registered agent;
- (3) A brief statement of the character of the affairs which the corporation is actually conducting; and
- (4) The names and respective addresses, including street and number, if any, of the directors and officers of the corporation.

(b) Such annual report shall be made on forms prescribed and furnished by the Tribal Department of Commerce and the information therein contained shall be given as of the date of the execution of the report.

- (1) It shall be executed by the corporation; by its president, a vice-president, secretary, or assistant secretary, treasurer, or assistant treasurer, or if the corporation is in the hands of a receiver or receivers, or trustee, it shall be executed by such receiver, receivers, or trustee.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-52 Filing of Annual Report of Corporation

36-52.01 Filing of Annual Report of Corporation.

(a) Such annual report of a corporation shall be delivered to the Tribal Department of Commerce. If the Tribal Department of Commerce, between the first day of January and the first day of March of each year, find that such report conforms to law, he shall file the same.

(b) If it finds that it does not so conform, it shall promptly return the same to the corporation for any necessary correction, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinafter provided shall not apply, if such report is corrected to conform to the requirements of this Chapter and returned to the Tribal Department of Commerce in sufficient time to be filed prior to the first day of July of the year in which it is due.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-53 Penalties Imposed Upon Corporations

36-53.01 Penalties Imposed Upon Corporations. Each corporation, foreign or domestic, that fails or refuses to file its annual report for any year within the time prescribed by this Chapter shall be subject to a penalty of \$100, to be assessed by the Tribal Department of Commerce.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-54 Fees for Filing Documents and Issuing Certificates

36-54.01 Fees for Filing Documents and Issuing Certificates.

- (a) The Tribal Department of Commerce shall charge and collect for:
- (1) Filing articles of incorporation and issuing a certificate of incorporation (\$100);
 - (2) Filing articles of amendment and issuing a certificate of amendment; (\$100);
 - (3) Filing a statement of change of address of registered office or change of registered agent, or both; (\$25);
 - (4) Filing articles of dissolution; (\$100);
 - (5) Filing a statement of election to accept this Chapter and issuing certificate of acceptance; (\$25);
 - (6) Filing any other statement or report, including an annual report of a domestic or foreign corporation; (\$15);
 - (7) Indexing each document filed, except an annual report; (\$5);
 - (8) Furnishing a certified copy of any document, instrument, or paper relating to a corporation; (\$5, plus per page cost);
 - (9) Furnishing a certificate as to the existence of a fact relating to a corporation; (\$10).
- (b) The Tribal Department of Commerce is authorized to make regulation providing for reasonable fees for other services not listed in this Section or to changes by regulation in any and all fees for services set out in this Chapter.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-55 Certificates and Certified Copies to be Received in Evidence

36-55.01 Certificates and Certified Copies to be Received in Evidence.

- (a) All certificates issued by the Tribal Department of Commerce in accordance with the provisions of this Chapter and all copies of documents filed in his or her office in accordance with the provisions of this Chapter, when certified by him or her, shall be taken and received in all Courts, public offices, and official bodies as prima facie evidence of the facts therein stated.
- (b) A certificate by the Tribal Department of Commerce under the seal of its office, as to the existence or non-existence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the existence or non-existence of the facts therein stated.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-56 Forms to be Furnished by the Tribal Department of Commerce

36-56.01 Forms to be Furnished by the Tribal Department of Commerce.

- (a) All reports required by this Chapter to be filed in the office of the Tribal Department of Commerce shall be made on forms, which shall be prescribed and furnished by the Tribal Secretary.
- (b) Forms for all other documents to be filed in the office of the Tribal Department of Commerce shall be furnished by the Tribal Department of Commerce on request therefore, but the use thereof, unless otherwise specifically prescribed in this Chapter, shall not be mandatory.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-57 Greater Voting Requirements

36-57.01 Greater Voting Requirements. Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation requires the vote or concurrence of a greater

proportion of the members or directors, as the case may be, than required by this Chapter, with respect to such action, the provisions of the articles of incorporation shall control.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-58 Waiver of Notice

36-58.01 Waiver of Notice.

(a) Whenever any notice is required to be given to any member or director of a corporation under the provisions of this Chapter, under the provisions of the articles of incorporation, or by-laws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

(b) Presence without objection also waives notice.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-59 Action by Members or Directors Without a Meeting

36-59.01 Action by Members or Directors Without a Meeting.

(a) Any action required by this Chapter to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or director, may be taken without a meeting, if consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the directors, as the case may be.

(b) Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the Tribal Department of Commerce under this Chapter.

Legislative History-Enacted 10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

Section 36-60 Effect of Invalidity of Part of This Chapter

36-60.01 Effect of Invalidity of Part of This Chapter. If a Court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this Chapter, such judgment or decree shall not effect, impair, invalidate, or nullify the remainder of this Chapter, but the effect thereof shall be confined to the clause, sentence, paragraph, section, or part of this Chapter so adjudged to be invalid or unconstitutional.

Legislative History-Enacted,10/14/04, Resolu. 2005-04; Readopted 8/01/06, Resolu. 2006-524.

CHAPTER 37 - GOVERNMENTAL CORPORATIONS

Section 37-1 Corporations

37-1.01 Corporations Authorized.

- (a) This Act shall be known as the Tribal Governmental Corporations Chapter.
- (b) There are hereby authorized to be created by duly adopted Resolutions of the Spokane Tribal Council of the Spokane Tribe of Indians, corporations which will be agencies and instrumentalities of the Spokane Tribal Government.
- (c) The corporations organized and created under this Chapter and other Tribal law.
- (d) The right to repeal, alter or amend this Chapter at any time is expressly reserved.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-2 Purpose

37-2.01 Purpose, Constitutional Authority.

- (a) Indian Tribes have been consistently recognized throughout the history of the United States of America to retain as governmental powers, where consistent with the trusteeship of the United States, all powers necessary to commercially utilize their undivided resources for the economic benefit of the Tribe to be of the same nature as all other Tribal powers, pursuant to the provisions of the Constitution of the Tribe.
- (b) The Constitution of the Tribe, in its Preamble, in Article I, and in Article VI, provides for the exercise of the Tribe's corporate, economic and commercial interests and powers of the Tribe by the Tribe and its council to further the economic advancement of the Spokane Indian people.
- (c) The Tribe and its members have endured a century of economic deprivation and oppression. This fact has been recognized by the Congress of the United States through numerous Acts intended to assist in the development of the Indian resources.
- (d) There is now a need and an opportunity to develop Spokane natural resources and human resources to provide a standard of living and education to all Tribal members equal to that of all citizens of the United States.
- (e) The Tribe adopts this Chapter in order to meet the following independent goals:
 - (1) Carry out a constitutional mandate;
 - (2) Develop and manufacture Tribal natural resources to obtain the highest value possible for those resources;
 - (3) To raise the standard of living and education for all Tribal members; and
 - (4) To enter into and take advantage of other business and commercial opportunities available to the Tribe.
- (f) To accomplish the goals set out in c) above, this Chapter is designed to further the development of all of the Tribal resources including, but not limited to:
 - (1) The Tribal labor force on or near the Spokane Indian Reservation;
 - (2) Timber;
 - (3) Minerals, oil and gas;
 - (4) Waters;
 - (5) Lands;
 - (6) Fish and Wildlife;
 - (7) Agricultural products and livestock;
 - (8) Hydroelectric and other electric power.
- (g) To accomplish the goals set out in c) and d), above, the Council hereby finds that for purposes of efficiency and wise stewardship, it is necessary for the management of the economic development of Tribal resources to be separated from other governmental functions of the Tribe and placed within the responsibility of persons or entities different from the Council, so that commercial development may take place within, and be based upon, the sphere of the economic marketplace rather than within the sphere of Tribal political concerns.

(h) The Tribe for many years has operated governmental programs to protect the economic and social welfare of Tribal members and to protect the health and security of all persons on and near the Reservation.

(3) To support these programs, the Tribe had depended upon revenues from the sale and utilization of Tribal natural resources.

(4) It is intended that the corporations created under this Chapter will increase the revenues to the Tribe from the sale and utilization of Tribal natural resources by adding value to those resources through manufacturing, processing, exporting and other means.

(5) Such surplus and additional revenues may be used to fund governmental programs for the protection and security of Tribal members and residents of the reservation.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-3 Privileges and Immunities

37-3.01 Privileges and Immunities.

(a) The corporations established under this Chapter shall be considered to be governmental agencies and instrumentalities of the Tribe; and their officers and employees considered officers and employees of the Tribe, notwithstanding the fact that their work rules and conditions may differ from that of other Tribal employees; carrying out responsibilities imposed upon the Council for economic advancement of the Tribe and its members by the Constitution and By-laws of the Spokane Tribe of Indians.

(b) Such corporations, their officers and employees shall, therefore, be entitled to all of the privileges and immunities enjoyed by the Tribe; including but not limited to, immunities from suit in federal and state courts, and federal and state taxation, or regulation, except as specifically set out in the corporate charters granted pursuant to this Chapter.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-4 Tribal Taxation

37-4.01 Tribal Taxation. All activities of corporations created under this Chapter shall be subject to taxation by the Tribe.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-5 Subsidiary Corporation

37-5.01 Subsidiary Corporation.

(a) Any corporation created pursuant to this Chapter may, by obtaining a charter from the Council pursuant to this Chapter, establish a subsidiary corporation in which the Tribe or the parent corporation retain not less than 60 percent of the voting stock of the subsidiary corporation.

(b) A subsidiary corporation and its officers and employees have all the same purposes, powers, privileges and immunities, as any other corporation established to this Chapter.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-6 Ownership

37-6.01 Ownership. Every corporation created pursuant to this Chapter shall have at all times at least 60 percent of its voting stock owned by the Tribe or a Tribal corporation created pursuant to this Chapter.

Readopted 8/01/06, Resolu. 2006-524.

Section 37-7 Voting Stock

37-7.01 Voting Stock-Alienation. No Voting stock in any corporation created pursuant to this Chapter and owned by a corporation created pursuant to this Chapter may be alienated.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-8 Organization

37-8.01 Organization.

(a) The council shall by Resolution appoint the initial, incorporating directors of all corporations created pursuant to this Chapter.

- (b) The election or appointment of corporate officers and the election of subsequent directors shall be governed by the provision of the charter of the corporation.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-9 Powers and Duration

37-9.01 Powers, Duration.

- (a) The powers of corporations created pursuant to this Chapter shall be set out in the charters of the corporations.

- (b) The duration of corporations created under this Chapter shall be perpetual unless a different duration is stated in the charter.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-10 Lands

37-10.01 Lands. Real property acquired by a corporation created pursuant to this Chapter may be transferred; where permitted by the federal law and/or the Spokane Law and Order Code, governing the ability of the Tribe to make such a transfer, to the ownership of the United States in trust for the Tribe and shall be by appropriate, lawful transfer be placed into the control of the corporation by the Tribe.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-11 Tribal Courts

37-11.01 Jurisdiction, Enforcement of Chapter. Notwithstanding the immunity from suit conveyed upon corporations created pursuant to this Chapter, the provisions of this Chapter, the Model Corporations Act, Tribal regulatory acts, or Tribal enactments pursuant to this Chapter, may be enforced against any such corporation, parent or subsidiary, its directors or officers by an action in law or equity in the Tribal Courts of the Spokane Tribe, when brought by any member of the Council or a director of a parent corporation.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-12 Agent

37-12.01 Agent. All corporations created under this Chapter shall publicly designate and maintain a registered agent for service of documents at Wellpinit, WA, Spokane Indian Reservation.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-13 Assets

37-13.01 Assets. The assets of each and every corporation created under this Chapter shall be separated and distinct from those of the Tribe. In no case shall Tribal assets not specifically pledged in a manner permitted by law be considered assets of a corporation created under this Chapter for any purpose.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-14 Audit

37-14.01 Audit. The Council, by duly adopted Resolution, may require that any corporation created under this Chapter be audited by an independent auditor hired by the Council at any time and shall have the absolute right to require access to all corporate documents necessary for such an audit.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-15 Annual Meeting & Report

37-15.01 Annual Meeting, Annual Report.

- (a) The board of directors and management of each corporation created pursuant to this Chapter shall hold at least 1 open, meeting per year, on 10 days public notice, within the boundaries of the Spokane Indian Reservation, at which the board shall answer any questions asked of them by members of the Council.

- (b) Each board shall also file a full report of the financial and production activities of the corporation with the Council on an annual basis.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-16 Contracts with Officers

37-16.01 Contracts with Officers. Notwithstanding any other provision of this Chapter or charters or articles of incorporation granted pursuant to provisions of this Chapter, all directors of officers of any governmental

corporation charters of licensed under this Chapter, and any firm in which said directors or officers hold office, or are shareholders or owners, shall be disqualified from dealing or contracting with Tribal governmental corporations, or subsidiaries thereof, as either a vendor, purchaser, or otherwise; and such contracts or transactions shall be void, unless such contract or transaction has been fully disclosed to, and approved by, the Spokane Tribal Council; *provided that*, this section shall not apply to the employment contracts of persons employed in full time, management positions, by a governmental corporation or subsidiary thereof.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-17 Bonding

37-17.01 Bonding.

(a) Notwithstanding any other provision of this Chapter, or charters or articles of incorporation (and supplementing by-laws) granted pursuant to provisions of this Chapter; all directors, officers, contractors and employees of any governmental corporation chartered or licensed under this Chapter who are:

- (1) Authorized, either individually or in conjunction with others, to expend funds on behalf of the governmental corporation or any of its subsidiaries or agencies, or
- (2) responsible for accounting for the funds of a governmental corporation or any of its subsidiaries or agencies; shall at all times be bonded or insured by the corporation to protect the assets of the corporation in an amount consistent with the financial responsibilities of the director, officer, contractor or employee.

(b) Such bonds or policies of insurance shall be obtained at the expense of the governmental corporation or the contractor and must be approved by the Spokane Tribal Council before the director, officer, contractor or employee is permitted to expend or account for funds.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-18 Severance Compensation

37-18.01 Severance Compensation. No corporation chartered under this Chapter shall pay any type of severance from unemployment compensation to any person.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-19 Record of Proceedings

37-19.01 Record of Proceedings. All corporations chartered under this Chapter shall record the complete proceedings of every board of directors meeting and the verbatim, unapproved records of those proceedings shall be filed with the Secretary of the Spokane Tribal Council within 30 days after the date of the board meeting; provided, that this section shall not require the publication to the Council of recording of board executive sessions in which personnel, business strategy, or legal strategy is discussed.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-20 Board Meeting of Corporation

37-20.01 Board Meeting of Corporation.

(a) All regular board meetings of corporation chartered under this Chapter shall be conducted within the boundaries of the Spokane Indian Reservation.

(b) All members of the Spokane Tribal Council shall receive prior reasonable advance written notice of regular board meetings and shall be invited to attend.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-21 Filing of Resolutions

37-20.01 Filing of Resolutions.

(a) All duly enacted Resolutions of the board of directors of corporations chartered under this Chapter shall be filed within 30 days of enactment with the Secretary of the Spokane Tribal Council.

(b) Resolutions with a confidential content shall be marked confidential.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-22 Violation of Charter

37-22.01 Violation of Charter. After the date of enactment of this section, director's or employees of corporations chartered under this Chapter found, at a fair and open hearing on the record called for the purpose of finding facts, by the board of directors or the Spokane Tribal Council, to have willfully violated any provision of this Chapter or their corporate charter shall be terminated from corporate employment.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-23 Term of Directors

37-23.01 Term of Directors. After the date of enactment of this section no director of a corporation chartered under this Chapter shall be appointed by the Spokane Tribal Council to any 1 term longer that 2 years.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-24 Duty of Loyalty

37-24.01 Duty of Loyalty. Directors and officers of corporations chartered under this Chapter when exercising their powers and duties under the corporate charter shall owe a standard duty of loyalty to both the corporation by which they are employed and to the Spokane Tribe of Indians and its members.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-25 Real Estate Purchase

37-25.01 Real Estate Purchase.

- (a) Corporations chartered under this Chapter shall obtain approval from the Spokane Tribal Council for all real estate purchases.
- (b) Real estate purchased by a corporation chartered under this Chapter shall be placed in the ownership of the United States in trust for the Spokane Tribe of Indians as soon as the legal status of the real estate makes them eligible under federal law to be taken into trust.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-26 Conflict of Interest

37-26.01 Conflict of Interest. Directors and officers of all corporations chartered under this Chapter shall excuse themselves from voting or participation in any board discussion concerning an issue wherein the director or officer, or the immediate family of such director or officer, has a business or personal interest or conflict of interest.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

Section 37-27 Arbitration Agreements

37-27.01 Arbitration Agreements. Notwithstanding the immunity from suit conveyed upon corporations created pursuant to this Chapter, any arbitration agreement approved by a corporation created under this Chapter and any arbitration award made under such arbitration agreement shall be enforceable against such corporation exclusively in the Spokane Tribal Court.

Legislative History—Enacted 1/24/04, Resolu. 2004-123; Readopted 8/01/06, Resolu. 2006-524.

CHAPTER 38 –TRIBAL EXECUTIVE MANAGEMENT

Section 38-1 Authority and Purpose

Section 38-3 Employment of Executive Director

Section 38-5 Duties of Executive Director

Section 38-1 Authority and Purpose

38-1.01 Authority and Purpose.

(a) The authority for this Code is established in the Tribal Constitution, Art. XI, Sec.4.

(b) Intent and Purpose.

(1) The Spokane Tribal Council has determined that it can best carry out its legislative functions and serve the best interests of the Tribe by establishing a position that shall be delegated the responsibility to carry out the executive functions of the Tribal government.

(2) It is the intent of the Tribal Council that the Tribal Executive Director position shall provide effective continuity in management and services of Tribal governmental operations.

(3) The purpose of this Code is:

A. to provide continuity in the management of the operational affairs of the Tribe;

B. to establish the position of Executive Director of the Tribal government;

C. to establish the authority and responsibility of the position of Tribal Executive Director.

Legislative History-Revised 3/07/06, Resolu. 2006-235; Readopted 8/01/06, Resolu. 2006-524; Adopted Resolu 2004-230

Section 38-3 Employment of Executive Director

38-3.01 Employment of the Executive Director.

(a) The Tribal Council establishes the position of Tribal Executive Director who shall be selected by, and shall serve at the pleasure of the Tribal Council.

(b) The Tribal Executive Director shall report to the Tribal Council and shall carry out the executive duties of the Tribal government as set forth in this Code.

(c) The Tribal Council shall determine the qualifications and procedures to be followed for selection of the Tribal Executive Director.

Legislative History-Adopted Resolu 2004-230; Revised 3/07/06, Resolu. 2006-235; Readopted 8/01/06, Resolu. 2006-524.

Section 38-5 Duties of Executive Director

38-3.05 Duties of the Executive Director. The Tribal Executive Director is delegated the following responsibilities and authorities:

(a) To assist and advise the Tribal Council in carrying out its legislative duties; and to have primary responsibility to implement the legislative actions of the Tribal Council;

(b) To provide for the delivery of services on behalf of the Tribal Council;

(c) To represent the Tribe by name and title in the executive management functions of the Tribe;

(d) To negotiate, execute, and administer agreements and contracts as authorized from time-to-time by the Tribal Council;

(e) To exercise direct authority over all work units of the Tribal governmental organization, except those governmental units directly under the authority of the Tribal Council; and excepting the Tribal enterprises;

(f) To establish the positions necessary to carry out the assigned functions and responsibilities of the Office most effectively;

(g) To hire, train, promote, assign, compensate, discipline, and discharge Tribal governmental employees in accordance with established law and policies;

(h) To establish subordinate work units and positions to carry out all assigned functions, to delegate authority and responsibility accordingly, and to hold subordinates accountable for such delegations;

(i) To provide overall direction and control for all assigned functions

- (j) To ensure appropriate and best use of Tribal assets and resources;
- (k) To authorize the expenditure of funds consistent with an adopted Tribal budget and subject to the signature authority delegated by the Tribal Council.
- (l) To recommend depositories and banking relationships to the Tribal Council;
- (m) To determine Tribal operational priorities, and to carry out short- and long-term planning and program development in compliance with generally outlined Tribal Council policy;
- (n) To provide executive support for all subordinate boards, committees, and commissions of the Tribe;
- (o) To take such emergency actions as required to protect life and property;
- (p) To monitor and report on all external and internal matters, including the provision of services by foreign governmental entities that impact the Tribe or its members;
- (q) To recommend, as necessary, but at least annually, to the Tribal Council, for Tribal Council approval, a Tribal governmental organizational structure according to the following goals:
 - (1) Focusing resources on direct delivery of services;
 - (2) Ensuring responsiveness to the population sector served by each unit
 - (3) Avoiding unnecessary layers and duplication of administration and management;
 - (4) Establishing clear lines of accountability and responsibility;
 - (5) Ensuring active, effective, and efficient processing of decisions, authorizations, transactions, and services;
 - (6) Ensuring efficient use of human and financial resources, and integration of programs and services.
- (r) To publish an organizational chart of the Tribal governmental structure at least annually, and at such other times as the Tribal Council shall adopt material changes in the organizational structure.

Legislative History-Adopted Resolu 2004-230; Revised 3/07/06, Resolu. 2006-235; Readopted 8/01/06, Resolu. 2006-524.

CHAPTER 39 – SPOKANE TRIBE DEVELOPMENT ACT

Section 39-1 Authority and Purpose

Section 39-3 General Provisions

Section 39-5 Development Committee

Section 39-1 Authority and Purpose

39-1.01 Purpose.

- (a) The purpose of this Act is to establish a Development Committee and to codify the responsibilities of the Development Committee relative to the management of development and construction activities, and the oversight of funds that will be borrowed and allocated for the express purpose of funding the Spokane Tribe's development activities.
- (b) The Development Committee shall exercise only that authority expressly identified or delegated in or by this Act, or clearly related to the construction project, and such authority shall not affect the day-to-day operational activities of any extant Tribal enterprise.

Legislative History-Adopted 07/18/06, Resolu 2006-488; Readopted 08/01/06, Resolu. 2006-524.

39-1.02 Findings. The Tribal Council finds that:

- (a) The Constitution of the Spokane Tribe of Indians delegates to the Tribal Council the authority and responsibility:
 - (1) to administer the affairs and assets of the Tribe including Tribal lands, funds, ... and other resources under appropriate contracts, leases, permits, loans or sale agreements; *Article VIII(b)*.
 - (2) to appoint necessary committees; *Article VIII(f)*
 - (3) to have and to exercise such other powers and authority necessary to fulfill its obligations, responsibilities, objectives, and purposes as the governing body of the Tribe. *Article VIII(g)*
- (b) There will be a need to authorize, by Resolution(s), the borrowing of funds from outside sources, or transfer of funds internally, to finance the costs of Tribal developments, including:
 - (1) The transfer of monies to fund approved developments requires the creation of a Development Committee for the purposes of managing the borrowed funds and transferring such funds to the authorized developments; and
 - (2) the ongoing creation of obligations to pay architectural, engineering, design, infrastructure, construction, and other expenses; and
 - (3) Tribal Council shall authorize persons to signature draw requests that authorize the creation of increasing amounts of borrowed funds for the purposes of making payments related to development of the Tribe's properties.
- (c) the implementation of authorized developments shall proceed as quickly as possible.

Legislative History-Adopted 07/18/06, Resolu 2006-488; Readopted 08/01/06, Resolu. 2006-524.

Section 39-3 General Provisions

39-3.01 General Provisions.

- (a) Construction Contracts. All development constructions shall be by means of construction contracts, which format shall be approved on a project-by-project basis.
- (b) Wage Scale. The Development Committee shall develop and propose for Tribal Council approval a listing of job classifications and associated wage rates to be paid to construction workers, which scale shall be implemented for construction at all development sites; *provided that*, all projects funded with federal dollars, or secured by federal loan guarantees, shall be paid at prevailing Davis-Bacon wages, as applicable.

Legislative History-Adopted 07/18/06, Resolu 2006-488; Readopted 08/01/06, Resolu. 2006-524.

Section 39-5 Development Committee

39-3.05 Development Committee.

- (a) Membership of the Development Committee.

- (1) Development Committees shall consist of 3 members per authorized development:
 - B. Tribal Enterprises Chief Executive Officer (CEO); and
 - C. 1 Councilmember, and 1 Councilmember alternate; and
 - D. 1 person as recommended by the CEO and approved by the Tribal Council.
- (2) The Tribe may have one or more development committees, as approved by Resolution of the Tribal Council, depending upon the number of ongoing Tribal development projects.
- (3) Development Committees shall have the authority consult with or to add to the Committees adjunct, non-voting members, who in a Committee's determination bring additional or necessary expertise to the Committee(s)' deliberations.

(b) Responsibilities of the Development Committee.

- (1) Development Committees shall act as the Tribe's designated representative for purposes of the developments, and shall be responsible to brief the Tribal Council, and/or the Tribal Enterprise Board ("Board"), as appropriate, on an ongoing basis regarding the progress of the developments, and at such other times as directed by the Tribal Council and/or the Board.
- (2) Development Committees shall be authorized to take the following actions:
 - A. Have decision authority related to all aspects of the developments, including design, development, site improvement, financing, and construction activities; provided that any changes exceeding the cost figure(s) specified in the project budget approved by the Tribal Council shall require approval by Tribal Council Resolution.
 - B. Have the authority to deviate from line items in the budget so long as the collective financial impact of such deviations does not cause the cost of the developments to exceed the budget approved by Tribal Council, as that budget may be amended from time to time by the Tribal Council.

(c) Approvals Required.

- (1) The Tribal Council shall approve/disapprove the following by Resolution:
 - A. New developments projects.
 - B. All construction schematic design documents;
 - C. All loan documents;
 - D. All project budgets;
 - E. All change orders that exceed the approved project budget of a development, or that change the scope of an approved development;
 - F. Any contract in excess of \$40,000;
 - G. Any contract that waives any aspect of the Spokane Tribe's sovereign immunity; and
 - H. Tribal Owner's Representative Contract, if any.
- (2) Development Committees may approve the following:
 - A. Design development documents;
 - B. Award of subcontracts by General Contractor, as necessary;
 - C. Change Orders that do not exceed an approved project budget, or change the scope of an approved development; and
 - D. Contracts not in excess of \$40,000, so long as the contract purpose and amount fit within an approved budget line item for the authorized development.

(d) Form of Action of Development Committees. All actions of development committees regarding the development for which they have oversight shall be in writing as follows:

- (1) Development committee meeting minutes that contain decisions and brief descriptions of discussions of the committee – initialed by the CEO.
- (2) Memos that identify direction or action that does not rise to the level of a change order but must be memorialized – signature by no less than 2 development committee members.
- (3) All other actions such as approval of contracts; payment of invoices; change orders, as that term commonly is utilized in the construction industry, etc., related to a development project shall require the signatures of 2 members of the development committee.

(e) Sovereign Immunity Waiver Not Authorized.

- (1) Nothing in this Act shall authorize, delegate, or otherwise imply, any authority delegated to any development committee to waive the sovereign immunity of the Tribe through approvals and executions of change orders, requests for bids or proposals, contracts or subcontracts, or other documents or decisions of the development committee.
- (2) No actions of a development committee shall be considered an implied waiver of the sovereign immunity of the Tribe.

(f) Sunset Clause. The authority delegated to a development committee shall expire upon completion of the development, which completion shall be identified as the issuance of the final payment to the Contractor, unless otherwise extended by a Tribal Council Resolution.

Legislative History-Adopted 07/18/06, Resolu 2006-488; Readopted 08/01/06, Resolu. 2006-524.

CHAPTER 40 – ENROLLMENT CODE

ENROLLMENT ORDINANCE OF THE SPOKANE TRIBE OF INDIANS

1. PURPOSE

It is the purpose of this document to control all matters regarding the enrollment of the membership of the Spokane Tribe of Indians.

2. AUTHORITY

This document is enacted under the authority granted the Spokane Tribal Business Council by the Constitution of the Spokane Tribe of Indians, Article III, Section 3.

3. DEFINITION

Adopted Children refers to those children whose natural parents parental rights have been terminated, either voluntarily or involuntarily, and are eligible for enrollment under this Ordinance and such information on adoption is verifiable.

Adult in need of assistance refers to an individual who has been determined to be "incapable of managing or administering his or her property, including his or her financial affairs" either (a) through a Bureau of Indian Affairs administrative process that is based on a finding by a licensed medical professional or licensed mental health professional determining a non-compos mentis status, (being of unsound mind), or (b) by an order or judgment of a court of competent jurisdiction.

Enrollment Committee refers to an appointed five (5) member advisory board established to verify and validate the applications for enrollment and supporting documentation, review ordinance annually, review by-laws annually and make other recommendations to Tribal Council. The Committee shall elect a Chairperson, and Vice Chairperson, the Enrollment office will serve as the recording individual. A quorum (three members) is required for all meetings and official actions.

Enrollment Officer or Enrollment Office, (EO) refers to the Officer or Office designated by the Tribal Council to provide assistance in the enrollment of Tribal members and maintaining the Tribal Role for the Tribe. EO will present information to committee for approval by Tribal Council. The Enrollment Office is the administrative function of government and will be under the supervision of the Administrative Director.

Indian Blood refers to that degree of the blood of any federally recognized Indian Tribe within the United States.

Member refers to a member of the Spokane Tribe of Indians

Minor is a person below the age of majority, under the age of eighteen (18) years of age.

Descendent/Other Tribes Parents refers to those parents, who are not enrolled, but are lineal descendants of the Spokane Tribal members or are members of federally recognized Tribes within the United States.

Spokane Tribal Business Council shall be referred to as the Tribal Council for purposes of this ordinance.

4. MEMBERSHIP

In accordance with Article III, Section I of the Constitution, the membership of the Spokane Tribe of Indians shall consist of:

- (a) All persons of Spokane Indian blood whose names appear on the official census of the Spokane Tribe as of January 1, 1951, provided that corrections may be made in said census by the

Business Council subject to the approval of the Secretary of the Interior, as long as such approval is required by law.

- (b) All children of $\frac{1}{4}$ or more degree of Indian blood born subsequent to January 1, 1951, but prior to midnight, September 1, 1963, to any parent who is an enrolled member of the Spokane Tribe and:
- (c) All children of $\frac{1}{4}$ or more degree of Indian blood born after midnight, September 1, 1963, to any enrolled member of the Spokane Tribe.¹⁹
- (d) All persons whose names appear on the official enrollment records of the Spokane Tribe as of midnight December 31, 2010 shall serve as the official census of the Spokane Tribe.

5. APPLICATION FOR MEMBERSHIP

- (a) *General* – any person seeking membership in the Spokane Tribe of Indians shall file an application for membership. The application process is the responsibility of the person applying, and/or the parents, and/or guardian of such applicant. This application shall be part of the permanent file of the applicant and shall provide the following information:
 - (1) Name and address of applicant;
 - (2) Date of birth of applicant;
 - (3) Names of parents of the applicant, their Tribal membership and degree of blood;
 - (4) If the applicant is under eighteen (18), the name, address and relationship of the person making the application on behalf of the minor or of any adult in need of assistance;
 - (5) Certification by the applicant, or by the person making application on behalf of the individual, that the information is true. Such forms shall be available at the Tribal Office at the Administration Building at Wellpinit, Washington. The mailing address shall be:

SPOKANE TRIBAL ENROLLMENT
SPOKANE TRIBE OF INDIANS
P.O. BOX 100
WELLPINIT, WA 99040

- (6) A family tree shall be completed. The EO will complete any information not provided and will verify and certify all information represented on the family tree..
- (b) *Adopted Person* – any person who had been adopted may make application for enrollment as set forth in Application for Membership, Section 5, subject to the provisions of Membership, Section 4. Such information shall remain confidential and all privacy rights protected.
 - (1) If the adopted person is able and has complete knowledge of their natural parents, they shall provide a copy of the Adoption Decree with the name of the natural parents.
 - (2) If the adopted person is not able to supply an Adoption Decree, the Enrollment Office will make reasonable accommodation to contact the Bureau of Indian Affairs or court of jurisdiction to obtain relevant information to complete the enrollment if the individual is eligible.
 - (3) Under no circumstances will an individual be considered for enrollment within the Spokane Tribe of Indians based upon their adoptive parents' blood quantum or Tribal status.

6. SUPPORTING DOCUMENTS

The Tribal Enrollment Office shall also require the following documents be submitted with the application:

- (a) **Birth Certificate:** A certified copy of the birth certificate with the application. The only type of birth certificate that is accepted is an ORIGINAL STATE CERTIFIED BIRTH CERTIFICATE from the County Health Department from the county which the individual was born or from the State Department of Vital records Office located in the state the individual was born. Certified birth certificates will be copied and stamped with an attestation that the copy is "Certified to be a true and exact copy "Photostat" of the document filed in this office by the Enrollment Office ®. Deoxyribonucleic acid (DNA) testing will be acceptable in lieu of a birth certificate until an acceptable birth certificate is located.
- (b) **Paternity Affidavit:** A complete, signed and notarized paternity affidavit is required for each enrollment application if , at the time of birth, the applicants parents were not legally married to each other. The affidavit can be one signed for this membership, or one signed previously for other purposes, e.g. an affidavit of paternity signed for the Department of Social and Health Services for the State of Washington. Court decisions based upon paternity statements are initiated by the parent.
- (c) If an affidavit of paternity is impossible to obtain because the father is deceased, cannot be located or denies paternity, the applicant (or adult acting on behalf of the applicant) shall obtain a judicial determination of paternity from a Court with the proper jurisdiction to determine the paternity of the child.
- (d) The Tribal Enrollment Office shall gather and prepare all necessary documentation and shall have the discretion to request other information to support a determination and request an Enrollment Committee meeting. The Enrollment Committee shall review all of the application information submitted above, verify blood quantum calculations. The Enrollment Committee will vote and make a recommendation to the Tribal Council.

7. DUAL ENROLLMENT

- (a) The Spokane Tribe of Indians does not allow for dual enrollment. Any enrolled member of the Spokane Tribe who is not now enrolled in another Tribe but seeking to be enrolled in another Tribe cannot be a member simultaneously of the Spokane Tribe of Indians and another Tribe. The Spokane Tribal members must, upon enrollment in the other Tribe submit a notarized written statement requesting relinquishment of his or her membership and rights as a Spokane Tribal member.
- (b) Failure of a Tribal member to notify the Spokane Tribe of Indians of dual enrollment will result in the Tribe initiating relinquishment action. The EO shall give notice to that individual by certified letter that the Tribe has reason to believe dual enrollment exists and is a violation of their Enrollment Ordinance. Individuals will be given sixty (60) days to address the issue with the Enrollment Office, or if another explanation is not offer by the individual why such relinquishment shall not occur, the Enrollment Office will submit directly to the Tribal Council a resolution with support documentation to relinquish the individual thirty (30) days proceeding the initial sixty (60) day resolution period. The individual Tribal member shall be entitled to an appeal of the Tribal EO's decision if done within thirty days and filed with the Spokane Tribal Court within such time period. If service has been properly made upon the individual with such notice and no action is taken, that person shall be deemed having relinquished their membership in the Spokane Tribe at the expiration of the above stated ninety (90) day period.

8. DUTIES OF THE TRIBAL ENROLLMENT OFFICER/OFFICE

The duties of the Tribal Enrollment Officer/Office are:

1. To protect the confidentiality of private details of family history and the confidentiality of enrollment record of the Spokane Tribe of Indians.
2. To be unbiased, fair minded and capable.
3. To provide copies to individual enrollees of certain documents for their own personal use or as required by other departments such as the Tribal Court, Social Services and DSHS. Before any copies are released the EO shall have a release form signed by the parent (s), guardian (s) or enrollees for records from individual files EXCEPT for purposes of Indian Child Welfare, request of the Tribal Court or the Tribal Police. Such information released for the purpose of Indian Child Welfare, Tribal Police, Tribal Court shall be limited to that information which is necessary for the office to receive.
4. Upon receipt of all information and documents necessary to complete an application, the Tribal Enrollment Officer/Office shall set up Enrollment Committee meetings, provide complete applications with research documentation and blood quantum calculations for Committee recommendations. The EO will present committee recommendations to the Tribal Council within ninety (90) days from receipt of application.
5. Coordinate certified rolls and addresses with the Tribal Finance Department for validating and processing Per Capita Distribution.
6. The EO is responsible for the issuing of tribal per capita payments and keeping the mailing addresses of each tribal member current at all times. All current information will be provided to the accounting department to run the checks as approved by resolution. If a per capita check is returned to the tribal office because of an incorrect address and not retrieved within 90-days, the check will be voided and placed in a tribal special account for future distribution to the payee. If a check does not reach a tribal member, a 10-day time frame shall lapse before a new check is issued to the individual, but only after a 24-hour wait once the original payment is voided by the bank.
7. Process death benefits.

9. CONSIDERATION BY TRIBAL COUNCIL

The Tribal Council shall consider the recommendations of the Enrollment Committee on any business involving membership or enrollment. Only upon approval by resolution of the Tribal Council will the individual be authorized to be placed on the official Tribal membership roll. The Enrollment Office will notify the applicant. If the Tribal Council rejects an application from enrollment, the applicant shall be so notified by certified mail and advised of his or her right to appeal in accordance with APPEAL, SECTION 16 of this ordinance.

10. DECEASED MEMBERS

The death of a person on the Tribal membership shall be noted with supporting written evidence and that the name shall be removed from the roll by the Tribal EO. Appropriate written evidence shall be a death certificate or in a case where Tribal funds were not used, a copy of the obituary or written notice from the family.

11. DEATH BENEFIT

It is the policy of the Spokane Tribe of Indians to provide assistance to aid families with burial and wake funds when available. Tribal funds, as appropriated by the Tribal Council, shall only be paid upon the receipt of an itemized bill and a death certificate from the funeral home in accordance with policy established by the Tribal Council.

12. BLOOD DEGREE CORRECTIONS

Corrections of blood degree of individuals on the Tribal roll shall be initiated by the Tribal member or family when there is reason to believe that quantum calculations or other such discrepancies have occurred. The Tribal EO shall provide support evidence and recommendations to the Enrollment Committee in the event of finding calculation errors while researching files. The Enrollment Committee will make recommendations to Tribal Council for approval and resolution. Upon approval, the resolution will direct the Tribal EO to make such corrections as to blood quantum of individuals on the Tribal rolls as it finds to be necessary and proper; notify all persons who are subject to adverse adjustment of their blood quantum; provide a thirty (30) days appeal timeframe, and have the right to a hearing before the Enrollment Committee before such changes become permanent thirty (30) days after resolution date.

13. RELINQUISHMENT

Any person shall be able to relinquish their membership in the Spokane Tribe of Indians

- (a) **Adults:** An adult may relinquish his or her membership. A notarized statement by the individual will be necessary. No monetary award will be issued to an individual, who relinquished, his or her rights in the Spokane Tribe of Indians. An adult relinquishing his or her membership in the Spokane Tribe of Indians will not be allowed to reapply for membership with the Tribe for any reason.
- (b) **Minors:** Enrolled parents or enrolled legal guardians may relinquish membership of minors. Both parents of a minor must seek the relinquishment of the membership, unless the parent seeking relinquishment has been determined to be a custodial parent by a decree of a court of competent jurisdiction. A copy of the court decree must be presented with the notarized statement requesting relinquishment or termination of membership.

Minors whose membership was relinquished by a parent or legal guardian may re-apply on their own upon reaching the age of majority (18). Minors who were relinquished by their parents have the option to reapply until the age of 25 with the Spokane Tribe.

14. CONFIDENTIALITY

All enrollment files are confidential and shall be available only to the Enrollment Committee, Tribal Council, the EO and the Tribal Staff identified in 8.3 of this ordinance. These individuals shall sign a written oath of confidentiality before review of such records.

15. PUBLICATION

All additional, deletions and corrections of the Tribal rolls shall be published on an annual basis by the Tribal EO.

An alphabetized list of Tribal members shall be kept in the Tribal Office and shall be available for inspection during office hours upon the request of any Tribal member.

16. APPEAL

Any person whose application for enrollment has been rejected by the Tribal Council, any person whose blood quantum has been modified, or any person who has been removed from the roll may appeal. Said appeal shall be pursuant to the Spokane Tribal Law and Order Code, Chapter 1, Section 1-7.

17. AMENDMENTS

This ordinance may be amended by a majority vote of the Tribal Council upon recommendations from the EO, Enrollment Committee, Tribal Administration or Tribal Council directive. No amendment shall become effective until it has been approved by the Tribal Council by resolution.

BY-LAWS OF THE SPOKANE TRIBAL ENROLLMENT COMMITTEE

ARTICLE I – MISSION

The mission of the Spokane Tribal Enrollment Committee is to serve the Spokane membership by maintaining the enrollment ordinance; and to ensure current and accurate, cooperative management of the membership rolls.

ARTICLE II – THE AUTHORITY

The Spokane Tribal Business Council by the Constitution of the Spokane Tribe, Article III, Section 3, have the authority by resolution to establish an Enrollment Committee to carry out all matters regarding the enrollment of the membership of the Spokane Tribe of Indians.

ARTICLE III – OFFICERS

Section 1. Officers: The officers of the Committee shall be a Chair, and a Vice Chair, the Secretary position will be the responsibility of the Enrollment officer.

Section 2 – Chair: The Chair shall preside over all meetings of the Committee. The chair shall be responsible for the completion of the Tribal Council recommendation sheets maintaining the Enrollment Committee actions. The Chair may not act on behalf of the Committee on matters which require action by a majority of the full Committee. Election of the Chair position is done annually.

Section 3 – Vice Chair: The Vice Chair shall perform the duties of the Chair in the absence or incapacity of the Chair and, in case of the resignation or death of the Chair, the Vice Chair shall perform the Chair's duties until such time as a new Chair is appointed by the Committee. Election of the Vice Chair is done annually.

Section 4 – Secretary: The secretary of the Committee is the Enrollment Officer. The Secretary shall keep the records of the Committee. Duties include recording all votes, keeping a record of the proceedings of the Committee, in journal of proceedings, and performing all duties required of this office. In the absence of the Chair and Vice Chair, the Secretary shall preside.

Section 5 – Enrollment Officer: The Enrollment Officer shall be hired through the Tribe's regular hiring practices. The Enrollment Office shall supervise/direct all activities of the Enrollment office. In accordance with the Enrollment Ordinance, this individual is directly responsible for safeguarding, maintaining current rolls, preparing all documents for the approval or denial of Tribal Enrollment.

Section 6 – Election or Appointment: The Chair, Vice Chair shall be elected at the first quorum of all five Committee members, position 1 will serve one (1) year; position 2 & 3 will serve for two (2) years; positions 4 & 5 will serve for (3) years, original staggered terms for the Committee set up . From thence all positions will be for three year terms, to provide for Committee continuity as appointed by the Tribal Business Council. All members are to apply for a position on the Committee in the event of vacancy or completion of term. The Committee will review applicants and recommend to the Tribal Business Council for appointment.

Section 7 – Removal: Committee members may be removed by the Tribal Business Council or the Enrollment Committee for serious inefficiency, neglect of duty, or misconduct in office. Failure to participate in three (3) consecutive meetings shall constitute position abandonment and cause for removal from the Committee. The member shall have the opportunity to be heard in person or by counsel, and to present witnesses in his/her behalf. In the event of removal of any Committee member, a record of the proceeding, together with the charges and findings thereon, shall be filed with the Tribal Business Council.

Section 8 – Resignation: Committee members may voluntarily resign from the Committee by submitting a written letter of resignation to the Chair.

Section 9 – Vacancies: Should the offices of Chair, Vice Chair become vacant, the Committee shall elect a successor from its membership at the next regular meeting, and such election shall be for the remainder of the term of said office.

ARTICLE IV – MEETINGS

Section 1 – Regular Meetings: Regular meetings shall be held at least once a month, on the 2nd Wednesday of each month. Meeting dates, times, and places will be set at the previous meeting of the Committee. One week notice shall be given for all scheduled meetings.

Section 2 – Special or Emergency Meetings: The Chair may call a Special or Emergency meeting upon the written request. A Special or Emergency meeting of the Committee must be given to each member of the Committee at least 24 hours prior to the time of such meeting. Any Committee member may waive notice of any meeting. The attendance of a Committee member at a meeting shall constitute a waiver of notice of such meeting, except where a Committee member attends a meeting for the express purpose of objection to the transaction of business because the meeting is not lawfully called or convened. No business may be transacted at a Special or Emergency meeting unless a quorum is present. Neither the business to be transacted, nor the purpose of the special meeting of the Enrollment Committee need be specified in the notice or waiver of notice of such meeting.

Section 3 – Quorum: The powers of the Committee shall be vested with the members. Three (3) Committee members shall constitute a quorum for the purpose of conducting business and exercising its powers, although a smaller number may adjourn the meeting from time to time until a quorum is obtained. When a quorum is in attendance, action may be taken by the Committee upon a vote of a majority of the Committee present.

Section 4 – Recommendation and Motions: All recommendations shall be in writing and shall be copied in a journal of the proceedings of the Committee. A motion is the action or process of changing position; a meaningful or expressive change in position of the Committee. A recommendation is a course of action determined or decided upon; a formal statement of a decision or expression of opinion put before or adopted by the Committee.

Section 5 – Manner of Voting: The voting on all questions coming before the Committee may be made by voice vote or by roll call, and shall be entered upon the minutes of such meeting, except in the case of elections, when the vote may be made by ballot. The Chair shall have all voting rights.

Section 6 – Compensation: The members of the Enrollment Committee are given regular work time to participate in this appointment. Committee members not employed by the Tribe will be provided a stipend of \$50.00 per day to cover meals and mileage. Travel and training will be provided as requested.

Section 7 – Confidentiality: Applications for enrollment and all records pertaining to applicants' and enrolled members' eligibility for membership shall be confidential. No person, except the Enrollment Office, the Enrollment Committee, and the Tribal Council may examine records other than his or her own without Tribal Council permission and only for the purpose of establishing/correcting enrollment transactions. All Enrollment Committee members will be required to sign a Tribal Confidentiality form maintained in the Enrollment Office. No records will be taken from meetings.

ARTICLE V – AMENDMENTS

The By-Laws of the Committee may be amended or repealed and new By-Laws adopted only with the approval of at least four (4) Committee members at any Board meeting with approval required by the Business Council.

CHAPTER 42 - TRUANCY CODE

Resolu. 2006-601

- Section 42-1 Notice To Parents and Students**
- Section 42-2 Definitions**
- Section 42-3 Mandatory Attendance Requirements**
- Section 42-5 Unexcused Absences**
- Section 42-7 Community Truancy Boards**
- Section 42-9 Court Intervention**
- Section 42-11 Court Jurisdiction and Process**
- Section 42-13 Sanctions**
- Section 42-15 Child Employment**

Section 42-1 Notice To Parents and Students

42-1.01 Notice To Parents and Students.

- (a) Each school within the Spokane Indian Reservation shall inform the students and the parents of the students enrolled in the school about the compulsory education requirements under these provisions.
- (b) Each school shall inform students and parents of the students who are non-Indian that enrollment of a child in a school on the Spokane Indian Reservation means that the parent consents to the authority of the school to enforce the following truancy requirements; *provided, however,* unless the parent and child consent to the jurisdiction of the Spokane Tribal Court, the petition for Court intervention shall be filed with the Stevens County Juvenile Court.
- (c) Each school shall distribute the information required in this section 42-1.01 at least annually.

Section 42-2 Definitions

42-2.01 Definitions. For purposes of this Code, certain terms are defined in this Section.

- (a) The word "shall" always is mandatory and not merely advisory.
- (b) "Approved Tribal school" or "private school," means a school approved by the Tribal Business Council of the Spokane Tribe of Indians.
- (c) "Certificated person" means an individual who has shown a level of proficiency in an educational area and holds a certificate issued by:
 - (1) rule of the Washington Professional Educator Standards Board or the Washington Superintendent of Public Instruction, or
 - (2) the Spokane Tribal Business Council or its designated representative.
- (d) "Community Truancy Board" or "CTB" means a board composed of members of the local community in which the child attends school.
- (e) "Hereof" is a generalized referent used to direct the reader's attention to another Section or subsection of this Code.
- (f) "Parent" means a parent or person having legal custody of a child, including a foster parent, a custodian, or a guardian.
- (g) "Reservation" means all lands and water areas within the exterior boundaries of the Spokane Indian Reservation, and all Spokane Tribal and allotted Indian trust lands outside the exterior boundaries of the Spokane Indian Reservation.
- (h) "School district" means the Wellpinit School District.
- (i) "Tribal Court" means the Youth Court of the Spokane Tribe of Indians.

- (j) "Tribe" means the Spokane Tribe of Indians, as represented by its elected governing body, the Tribal Business Council.
- (k) "Unexcused absence" means that a child:
 - (1) has failed to attend the majority of hours or periods in an average school day, or has failed to comply with a more restrictive school district policy; and
 - (2) has failed to meet the school district's policy for excused absences.

Section 42-3 Mandatory Attendance Requirements

42-3.01 School attendance for children 8 years of age and older.

- (a) All parents of any child 8 years of age, and under 18 years of age, residing on the Spokane Indian Reservation shall ensure that their child attends one of the following schools, unless the child is receiving home-based instruction as provided in 42-5.01(e):
 - (1) Public school; or
 - (2) Tribal School approved by the Tribe; or
 - (3) Tribal-approved private school; or
 - (4) extension program; or
 - (5) education center.
- (b) If a parent enrolls a child who is 6 or 7 years of age, the child is required to attend school full-time, and the child's parent is responsible to ensure that the child attends full-time when school is in session, unless a parent formally removes a child from enrollment, if:
 - (1) the child is less than 8 years old; and
 - (2) the school district or Tribe has not filed a truancy petition under subsection 42-9.03, hereof.
- (c) Each child is required to attend school full-time when school is in session, unless the school superintendent of the Wellpinit School District has excused the child from attendance because the child:
 - (1) is physically or mentally unable to attend school; or
 - (2) is attending a residential school operated by the department of social and health services; or
 - (3) is incarcerated in an adult correctional facility; or
 - (4) temporarily has been excused upon the request of the child's parents for purposes agreed upon by the school authorities and the parent; provided that excused absences shall not be permitted if the absences would have a serious adverse effect upon the student's educational progress; and provided further that, students excused temporarily may be claimed as full-time equivalent students to the extent the students otherwise would have been claimed, and their absence shall not affect school district compliance with the child's basic education program requirements; or
 - (5) The child is 16 years of age or older and:
 - A. the child is employed regularly and lawfully, and either the parent agrees that the child should not be required to attend school or the child is emancipated; or
 - B. the child already has met graduation requirements in accordance with state Board of Education rules and regulations; or
 - C. the child has received a certificate of educational competence.
- (d) The requirement to attend school under this section shall not apply to a child enrolled in school part-time for the purpose of receiving ancillary services.
- (e) For the purposes of this RSLOC 42-3.01, instruction shall be deemed home-based if it:
 - (1) consists of a traditional Indian format approved by the Tribe; or
 - (2) consists of planned and supervised instructional and related educational activities, including a curriculum and instruction in the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of an appreciation of art and music, provided for a

- number of hours equivalent to the total annual program hours per grade level established for private schools; or
- (3) the instruction is provided by:
- A. a parent who is supervised by a certificated person; or
 - B. a parent who:
 - i. has earned 45 college-level quarter credits or its equivalent in semester hours; or
 - ii. has completed a course in home-based instruction; or
 - iii. is deemed sufficiently qualified to provide home-based instruction;
 - iv. by the Superintendent of the Wellpinit School District; or
 - v. by the Spokane Tribal Business Council or its designated representative.

42-3.03 Compliance in private schools. Educators and parents involved with private schools shall have the same responsibility to ensure that a child attends school on a full-time basis unless excused by the superintendent of the Wellpinit School District.

Section 42-5 Unexcused Absences

42-5.01 Unexcused Absences. If a child fails to attend school without valid justification, the school in which the child is or was enrolled shall:

- (a) after 1 unexcused absence in any 30-day period during the current school year, inform the child's parent, by written notice or by telephone, of the potential consequences of additional unexcused absences;
- (b) after 2 unexcused absences in any 30-day period during the current school year, schedule a conference or conferences with the parent and child to discuss the reasons for the child's absences.
 - (1) If a regularly scheduled parent-teacher conference day is to take place within 30 days of the 2nd unexcused absence, the school may schedule the conference on that day;
 - (2) If a child is 12 years of age or over, and if the child's parent does not attend the scheduled conference, the student and school official may meet to discuss ways to reduce unexcused absences.
 - (3) The school shall notify the parent, in writing, of any decisions made by the school during the meeting.
- (c) take whatever steps the school deems reasonable to reduce the child's absences, including, where appropriate:
 - (1) adjusting the child's school program, or school, or course assignment; or
 - (2) providing more individualized or remedial instruction; or
 - (3) offering assistance to enroll the child in available alternative schools or programs; or
 - (4) assisting the parent or child to obtain supplementary or health services that may help eliminate or reduce the cause or causes for the absence from school.

Section 42-7 Community Truancy Boards

42-7.01 Community Truancy Boards.

- (a) If the Tribal Court and the school district agree, a school district may establish and operate a community truancy board ("CTB").
- (b) If the actions taken by a school district under Section 42-5, *hereof*, are not successful in substantially reducing a child's absences from school, not later than the 5th unexcused absence by a child in any 30-day period during the current school year, or not later than the 10th unexcused absence during the current school year, the school district or a parent may request assistance from the CTB to help address a child's truancy problems.
- (c) The CTB shall meet with the child and parent to attempt to find ways to improve school attendance, such as:
 - (1) assisting the parent or the child to obtain supplementary services to address any cause that may be contributing to absence from school, or

- (2) suggesting to the school district that the child enroll in another school, an alternative education program, an education center, a skill center, a dropout prevention program, or another public or private educational program.
- (d) If a referral is made to a CTB, the CTB shall meet with the child, a parent, and the school representative as soon as possible, but in all cases within 30 days of the referral, and enter into an agreement with the parent, child, and school representative regarding expectations and any actions necessary to address the child's truancy issues.
- (e) If the petition is based upon unexcused absences of a 6- or 7-year-old child, the child shall not be required to attend the CTB meeting, and the agreement under subsection 42-7.01(d) shall be between the CTB, the school representative, and the child's parent.

Section 42-9 Court Intervention

42-9.01 Court Intervention.

- (a) If the actions taken by a school under Sections 42-5 and 42-7, *hereof*, are not successful in substantially reducing a child's absences from school, then not later than the 7th unexcused absence by a child in any 30-day period during the current school year, or not later than the 10th unexcused absence during the current school year, the school district, the private school, the Office of the Spokane Tribal Attorney, or a parent, shall file a petition and supporting affidavit for a civil action with the Spokane Tribal Youth Court.
- (b) If the parents or child are non-Indian and do not consent to the jurisdiction of the Spokane Tribal Court, the parent or school shall file the petition with the Stevens County Juvenile Court.
- (c) Except as provided in this Section 42-9, no additional documents need be filed with the petition.

42-9.03 Petition.

- (a) A petition for a civil action under this Section 42-9 shall consist of a written notification to the Court alleging that:
 - (1) the child has unexcused absences in excess of the legal requirements during the current school year;
 - (2) actions taken by the school have not been successful in substantially reducing the child's absences from school; and
 - (3) Court intervention and supervision are necessary to assist the school or parent to reduce the child's absences from school.
- (b) The petition shall set forth the name, date of birth, school, address, gender, race, ethnicity of the child, and the names and addresses of the child's parents.
- (c) The petition shall:
 - (1) set forth facts that support the allegations in this section 42-9;
 - (2) generally request available relief pursuant to this Code; and
 - (3) provide information about what the Court might order pursuant Section 42-11.05, *hereof*.

42-9.05 Service of Process.

- (a) The petition shall be served in the same manner as a complaint, pursuant to the RSLOC 4-3 *et.seq.*
- (b) The Tribal Court separately shall notify the Tribal Attorney, the child, the parent of the child, and the school of the hearing time and date.
- (c) The Court may compel a child 8 years old or older, the parent, and the school representative to attend the hearing.

Section 42-11 Court Jurisdiction and Process

42-11.01 Tribal Court Jurisdiction. Pursuant to the RSLOC Sections 1-2.01, 4-1.03(a), and 6-3.01, the Spokane Tribal Court has jurisdiction over any Indian or non-Indian parent or child who attends a school on the Spokane Indian Reservation.

42-11.03 Tribal Court Hearing Procedures.

- (a) At the 1st hearing, the Tribal Court shall:
 - (1) inform the student and the parent of their right to present evidence and testimony to the Court;
 - (2) decide whether an Indian Child Advocate may be necessary to represent the interests of the child;
 - (3) Inform the parent that the parent is entitled to legal counsel at the parent's own expense.
- (b) If the allegations in the petition are established by a preponderance of the evidence, the Tribal Court shall grant the petition and shall enter an order assuming jurisdiction to intervene for the period of time necessary, after considering the facts alleged in the petition and the circumstances of the child, that most likely will assist the child to return to and remain in school.

42-11.05 Truancy Orders. The Court may order a child to do one or more of the following:

- (a) attend the child's current school, and set forth minimum attendance requirements, including suspensions;
- (b) if there is space available, and the program can provide educational services appropriate for the child, attend another public school, an alternative education program, center, a skill center, dropout prevention program, or another public educational program;
- (c) attend a private nonsectarian school or program including an education center.
 - (1) Before ordering a child to attend an approved or certified private nonsectarian school or program, the Court shall:
 - A. consider the public and private programs available;
 - B. decide whether the placement is in the best interest of the child; and
 - C. determine whether the private school or program is willing to accept the child; and
 - D. determine whether the private school will not charge any fees in addition to those established by contract with the student's school district.
- (d) engage in services offered by the Spokane Tribe of Indians that may assist the child, in order to reduce the child's unexcused absences;
- (e) submit to drug testing if the Court determines, based upon the evidence presented in Court, that the child may be consuming non-prescription or other unlawful drugs;
- (f) abstain from possession or consumption of illegal controlled substances or alcohol, and to enter into drug or alcohol treatment with an appropriate treatment provider;
- (g) order that a Youth In Need of Care petition be filed to obtain appropriate placement for the child and to obtain services for the parent.

42-11.07 Enrollment in a Private School.

- (a) If the Court orders the child to enroll in a private school or program, the child's school district shall contract with the school or program to provide educational services for the child.
- (b) The school district shall not be required to contract for a weekly rate that exceeds the state general apportionment dollars calculated on a weekly basis generated by the child and received by the district.
- (c) The school district shall not be required to enter into a contract that is longer than the remainder of the school year.
- (d) The school district shall not be required to enter into or to continue a contract if the child is no longer enrolled in the district.

42-11.09 Reporting of Additional Unexcused Absences. The school shall report regularly to the Court any additional unexcused absences by the child.

42-13.11 Coordination with School Representatives.

- (a) If the school and CTB agree, the Court may permit the CTB to provide continued supervision over the student or parent and report on compliance with the order of the Court.
- (b) If the CTB is unable to gain compliance with the Court order, the CTB shall return the case to the Tribal Court for further proceedings.

42-11.11 Student Relocation. If, after the Tribal Court assumes jurisdiction, the child relocates to a residence off the Reservation, either the school representative or the child's parent may request that the juvenile Court in the receiving jurisdiction assume jurisdiction of the petition filed in the Spokane Tribal Court.

Section 42-13 Sanctions

42-13.01 Sanctions.

- (a) If the child fails to comply with the Court order, the Tribal Court may find the child in contempt of Court and may order the child to be subject to detention, as a remedial civil sanction, until the child agrees to follow the terms of the Court's order; or the Court may impose alternatives to detention, such as community restitution.
- (b) Failure by a child to comply with an order issued under the RSLOC § 42-11.05, *hereof*, shall not be subject the child to detention for a period greater than that permitted pursuant to a civil contempt proceeding.
- (c) Any parent violating the RSLOC §§ 42-3, 42-5, or 42-11, *hereof*, or who refuses to cooperate with the school district to reduce unexcused absences, may be held in contempt; may be subject to detention as a remedial sanction; and may be fined not more than \$25 dollars for each day the child continues with unexcused absence from school.
 - (1) The Court shall remit 50% of all fines collected under this Section 42-13.01 to the Wellpinit School District.
 - (2) The Court may order the parent to provide community restitution instead of imposing a fine.
- (d) It shall be a defense for a parent who is alleged to have violated the RSLOC §§ 42-3 or 42-5, *hereof*, or who is accused of failing to work with the school to ensure their child attends school, that the parent exercised reasonable diligence in attempting to cause a child in the parent's custody to attend school, or that the child's school did not perform its duties as required by this Code.
- (e) Any sentence of detention or fine imposed pursuant to the RSLOC § 42-13.01 may be suspended upon the condition that a child or parent shall participate with the school in a supervised plan for the child's attendance at school, or upon the condition that the parent and child attend a conference or conferences scheduled by a school for the purpose of analyzing the causes of a child's absence.

Section 42-15 Child Employment

42-15.01 Child Employment.

- (a) Except as otherwise provided in this Code, no child under the age of 15 years shall be employed, for any purpose, by any person, company or corporation, on the Reservation during the hours when the public schools of the Wellpinit School District are in session, unless the child shall present a certificate from the school superintendent containing the following:
 - (1) excusing the child from attendance in the public schools; and
 - (2) setting forth the reason for such excuse;
 - (3) the residence and age of the child; and
 - (4) the time and days during which the child is excused from school.
- (b) Every owner, superintendent, or overseer of any establishment, company, or corporation shall keep the certificate on file so long as the child is employed.
- (c) Proof that any child under 15 years of age is employed when a public school of the district is in session, is *prima facie* evidence of a violation of this section.

- (d) Violation of this provision by a child, a parent, or an owner, superintendent, or overseer of any establishment, company, or corporation, shall be dealt with pursuant to the civil contempt remedies provided in the Revised Spokane Law and Order Code.

CHAPTER 43 - SPOKANE TRIBE ENTERPRISES CODE

Section 43-1 Findings and Purpose

43-1.01 Findings. The Spokane Tribal Council makes the following findings:

- (a) The People of the Spokane Tribe have established a government to promote and protect the sovereignty, rights, and interests of the Spokane Tribe of Indians, including, among other reasons, to develop their community resources and to promote their economic and social welfare.
- (b) The Spokane Tribe and its government remain, for its operation, overly dependent on funding provided by agencies of the United States Government.
- (c) The federal and state governments, rather than the Tribal government, fund nearly all the health, social, educational, and other services available to members of the Spokane Tribe.
- (d) This dependence on outside funding imposes substantial limits on Tribal self-government and frustrates efforts to improve the economic and social welfare of the members of the Spokane Tribe.
- (e) The economic and social conditions of the Spokane People remain significantly worse than those of the general population of Washington State.
- (f) An unacceptable proportion of the members of the Spokane Tribe are unemployed, underemployed, or living in poverty.
- (g) The Spokane Tribal Council seeks to develop the resources and assets of the Tribe in such a way as to generate new Tribal resources and to provide opportunities for Spokane Tribe members to improve their standard of living.
- (h) For the purposes of efficiency and wise stewardship, it is necessary that the management of the economic development of Spokane Tribe resources be separated from other governmental functions of the Spokane Tribe, and be placed within the responsibility of persons or entities different from the Spokane Tribal Council, so that commercial development may take place.
- (i) The establishment of Spokane Tribe Enterprises, that shall have the power and responsibility to generate income and create jobs by engaging in commercial activities, can best meet these goals.
- (j) The Spokane Tribal Council has authority to enact this chapter pursuant to the Constitution and Bylaws of the Spokane Tribe, Articles VIII(b) and VIII(f).

Legislative History - Adopted 10/31/07, Resolu 2008-065

43-1.03 Purpose. The Spokane Tribal Council adopts this Code to achieve the following goals:

- (a) To promote Tribal economic development, self sufficiency, and strong Tribal government, thereby simultaneously reducing the Spokane Tribe's dependence on outside funding sources and providing needed services to members of the Tribal community;
- (b) To generate profits to promote the continuity and growth of Spokane Tribe Enterprises.
- (c) To make possible the use and development of Spokane Tribal community resources in a way that both ensures their preservation and promotes their use to generate additional community resources;
- (d) To create, stimulate, and increase suitable employment, training, and other economic opportunities for members of the Spokane Tribal community.
- (e) To engage in any type of lawful business, enterprise, or venture, other than banking or insurance.
- (f) To serve as the umbrella entity for all Spokane enterprises, as delegated to the Spokane Tribe Enterprises by Tribal Council Resolution.
- (g) To provide policy direction and oversight to all existing and future Spokane enterprises.

- (h) To coordinate the goals, activities, policies, and procedures of all Spokane enterprises established under Spokane Tribe Enterprises pursuant to the economic development, employment, and other policies of the Tribal Council.

Legislative History - Adopted 10/31/07, Resolu 2008-065

43-3 Establishment of Spokane Tribe Enterprises

43-3.01 Spokane Tribe Enterprises – Establishment.

- (a) The Spokane Tribal Council establishes the Spokane Tribe Enterprises that shall be an instrumentality of the Spokane Tribe.
- (b) The Spokane Tribal Council organizes and grants to the Spokane Tribe Enterprises its powers, privileges, and immunities under the laws of the Spokane Tribe of Indians, pursuant to the Tribe's inherent sovereign authority and the Constitution of the Spokane Tribe-Spokane Reservation.
- (c) Spokane Tribe Enterprises shall have the duty and responsibility for all commercial activities as assigned by the Spokane Tribal Council, except as the Tribal Council commits specific activities to other entities.
- (d) Nothing in this Code shall be implied to waive or to permit the Spokane Tribe Enterprises to waive the Tribe's sovereign immunity from suit, except as expressly delegated elsewhere in the Code.

Legislative History - Adopted 10/31/07, Resolu 2008-065

43-5 Definitions

43-5.01 Definitions. For purposes of this Enterprise Code, this Section defines certain terms. The word "shall" is always mandatory and not merely advisory.

- (a) "Board" or "Board of Directors" means the Board of Directors of Spokane Tribe Enterprises.
- (b) "Commercial activity" means activity involving the purchase and sale of goods or services in the regular course of a business which purpose primarily is to produce profit.
- (c) "Director" means an appointed member of the Spokane Tribe Enterprises Board of Directors.
- (d) "Enterprise" means Spokane Tribe Enterprises or the Enterprise's subordinate enterprises.
- (e) "Immediate family" means a spouse, parent, sibling, child, grandchild, grandparent, aunt, uncle, first cousin, any person who lives in the same home, or who no longer lives in the same home, but who has lived in the same home for greater than 1-year.
- (f) "Management position" means a position having significant actual or potential legal influence over the management of an organization, including a position as a Director, general partner, principal, or officer.
- (g) "Net proceeds" means all earnings in excess of the cost of sales, operating expenses, other expenses, capital expenditures that are paid in full, and the principal portion of payments on loans for capital expenditures.
- (h) "Substantial interest" means a financial interest of such significance that it would reasonably be expected to exert an influence on the judgment of the person having such interest, including ownership of in excess of the lesser of 10% or \$1,000 of the assets or capital stock of such organization.
- (i) "Tribal Council" means the Spokane Tribal Council, the elected governing body of the Spokane Tribe.
- (j) "Tribe" means the Spokane Indian Tribe.

Legislative History - Adopted 10/31/07, Resolu 2008-065

Section 43-7 Location and Place of Business

43-7.01 Location and Place of Business.

- (a) The headquarters and principal place of business of Spokane Tribe Enterprises shall be Wellpinit, Washington, on the Spokane Indian Reservation, and its primary headquarters and business address shall be: Post Office Box xxx, Wellpinit, Washington 99040.
- (b) Spokane Tribe Enterprises may have other places of business as directed by the Board of Directors and approved by the Tribal Council.

Legislative History - Adopted 10/31/07, Resolu 2008-065

Section 43-9 Powers of Spokane Tribe Enterprises

43-9.01 Powers of Spokane Tribe Enterprises. Subject to the limitations and conditions set out in this Chapter, and subject to approved Annual Plan as required elsewhere in this Code, the Spokane Tribe Enterprises shall have the power, in its own name:

- (a) To provide oversight and policy direction to the Spokane Tribe Enterprises and subordinate enterprises;
- (b) To acquire, lease, manage, encumber, and dispose of enterprise property on behalf of the Spokane Tribe Enterprises;
- (c) To hire and discharge employees and to contract for personal or professional services;
- (d) To enter into contracts;
- (e) To contractually waive the sovereign immunity of the Spokane Tribe Enterprises, provided that any such waiver shall not exceed the value of the contract;
- (f) Consistent with section 43-5.01(d), to consent to be sued only in the Spokane Tribal Court;
- (g) To sue on behalf of Spokane Tribe Enterprises; - NB: opens Tribe to potential SI waiver
- (h) To borrow and lend money and other personal property;
- (i) To establish new commercial ventures governed by the Board of Directors;
- (j) To engage in activities and take actions necessary for carrying out these powers and any other powers conferred on the Enterprises by the Tribal Council.

Legislative History - Adopted 10/31/07, Resolu 2008-065

Section 43-11 Enterprise Board of Directors

43-11.01 Board of Directors.

- (a) The Tribal Council shall appoint 5 persons as regular Directors of the Enterprises Board of Directors, which shall provide policy guidance to and shall oversee the operations of Spokane Tribe Enterprises.
- (b) The Board shall be responsible to:
 - (1) Advertise Director vacancies;
 - (2) interview candidates for Director positions;
 - (3) conduct criminal and credit diligence on Director applicants; and
 - (4) provide a recommendation to the Tribal Council for appointment of Directors or renewal of an appointment of a Director.
- (c) The term of appointment for each Director shall be 3 years, unless the Tribal Council shall determine otherwise in the appointing Resolution; and there shall be no restriction on serving consecutive terms.
- (d) If the Tribal Council expands, by Resolution, the size of the Board, the Tribal Council shall designate the length of term any additional Directors shall serve, in a manner that ensures that the terms of all Directors are staggered.
- (e) A majority of the regular Directors shall be enrolled members of the Spokane Tribe eligible to vote in Tribal elections.
- (f) The Council shall appoint to the Board individuals who have experience in commercial activities and/or the interest, education, judgment, integrity, and commitment to manage the commercial activities and resources of the Tribe.

(g) The Tribal Council may appoint 1 alternate Director.

- (1) The alternate shall have the same qualifications as regular Directors, and the Board shall advertise, review, and nominate persons for the position to the TBC in the same manner as set forth for regular Directors.
- (2) The alternate Director shall receive all copies of meeting minutes and the Board shall keep the alternate Director apprised of all activities, decisions, and actions of the Board.
- (3) The alternate Director shall not be required to attend any meetings of the Board unless attendance is necessary to establish a quorum and then, in such instances, the alternate shall participate as a voting Director of the Board.

Legislative History-Adopted 10/31/07, Resolu 2008-065

43-11.03 Removal of Directors. The Tribal Council may remove a Director of the Board for good cause.

(a) "Good cause" includes, but is not limited to:

- (1) Neglect of duty;
- (2) Abusing the powers or privileges of appointed office;
- (3) Impropriety or the appearance thereof;
- (4) Conviction of a felony;
- (5) Breach of confidentiality, for all matters dealt with in-camera, issues not discussed at the public meeting, or sensitive financial information of the Enterprises;
- (6) Failure to meet obligatory procedures in the disclosure of conflict of interest;
- (7) Failure to fulfill the fiduciary duties of a Director;
- (8) Failure to comply with the attendance policy for Board meetings; and
- (9) Inappropriate or consistent lack of participation and contribution to effective discussion and Board decision-making.

(b) The Board shall present recommendations, in writing, to the Tribal Council for the removal of any Director.

(c) Before voting to remove a Director, the Tribal Council shall give the Director reasonable written notice of the reasons for the proposed removal, and an opportunity to respond to such notice at a meeting of the Tribal Council.

(1) If, after such a meeting, the Tribal Council determines to remove the Director, the decision of the Tribal Council shall be final and unreviewable.

(2) The Board promptly shall consider the replacement of the removed Director.

Legislative History - Adopted 10/31/07, Resolu 2008-065

43-11.05 Officers.

(a) At its first regular meeting on or after October 1st of each year, the Board shall elect from among its members a President, Vice-president, and Secretary-treasurer, who shall serve 1-year terms of office

(b) There shall be no restriction on an Officer's election for consecutive years.

Legislative History - Adopted 10/31/07, Resolu 2008-065

43-11.07 Board Meetings.

(a) The Board shall hold regular meetings at least quarterly and may hold regular meetings more frequently by majority vote of the Directors.

(b) The President of the Board, or a confirmed majority of the members of the Board, may call Special meetings, as necessary.

(1) The alternate Director shall not count for the purposes of calling a special meeting.

(2) A call for a special meeting of the Board may be confirmed by Director agreement via email.

(c) The Board shall schedule quarterly meetings with the Tribal Council to review the progress of the enterprises.

Legislative History - Adopted 10/31/07, Resolu 2008-065

43-11.09 Board Procedures.

(a) A quorum of a 5-Director Board shall be 3 members; *provided, that* at least 2 Directors present must be members of the Spokane Tribe.

- (b) Within 60 days after the Tribal Council adopts this Code, the Board shall establish written by-laws governing its procedures, for review and adoption by the Tribal Council.

Legislative History - Adopted 10/31/07, Resolu 2008-065

43-11.11 Powers and Duties of the Board of Directors. The Directors of Spokane Tribe Enterprises shall have the following powers and responsibilities:

- (a) To carry out the powers of Spokane Tribe Enterprises set forth in section 43-5.01;
- (b) To establish policies, subject to the approval of the Tribal Council, governing the employment, supervision, compensation, disciplining, and discharge of personnel of Spokane Tribe Enterprises and its subordinate enterprises; *provided, that* the personnel policies shall provide for Indian and Spokane Tribe preference in hiring and promotion consistent with Tribal laws, regulations, and policies;
- (c) To reimburse, at direct cost, expenses incurred by Directors, and the alternate Director, to attend meetings for and on behalf of Spokane Tribe Enterprises, or its subordinate enterprises, and to pay each Director and the alternate Director a stipend to attend meetings.
- (1) The per meeting amount and conditions for, and limitations upon, receiving such payment shall be determined and shall be set on an annual basis by the Tribal Council as part of the Council's review and approval of Spokane Tribe Enterprises' Annual Plan and budget.
- (d) To recommend to the Tribal Council an Annual Plan of operation, and an associated budget, for Spokane Tribe Enterprises and its subordinate enterprises.
- (1) Should an annual budget for the continued operations of the Spokane Tribe Enterprises and its subordinate enterprises not be approved by the start date of the next fiscal year, the Board shall continue to operate the Enterprises on a continuing basis, with monies available only for essential operational services.
- (2) The Board shall define the extent and scope of essential operational services in a separate policy for the enterprises.
- (e) To advise the Council on issues of economic development.
- (f) To execute contracts consistent with the Annual Plan approved by the Council;
- (g) To acquire, lease, manage, and dispose of personal property for use in the operation of Spokane Tribe Enterprises or the Board's activities pursuant to this Code; *provided, that* the Board shall adopt procurement policies, subject to the approval of the Tribal Council, that are consistent generally with the requirements of the purchasing policy of the Tribe, consistent with United States Government agencies that fund or contract with Spokane Tribe Enterprises;
- (h) To borrow money and to secure such loans or the payment of any obligation by assigning or mortgaging property of Spokane Tribe Enterprises.
- (1) The Board shall have no authority to assign or mortgage any property of the Spokane Tribe without the express approval, by Resolution, of the Tribal Council;
- (i) So long as consistent and within an approved Enterprise budget and Annual Plan of operation, to change the nature, volume, and scope of the commercial activities conducted by Spokane Tribe Enterprises, or its subordinate enterprises, as necessary, to maximize revenues, to minimize losses, to expand employment opportunities for members of the Tribal community, to provide services to the public, and to achieve the purposes of this Code;
- (j) Consistent with sections 43-5.01(e)-(g), *herein*, to file suit, and to consent to suit, solely in the Spokane Tribal Court; *provided, that* the Board shall not consent to the Court's jurisdiction over property of the Spokane Tribe without the approval of the Tribal Council;
- (k) Consistent with section 43-5.01(e)-(g), *herein*, to agree to mediation or binding arbitration;
- (l) To communicate and negotiate with representatives of private businesses.
- (m) To make a formal presentation regarding the status of the enterprises to the general Tribal membership at the semi-annual General Council.

Legislative History - Adopted 10/31/07, Resolu 2008-065

Section 43-13 Powers Reserved to the Tribal Council

43-13.01 Powers Reserved to Tribal Council. The following powers relating to the management and operation of Spokane Tribe Enterprises shall be reserved to the Tribal Council:

- (a) To set general economic development policies and strategies for the Spokane Tribe;
- (b) To request the United States to take land intended for use by Spokane Tribe Enterprises into trust for the Spokane Tribe;
- (c) To consent to the lease, pledge, encumbrance, or disposition of any property owned by or held in trust for the Spokane Tribe;
- (d) To appropriate property or funds of the Spokane Tribe for use by or in Spokane Tribe Enterprises;
- (e) To establish qualifications for, and to appoint and remove members of the Board;
- (f) To approve an Annual Plan and budget for the operation of the Spokane Tribe Enterprises prepared and recommended by the Board;
- (g) To determine the use and disposition of all distributions from net proceeds of Spokane Tribe Enterprises operations;
- (h) Upon recommendation of the Board, to hire a Chief Executive Officer for the Spokane Tribe Enterprises, who thereafter shall be subject to the supervision of the Board.
- (i) To change this Code establishing the powers and structure of Spokane Tribe Enterprises, and to dissolve the Enterprises Board, or individual enterprises, and to provide for the distribution of Spokane Tribe Enterprises assets, or the assets of subordinate enterprises;
- (j) To waive the immunity of the Enterprise to suit in courts of other jurisdictions, and to consent to any court's jurisdiction over property or assets held by or for the Spokane Tribe.

Legislative History - Adopted 10/31/07, Resolu 2008-065

Section 43-15 Chief Executive Officer

43-15.01 Chief Executive Officer. The Chief Executive Officer shall have the following responsibilities:

- (a) To serve as liaison, together with the Chairman of the Board, between the Board and the Tribal Council;
- (b) To conduct and oversee the daily operations of the Spokane Tribe Enterprises commercial activities, and the commercial activities of its subordinate enterprises;
- (c) To oversee the hiring, training, supervision, and discharge employees of Spokane Tribe Enterprises, consistent with personnel policies adopted by the Board and approved by the Tribal Council;
- (d) To determine, consistent with the Annual Plan and budget adopted by the Board and approved by the Tribal Council, what goods and services Spokane Tribe Enterprises shall sell and the prices to be charged for such goods and services;
- (e) To ensure a complete and accurate accounting of all funds and property acquired, held, used, and disposed of by Spokane Tribe Enterprises;
- (f) To formulate, for the Board's consideration and approval, an Annual Plan for operations of the Spokane Tribe Enterprises, for changes in the nature and scope of those operations, and for investment of proceeds of Spokane Tribe Enterprises activities;
- (g) To carry out the plans and policies adopted by the Board, and to perform all responsibilities delegated to the Chief Executive Officer by the Board and the Tribal Council.

Legislative History - Adopted 10/31/07, Resolu 2008-065

Section 43-17 Plans and Reports

43-17.01 Annual Plan.

- (a) On or before its last regular meeting of the fiscal year, the Board shall adopt, for submission to the Tribal Council, an Annual Plan of operations for the Spokane Tribe Enterprises.

- (b) The Annual Plan shall include at least the following information:
- (1) An unaudited report of the year's operations to that date, including expenditures, income, profits, and performance relative to the goals set in the previous year's approved Annual Plan;
 - (2) A projection of the final report for the fiscal year;
 - (3) Any planned changes in the nature of the commercial activities to be conducted by Spokane Tribe Enterprises;
 - (4) Any planned expansion or reduction in the inventory, assets, facilities, or personnel of Spokane Tribe Enterprises;
 - (5) Any construction, major repairs, major equipment purchases, or other capital expenditures planned;
 - (6) Plans or proposals for any joint ventures, partnerships, subcontracts, or new enterprises that will be employed to carry out Spokane Tribe Enterprises' functions;
 - (7) Funds required for continuation or expansion of operations;
 - (8) Any new loans or grants that Spokane Tribe Enterprises expects to apply for, to receive, or to propose that the Tribal Council apply for on behalf of Spokane Tribe Enterprises;
 - (9) A projected profit and loss statement, balance sheet, and cash flow analysis for the upcoming year.

Legislative History - Adopted 10/31/07, Resolu 2008-065

43-17.03 Quarterly Reports.

- (a) In addition to the Annual Plan, the Board shall submit to the Tribal Council, within 30 days after the end of each fiscal quarter, a brief report of the operations and financial status of Spokane Tribe Enterprises for that quarter and for the fiscal year to that date.
- (b) The Tribal Council may require more frequent reports, but shall not require reports more frequently than once each month.
- (c) Within 120 days after the end of the fiscal year, the Board shall prepare a summary Annual Report for release by the Tribal Council to the Tribal membership.

Legislative History - Adopted 10/31/07, Resolu 2008-065

Section 43-19 Limitations on Liability

43-19.01 Directors, Officers, and Employees – Limited Liability.

- (a) By the adoption of this Code, the Spokane Tribal Council establishes and directs the Directors, Officers, Managers, and employees of Spokane Tribe Enterprises to be officers and employees of the Tribe, carrying out Tribal constitutional responsibilities imposed upon the Tribal Council for the economic advancement of the Tribe and its members, notwithstanding the fact the work rules and conditions of the Spokane Tribe Enterprises may differ from that of other Tribal employees.
 - (1) Directors, Officers, Managers, and employees of Spokane Tribe Enterprises shall be entitled to all of the privileges and immunities enjoyed by the Tribe, including but not limited to, immunities from suit in federal and state courts.
- (b) No lawful act of the Tribal Council, the Board of Directors, or any members of the Council or the Board shall result in personal liability on the part of any Directors, Officers, Managers, and employees of Spokane Tribe Enterprises, for the debts, acts, or omissions of Spokane Tribe Enterprises.
- (c) No lawful act of the Chief Executive Officer, or any other Officer, or Manager or any employee of Spokane Tribe Enterprises, shall result in personal liability on the part of any such employee for the debts, acts, or omissions of Spokane Tribe Enterprises.
- (d) The personal liability of a Director, Officer, Manager, or employee of the Board to the Spokane Tribe, or to Spokane Tribe Enterprises, for acts taken as a Director, Officer, Manager, or employee, shall not exceed the amount of any applicable insurance maintained by Spokane Tribe Enterprises, or by the Tribe, for the protection of Directors, Officers, Managers, or employees, provided that the liability does not arise from:

- (1) Knowingly permitting Spokane Tribe Enterprises to enter into a business transaction with the Director, Officer, Manager, or employee, or a member of immediate family of the Director, Officer, Manager, or employee, or with any organization in which the Director, Officer, Manager, or employee, or such family member, has a substantial interest or holds a management position, without having previously disclosed such interest to the persons approving the transaction; or
 - (2) Taking actions as a Director, Officer, Manager, or employee for the purpose of conferring personal benefit upon the Director, Officer, Manager or employee, or their immediate family; or
 - (3) Taking actions as a Director, Officer, Manager, or employee that are criminal; or
 - (4) Taking actions in any capacity that are in willful disregard of the obligations of the Director, Officer, Manager, or employee.
- (e) Spokane Tribe Enterprises shall indemnify and hold harmless each Director, Officer, Manager, or employee against the actual and reasonable expenses incurred by the Director, Officer, Manager, or employee in connection with any claim or proceeding against a Director, Officer, Manager, or employee arising from their actions as a Director, Officer, Manager, or employee, provided the Director, Officer, Manager, or employee has been successful on the merits or otherwise in defense of such claim.
- (f) Any indemnification under subsection 43-10.01(e), unless ordered by the Court, shall be made only:
- (1) Upon a majority vote of a quorum of Directors not parties to such claim or proceeding; or
 - (2) If a decision cannot be made by the Board, then by the Tribal Council.

Legislative History - Adopted 10/31/07, Resolu 2008-065

43-19.03 Sovereign Immunity. As an entity established and wholly owned by the Spokane Tribe, Spokane Tribe Enterprises shall be entitled to all the protections and immunities afforded by the laws of the Spokane Tribe and the United States; and nothing in this Chapter shall be construed as a general waiver of the sovereign immunity of the Spokane Tribe or the Spokane Tribe Enterprises; *provided, however*, that the Board, subject to the powers reserved in this Chapter by the Tribal Council, may enter into agreements that waive the right of the Enterprise to raise the defense of sovereign immunity to suit pursuant to sections 43-5.01(e)-(g), *herein*, and solely in the Spokane Tribal Court.

Legislative History - Adopted 10/31/07, Resolu 2008-065

Section 43-21 Miscellaneous Provisions

43-21.01 Fiscal Year. The fiscal year of Spokane Tribe Enterprises shall be the same as the fiscal year for the Spokane Tribe, currently established as 1 October to 30 September of the following year.

Legislative History - Adopted 10/31/07, Resolu 2008-065

43-12.03 Bonding. The Directors, Officers, Managers, and all employees of the Enterprises who handle money shall be bonded.

Legislative History-Adopted 10/31/07, Resolu 2008-065

43-21.05 Conflict of Interest and Duty of Loyalty.

- (a) *Conflict of Interest.* Directors and Officers of the Enterprises shall excuse themselves from voting or participation in any Board discussion concerning an issue wherein the Director or Officer, or the immediate family of the Director or Officer, has a business or personal interest or conflict of interest.
- (b) *Duty of Loyalty.* When exercising the powers and duties of their employment, Directors, Officers, Managers, and employees of the Enterprises shall owe a standard duty of loyalty to both the enterprise by which they are employed; to the Spokane Tribe Enterprises, in general; and to the Spokane Tribe of Indians and its members.

Legislative History - Adopted 10/31/07, Resolu 2008-065

43-21.07 Licensing and Regulation.

- (a) Spokane Tribe Enterprises shall not secure master business licenses, or licenses for the sale of specific goods or the provision of specific services, from the State of Washington, unless provided for by Tribal Council Resolution.
- (b) Spokane Tribe Enterprises shall not be regulated by any external governmental entity unless the Tribal Council, by Resolution, expressly consents to such regulation.

Legislative History-Adopted 10/31/07, Resolu 2008-065

43-21.09 Audits.

- (a) The Board of Directors shall cause an annual, independent, outside audit of Spokane Tribe Enterprises accounts to be conducted by a licensed accounting firm approved by the Board.
- (b) The annual audit shall be submitted to the Tribal Council within 180 days after the end of Spokane Tribe Enterprises' fiscal year.
- (c) The Tribal Council shall retain the right to cause its own audit of Spokane Tribe Enterprises accounts to be conducted at no expense to Spokane Tribe Enterprises.

Legislative History - Adopted 10/31/07, Resolu 2008-065

43-21.11 Disclosure to Tribal Members. The following records of Spokane Tribe Enterprises shall be available for inspection by any interested Tribal member during regular business hours at the Enterprise headquarters:

- (a) A summary of the approved Annual Plan of operation;
- (b) By-laws of the Board of Directors;
- (c) Personnel policies and other policies of Spokane Tribe Enterprises and its subordinate enterprises;
- (d) The Annual Report.
- (e) When necessary to prevent another commercial enterprise from acquiring a competitive advantage over Spokane Tribe Enterprises or its subordinate enterprises, the Board may delete portions of the Annual Plan and report before permitting their inspection pursuant to this section.

Legislative History - Adopted 10/31/07, Resolu 2008-065

43-21.13 Economic Development Fund and Distribution of Net Proceeds.

- (a) The Board shall distribute to the Spokane Tribal Government the net income of the Spokane Tribe Enterprises each quarter according to the formula set out in this section.
- (b) There is established a Spokane Tribe Economic Development Fund.
- (c) The distribution formula shall be as follows: a specified percentage of the net income, to be recommended by the Board, and determined each year by the Tribal Council, shall be paid to the Tribal Economic Development Fund.
- (d) The Tribal Council, as it deems advisable, shall appropriate the Economic Development Fund for the following Tribal government purposes:
 - (1) Operation and development of the Spokane Tribe Enterprises;
 - (2) Operation and development of new Tribal commercial ventures; and
 - (3) Technical assistance for Spokane Tribe Enterprises.
- (e) The remaining net income shall be paid to the Tribe's General Fund.

Legislative History - Adopted 10/31/07, Resolu 2008-065

43-21.15 Insurance.

- (a) The Board shall maintain policies for property and liability insurance covering all operations of the Spokane Tribe Enterprises, with limits specified by the Tribal Council.
- (b) Such policies shall require that the insurer not raise the sovereign immunity of the Spokane Tribe Enterprises, or the Tribe, as a defense to claims against the policy, unless the Board and the Tribal Council first consent in writing to the use of such a defense.

Legislative History - Adopted 10/31/07, Resolu 2008-065

43-21.17 Transition Period.

- (a) Until the Board adopts personnel policies, the personnel policies of the Tribal government shall govern the employment conditions of the persons employed by Spokane Tribe Enterprises.
- (b) Until the Board adopts purchasing, travel, and other desired policies, the associated policies of the Tribal government shall govern the policy conditions of the Enterprise.

Legislative History - Adopted 10/31/07, Resolu 2008-065

CHAPTER 44 - CIGARETTE SALES AND TAX CODE

Section 44-1 Authority

44-1.01 Authority. The Spokane Tribal Council's authority to adopt this Code is found in the Spokane Tribal Constitution and in the inherent sovereignty of the Spokane Tribe of Indians to regulate its own territory and the activities therein.

Legislative History - Adopted 12/04/07, Resolu 2008-071

Section 44-3 Purpose

44-3.01 Purpose.

- (a) The Spokane Tribal Council determines that regulation of the sale of cigarettes is essential to the health and welfare of the Spokane Tribe of Indians and its members.
- (b) The Spokane Tribal Council determines that a tax base is essential to the Tribe's ability to provide goods and services, and to finance government operations and economic development, for the safety, health and welfare of the Spokane Tribe of Indians, its members, and those who work on, live on, and visit Spokane Tribal Lands.
- (c) In the public interest and for the welfare of the Spokane Tribe of Indians, its employees, the residents of and visitors to Spokane Tribal Lands, the Spokane Tribal Council, in the exercise of its authority under the Tribal Constitution, declares its purpose by the provisions of this Title to regulate the sale of cigarettes, and to impose, collect, and administer taxes on the retail sale of cigarettes.

Legislative History - Adopted 12/04/07, Resolu 2008-071

Section 44-5 Scope; Compliance; Jurisdiction

44-5.01 Scope. This Title shall apply to the full extent of the sovereign jurisdiction of the Spokane Tribe of Indians upon Spokane Tribal Lands.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-5.03 Compliance. Compliance with this Title hereby is made a condition of entering or residing upon Spokane Tribal Lands.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-5.05 Consent to Jurisdiction. Any person who resides upon Spokane Tribal Lands, conducts business on Spokane Tribal Lands, engages in a business transaction upon Spokane Tribal lands, receives benefits from the Spokane Tribal government, including police, fire or emergency services, acts under Tribal authority, or enters upon Spokane Tribal lands, shall be deemed to have consented to the following:

- (a) To be bound by the terms of this Title;
- (b) To the exercise of civil jurisdiction by the Spokane Tribal Court in legal actions arising pursuant to this Title; and
- (c) To detainment, service of summons and process, and search and seizure, in conjunction with legal actions arising pursuant to this Title.

Legislative History - Adopted 12/04/07, Resolu 2008-071

Section 44-7 Definitions

44-7.01 Definitions. The following definitions apply throughout this Title unless otherwise specified or the context clearly indicates otherwise. The term "shall" is always mandatory and is not discretionary.

- (a) "Agreement" means the Cigarette Tax Agreement between the Spokane Tribe of Indians and the state of Washington.
- (b) "Auditor" means an independent 3rd party auditor selected pursuant to Chapter 44-15 of this Title.
- (c) "Carton" or "carton of cigarettes" means a carton of 200 cigarettes.
- (d) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape, and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

- (e) "Court" means the Spokane Tribal Court, and includes the Spokane Tribe of Indians Court of Appeals.
- (f) "Department" means the state of Washington Department of Revenue.
- (g) "Essential government services" means services such as Tribal administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development.
- (h) "General fund" means the Spokane Tribe of Indians general fund.
- (i) "Local retail sales tax" means the combined Washington local retail sales taxes applicable in the area in which cigarettes are sold.
- (j) "NonIndian" means an individual who is neither a Tribal member nor a nonmember Indian.
- (k) "Nonmember Indian" means an enrolled member of a federally recognized Indian Tribe other than the Spokane Tribe of Indians.
- (l) "Person" means and includes any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity, or other identifiable entity.
- (m) "Retail selling price" means the ordinary, customary, or usual price paid by the consumer for each package of cigarettes, which price includes the Tribal cigarette tax.
- (n) "Self-certified Tribal wholesaler" means a wholesaler who is a federally recognized Indian Tribe or a member of such a Tribe, who is not required to be licensed under any state law; who has certified, by letter to the Department, that it will abide by the terms of the Agreement and this Title; and who has signed a contract with the Tribe requiring the wholesaler to abide by the terms of the Agreement and this Title.
- (o) "Self-certified wholesaler" means an out-of-state wholesaler who is not a self-certified Tribal wholesaler; who has certified, by letter to the Department, that the wholesaler shall abide by the terms of the Agreement and this Title; and who has signed a contract with the Tribe requiring the wholesaler to abide by the terms of the Agreement and this Title.
- (p) "Spokane Tribal Lands" means:
 - (1) all land within the limits of the Spokane Indian Reservation, notwithstanding the issuance of any patent, and, including rights of way running through the Reservation; and
 - (2) all Indian allotments or other lands held in trust for a Spokane Tribal Member or the Tribe, including rights of way running through the same.
- (q) "Spokane Indian Reservation" or "reservation" means the area recognized as the Spokane Indian Reservation by the United States Department of the Interior.
- (r) "State" means the state of Washington.
- (s) "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; Cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both, for chewing and smoking. "Tobacco product" does not include cigarettes.
- (t) "Tribal cigarette tax" means the tax or taxes enacted as a provision of Tribal law on the units of cigarettes sold, and on the purchase of cigarettes by retail buyers.
- (u) "Tribal Council" means the Spokane Tribal Council.
- (v) "Tribal member" means an enrolled member of the Spokane Tribe of Indians.
- (w) "Tribal retailer" means a cigarette retailer wholly owned by the Spokane Tribe of Indians or the Spokane Tribe Enterprises, and located on Spokane Tribal Lands.

- (x) "Tribeally-licensed retailer" means a Tribal member who holds a Spokane Tribal Cigarette Outlet License, issued by the Tribal Council, to sell cigarettes at retail from a business located on Spokane Tribal Lands.
- (y) "Tribal tax stamp" means the stamp or stamps that indicate the Spokane Tribal cigarette tax imposed under the Agreement is paid or that identify those cigarettes with respect to which no tax or another Tribal tax is imposed.
- (z) "Tribe" or "Tribal" means or refers to the Spokane Tribe of Indians.
- (aa) "Wholesaler" means every person who purchases, sells, or distributes cigarettes for the purpose of resale only.

Legislative History - Adopted 12/04/07, Resolu 2008-071

Section 44-9 Cigarette Tax – Agreement with Washington State

44-9.01 Intergovernmental Agreement with Washington State. The Tribe has entered into an Intergovernmental Agreement ("the Agreement") with the state of Washington regarding the taxation of cigarettes sold on Spokane Tribal Lands.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-9.03 Incorporation of the Agreement. All terms and conditions of the Agreement are incorporated into this Title as if fully set forth herein.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-9.05 Prohibition against Certain Sales.

- (a) Pursuant to the Agreement, mail order type sales, such as internet, catalog, and telephone sales, outside of Spokane Tribal Lands are prohibited, unless and until the State and the Tribe have entered into a memorandum of agreement in regard to the taxability of such sales.
- (b) Only Tribal Retailers and Tribeally-Licensed Retailers may engage in cigarette retail sales activities.
- (c) Only State-Certified Wholesalers, Self-Certified Wholesalers, Self-Certified Out-of-State Wholesalers, or the Tribe may engage in wholesale cigarette activities.
- (d) Any activity in violation of this section constitutes a civil infraction pursuant to this Title.
- (e) Any person or entity that violates this section is subject to confiscation of all unstamped cigarettes, and to a minimum fine equal to the amount of the cigarette levy that should have been assessed against such cigarettes pursuant to Chapter 44-8.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-9.07 Tribal Retailers; Notice to State Required For New Tribal Retailers.

- (a) "Tribal retailers" include:
 - (1) Two Rivers Spoko;
 - (2) Two Rivers Casino
 - (3) West Plains Spoko;
 - (4) Chewelah Spoko;
 - (5) Chewelah Casino and
 - (6) Wellpinit Trading Post.
- (b) The Tribe shall notify the Department 30 days before the start up of cigarette sales by any other Tribal retailer.
- (c) The Tribe shall provide information regarding the status of the land upon which any Tribal retailer is located at least 30 days before to the startup of any new cigarette sales by such retailer.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-9.09 Tribeally-Licensed Retailers; Application.

- (a) The Tribal Council, in its sole and unreviewable discretion, may issue a Spokane Tribe Cigarette Outlet License ("License") authorizing a Spokane Tribal Member 18 years of age or older to engage in retail sale of cigarettes at a specified location within Spokane Tribal Lands.

- (b) An applicant for a License ("Applicant") is seeking a privilege, and assumes and accepts any and all risk of adverse publicity, notoriety, embarrassment, criticism, or other action or financial loss that may occur in connection with the application process or the public disclosure of information requested.
- (c) The Applicant expressly waives any claim for damages that may result from the application process.
- (d) The Applicant must submit an application approved by the Tribal Council.
- (e) Any misrepresentation or omission made with respect to an application may be grounds for denial of the License.
- (f) An applicant need only submit the original application and 1 set of requested materials.
- (g) Express conditions of a License shall include compliance with this Title and the Agreement.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-9.11 Tribally-Licensed Retailers; Notice to the State. The Tribe shall provide to the Department a list of Tribally-licensed retailers, and shall provide the Department with an updated list upon the Tribe's issuance of a License to a Tribally-Licensed Retailer as provided in section 44-5.04.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-9.13 Purchase of Cigarettes by Tribal Retailers and Tribally-Licensed Retailers.

- (a) Tribal Retailers and Tribally-Licensed Retailers shall purchase cigarettes for sale within Spokane Tribal Lands only from:
 - (1) Wholesalers who meet the requirements of section 7 of the Agreement; or
 - (2) The Tribe, or its enterprises, as a Tribal manufacturer.
- (b) All cigarettes sold by Tribal Retailers and Tribally-Licensed Retailers shall bear a Tribal tax stamp.
- (c) The Tribe, or its designee, shall notify the state Department of Revenue 72 hours in advance of all shipments of cigarettes by self-certified wholesalers or self-certified Tribal wholesalers to Tribal Retailers or Tribally-Licensed Retailers.
 - (1) Tribal Retailers and Tribally-Licensed Retailers shall notify the Tribe, the STCTED Director or the Director's designee, of all cigarette shipments no less than 5 days in advance of all shipments.
 - (2) Such notice shall include the name of the wholesaler, detail regarding both quantity and brand, and the invoice order number.

Legislative History - Adopted 12/04/07, Resolu 2008-071

Section 44-11 Prohibition Against Sales to Minors

44-11.01 Sales to Minors Prohibited.

- (a) No person shall sell or give, or permit to be sold or given, cigarettes to any person under the age of 18.
- (b) Violation of subsection 44-7.01(a) is a civil infraction, subject to the following penalties:
 - (1) Upon a 1st violation, a fine of \$250;
 - (2) Upon a 2nd violation within any rolling 1-year period, a fine of \$500;
 - (3) Upon a 3rd violation within any rolling 1-year period, a fine of \$750;
 - (4) Upon a 4th violation within any rolling 2-year period, a fine of \$1,000; and
 - (5) Upon a 5th violation within any rolling 2-year period, a fine of \$1,000, and termination from employment or, in the case of a Tribally-Licensed Retailer, revocation of the licensee's Spokane Tribe Cigarette Outlet License.
 - (6) If a Spokane Tribal Cigarette Outlet License is revoked pursuant to subsection 44-7.01(5), the Tribe shall refuse to issue a Spokane Tribe Cigarette Outlet License to licensee for a period of 1 year from the date of the infraction.
- (c) It shall not be defense for a violation of subsection 44-7.01(a) that the purchaser acted, or was believed by the defendant to act, as agent or representative of another.

- (d) It shall be a defense to a violation of subsection 44-7.01(a) that the person making a sale reasonably relied on officially issued identification that shows the purchaser's age and bears the purchaser's signature and photograph.

Legislative History - Adopted 12/04/07, Resolu 2008-071

Section 44-13 Levy and Assessment of the Tribal Cigarette Tax

44-13.01 Tribal Cigarette Tax—Levy. Beginning no later than the 1st date of the sale of cigarettes by Tribal Retailers or Tribally-Licensed Retailers after the effective date of the Agreement, the Tribe shall impose taxes, pursuant to the terms of this section, on all sales of cigarettes to all persons.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-13.03 Tribal Cigarette Tax Rate. The Tribal cigarette tax rate shall be as follows:

- (a) For the first 36 months after the effective date of the Agreement ("phase-in period"), the tax rate shall equal no less than the sum of an amount equal to 80% of the State cigarette tax that is expressed in cents per cigarette, plus an amount determined pursuant to an agreed-upon formula under section 4.3.6 of the Agreement in lieu of state and local retail sales taxes.
- (b) The phase-in period may be reduced in accordance with subsection 7-8.02(d) of the Agreement.
- (c) No later than 36 months after the initial effective date of the Agreement, and subject to the phase-in period reduction under subsection 7-8.02(c) of the Agreement, the Tribal cigarette tax rate shall be no less than the sum of an amount equal to 100% of the state cigarette tax that is expressed in cents per cigarette, plus an amount determined pursuant to an agreed-upon formula under section 4.3.6 of the Agreement in lieu of state and local retail sales taxes.
- (d) If during any quarter the number of cartons of cigarettes, excluding those manufactured by the Spokane Tribe of Indians or its enterprises, that are sold at retail exceeds by at least 10% the quarterly average sales of the 6 months preceding the imposition of the Tribal cigarette tax, the 36-month phase-in period shall be reduced by 3 months. These reductions shall be cumulative.
- (e) The quarterly average sales baseline shall be determined by the Auditor.
- (f) For the purposes of this provision:
- (g) "Quarter" means a 3-month period, each quarter immediately succeeding the next. The first quarter begins the first day of the first month the Tribal cigarette tax is imposed, if the imposition of the tax is on or before the 15th of the month, or begins the first day of the second month the Tribal cigarette tax is imposed, if the imposition of the tax is after the 15th of the month; and
- (h) The "quarterly average sales" means the sum of the retail sales made during the 2 quarters divided by 2.
- (i) During the term of the Agreement, upon any future increase in the state cigarette tax, state retail sales tax, or local retail sales tax, the Tribal tax on cigarettes shall increase by no less than 100% of the increase in the combined state and local tax rates; *provided, however*, that during the phase-in period the Tribal tax rate shall be set so that it is at least equal to 80% of the then-current combined state cigarette tax and an amount determined pursuant to an agreed-upon formula under section 4.3.6 of the Agreement in lieu of state and local retail sales taxes.
- (j) During the term of the Agreement, upon any future decrease in the state cigarette tax, state retail sales tax, or local retail sales tax, the Tribal tax on cigarettes may decrease to a minimum of no less than 100% of the combined state and local tax rates; *provided, however*, that during the phase-in period the Tribal tax rate shall be set so that it is at least equal to 80% of the then-current combined state cigarette tax and state and local sales tax, as reflected pursuant to an agreed-upon formula under section 4.3.6 of the Agreement in lieu of state and local retail sales taxes.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-13.05 Cigarettes Manufactured by the Tribe or a Tribal Enterprise within Spokane Tribal Lands. All cigarettes manufactured by the Tribe or its enterprises upon Spokane Tribal lands that also are sold within Spokane Tribal Lands shall be exempt from the Tribal cigarette tax and from state cigarette taxes and state and local sales and use taxes.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-13.07 Tobacco Products not Subject to the Tribal Cigarette Tax Levy. Sale of tobacco products shall not be subject to the Tribal cigarette tax levy.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-13.09 Mail Order Type Sales Outside of Spokane Tribal Lands and Outside of Washington State. Mail order type sales of cigarettes, such as internet, catalog, and telephone sales, to purchasers outside of Indian country and outside of Washington State, shall not be subject to the Tribal cigarette tax levy.

Legislative History - Adopted 12/04/07, Resolu 2008-071

Section 44-15 Collection and Payment of Tribal Cigarette Taxes

44-15.01 Stamp Vendor. The Tribe shall contract with a bank or other stamp vendor, satisfactory to both the Tribe and the Department, to distribute Tribal tax stamps.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-15.03 Contract between the Tribe and the Stamp Vendor. The contract between the Tribe and the Stamp Vendor shall provide that the stamp vendor shall purchase a supply of Tribal tax stamps from the stamp manufacturer, or the Department, and make them available for purchase.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-15.05 Stamp Vendor Reporting Requirements.

(a) The Tribe shall require the stamp vendor to provide to the Tribe and the Department timely reports detailing the number of Tribal tax stamps sold, and make its records available for auditing by the Tribe and the Department.

(b) The Tribe's contract with the stamp vendor shall specify a process by which the Tribe is assured that all wholesalers who sell cigarettes to Tribal retailers are paying the applicable Tribal taxes.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-15.07 Distribution of Tribal Tax Stamps by Stamp Vendor. The stamp vendor shall distribute stamps to wholesalers, upon payment of the applicable Tribal taxes by the wholesaler, and remit all collected taxes to the Tribe.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-15.09 Tribe as a Stamping Wholesaler.

(a) If the Tribe elects to act as a stamping wholesaler, the Tribe also shall act as the stamp vendor.

(b) In the event the Tribe elects to act as a stamping wholesaler, the Tribe shall institute appropriate segregation of duties and internal controls regarding stamp vending and handling.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-15.11 Pre-Collection of the Tribal Tax; Inclusion in Sales Price.

(a) Whenever cigarette taxes are paid by any person other than the consumer, user, or possessor, that payment shall be considered a pre-collection of such taxes due.

(b) When the tax is prepaid by another, this amount is part of the selling price of the cigarette to the retail purchaser and shall be passed on by the retail purchaser to the consumer.

Legislative History - Adopted 12/04/07, Resolu 2008-071

Section 44-17 Requirements for Affixation of Stamps by Wholesalers

44-17.01 Wholesalers Responsible for Affixing Tribal Stamp Taxes. Wholesalers shall be responsible for affixing the Tribal tax stamps to the smallest container of cigarettes that will be sold or distributed by the Tribal retailer or Tribally-Licensed Retailer.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44.17.03 Tribal Stamp Tax Affixation; Requirements.

(a) Stamps shall be affixed so that the stamps may not be removed from the package without destroying the stamp.

(b) Stamps shall be affixed so the stamps readily can be ascertained by inspection to ensure the tax has been paid.

(c) Wholesalers may possess unstamped cigarettes only for as long as is reasonably necessary to affix Tribal tax stamps to the packages for sale.

Legislative History - Adopted 12/04/07, Resolu 2008-071

Section 44-19 Prohibition Against Sale of Unstamped Cigarettes

44-19.01 Sale of Unstamped Cigarettes Prohibited.

- (a) Unless specifically exempt under sections 44-8.03 and 44-8.05, all cigarettes sold or intended for sale within Spokane Tribal lands shall bear the Tribe's Cigarette Tax Stamp in the manner required pursuant to this Title.
- (b) Any person who possesses unstamped cigarettes in violation of this Title with the intent to sell such cigarettes, shall be guilty of an infraction and shall be subject to the following penalties:
 - (1) a fine equal to the amount of the cigarette levy that should have been assessed against such cigarettes pursuant to Chapter 44-8;
 - (2) forfeiture of all unstamped cigarettes; and
 - (3) if applicable, revocation of the Spokane Tribe Cigarette Outlet License for a minimum of 3 years.

Legislative History - Adopted 12/04/07, Resolu 2008-071

Section 44-21 Retailer Compliance Program

44-21.01 Tribal and Tribally-Licensed Retailer Compliance Program; Establishment; Purpose.

- (a) The Tribe hereby establishes the Tribal and Tribally-Licensed Retailer Compliance Program ("Program").
- (b) The purpose of the Program is to monitor compliance with the Tribe's Cigarette Sales and Tax Code and with the Agreement.
- (c) The compliance program is designed to monitor and to investigate Tribal and Tribally-Licensed Retailers in regard to:
 - (1) Sales to minors;
 - (2) Sales of unstamped cigarettes;
 - (3) Sales of cigarettes obtained from unauthorized sources; and
 - (4) Sales of exempt cigarettes to ineligible persons.
- (d) The Tribe shall provide monitoring, sampling, investigation, reporting, and related activity necessary to carry out the Tribal and Tribally-licensed retailer compliance program by the Tribe.
- (e) The Tribe shall report violations of 4-11.01(3) and enforcement actions taken pursuant to Tribal law to the Department within 30 days.

Legislative History - Adopted 12/04/07, Resolu 2008-071

Section 44-23 Records

44-23.01 Stamp Vendor.

- (a) The Stamp Vendor shall maintain records and invoices of stamps purchased from the stamp manufacturer, records and invoices of sales of stamps to licensed wholesalers, manufacturers, self-certified wholesalers, and self-certified Tribal wholesalers.
- (b) All records required to be maintained by the Stamp Vendor shall be made available for inspection and duplication by the Spokane Tribal Cigarette Tax Enforcement Department ("STCTED"), and the 3rd Party Auditor, pursuant to Section 15 of this Title.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-23.03 Tribal Retailers.

- (a) Tribal Retailers shall maintain records and invoices of cigarettes purchased from licensed wholesalers, self-certified wholesalers, self-certified Tribal wholesalers and manufacturers; records and invoices of cigarettes sold; cigarette inventory; and records to verify that the retail selling price included the applicable Tribal taxes.
- (b) All records required to be maintained by Tribal Retailers shall be made available for inspection and duplication by the STCTED, and the 3rd Party Auditor, pursuant to Section 15 of this Title.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-23.05 Tribally-Licensed Retailers.

- (a) Tribally-Licensed Retailers shall maintain records and invoices of cigarettes purchased from licensed wholesalers, self-certified wholesalers, self-certified Tribal wholesalers and

manufacturers; records and invoices of cigarettes sold; cigarette inventory; and additional records necessary to verify that the retail selling price included the applicable Tribal taxes.

- (b) All records required to be maintained by Tribal Tribally-Licensed Retailers shall be made available for inspection and duplication by the STCTED, and the 3rd Party Auditor, pursuant to Section 15 of this Title.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-23.07 Tribe.

- (a) The Tribe shall maintain records necessary to verify that all Tribal tax revenue was used to fund essential government services of the Tribe.
- (b) All records required to be maintained by Tribe shall be made available for inspection and duplication by the STCTED, and the 3rd Party Auditor, pursuant to Section 15 of this Title.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-23.09 Self-Certified Wholesalers; Self-Certified Tribal Wholesalers; Self-Certified Out of State Wholesalers.

- (a) Self-Certified Wholesalers, Self-Certified Tribal Wholesalers, and Self-Certified out of State Wholesalers shall maintain records and invoices of stamp purchases, records and invoices of sales of stamped cigarettes, stamp inventory, and the stamping process.
- (b) All records required to be maintained by Self-Certified Wholesalers, Self-Certified Tribal Wholesalers, and Self-Certified out of State Wholesalers shall be made available for inspection and duplication by the STCTED, and the 3rd Party Auditor, pursuant to Section 15 of this Title.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-23.11 Wholesalers Licensed by the State.

- (a) Wholesalers licensed by the State are subject to the requirements as set forth in Title 82 RCW and any rules adopted thereunder, and must maintain adequate records detailing which cigarettes are subject to state tax and which cigarettes are subject to the Spokane Tribe of Indians Tribal taxes, as evidenced by the proper stamp and tax rate.
- (b) All records required to be maintained by Wholesalers licensed by the State shall be made available for inspection and duplication by the STCTED, and the 3rd Party Auditor, pursuant to Section 15 of this Title.

Legislative History - Adopted 12/04/07, Resolu 2008-071

Section 44-25 Use of Tribal Cigarette Tax Revenue

44-25.01 Cigarette Tax–Use of Tribal Levy.

- (a) Tribal cigarette tax revenue shall be used only for essential government services, and may not be used to subsidize Tribal cigarette retailers.
- (b) For the purposes of this section, “subsidize” means that proceeds from the Tribal cigarette tax pursuant to the Agreement cannot be expended on the enterprise activities of the Tribal retail cigarette business.
- (c) Where the cigarette business is co-located with a retail food business, the proceeds cannot be expended to support the retail food business.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-25.03 Tribal Retail Cigarette Enterprise Activities. “Tribal Retail Cigarette Enterprise Activities” include paying wages, benefits, bonuses, or expenses related to the maintenance and operation of the retail facility or typically considered to be part of a business’ operating expenses and overhead.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-25.05 Non-Enterprise Activities. Non-Enterprise Activities include, but are not limited to: government services to provide and maintain infrastructure, such as sidewalks, roads, and utilities; governmental administrative services; general governmental services, such as, accounting, human resources, planning, legal; services such as fire protection and law enforcement; the costs of administering deductions and exemptions similar to those available to retailers, wholesalers and others under state law; providing or contracting for health benefits, economic development, natural resource protection and enhancement; the provision of job services; and distribution of moneys related to trust funds, education, and general assistance.

Section 44-27 Cigarette Tax–Audit.

44-27.01 Audit.

- (a) The Tribe shall retain a 3rd party independent Auditor (“Auditor”) for the purposes of verifying compliance with the Agreement.
- (b) The Auditor shall be a certified public accountant licensed by the state of Washington.
- (c) The Auditor shall perform all work required under Section 10 of the Agreement.

Legislative History - Adopted 12/04/07, Resolu 2008-071

Section 44-29 Spokane Tribal Cigarette Tax Enforcement Department

44-29.01 Establishment of the Spokane Tribal Cigarette Tax Enforcement Department.

- (a) The Tribe hereby establishes the Spokane Tribal Cigarette Tax Enforcement Department (“STCTED”).
- (b) The STCTED is authorized and empowered to ensure compliance with the this Title and with the Agreement.
- (c) The Tribal Council shall appoint a Director (“Director”) for the STCTED.
- (d) Upon authorization of the Tribal Council, the STCTED Director may employ agents to assist in the enforcement of this Title and the Agreement.
- (e) The Director, and any duly authorized STCTED agents, shall hold a limited commission, issued by the Tribal Council, to enforce the Code and the Agreement, including the issuance of citations based upon commission of infractions set forth in the Title.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-29.03 Inspections. The Director, or the Director’s authorized representative, upon presentation of appropriate credentials, reasonably may inspect and investigate locations within Spokane Tribal Lands upon which cigarette operations are occurring to determine whether:

- (a) persons engaged in activities regulated under this Title properly are licensed;
- (b) cigarette sales are conducted pursuant to the requirements of this Title;
- (c) cigarettes properly are stamped pursuant to the requirements of this Title; and
- (d) records properly are being maintained pursuant to requirements of this Title.

Legislative History - Adopted 12/04/07, Resolu 2008-071

Section 44-31 Penalties

44-31.01 Tribally-Licensed Retailers; Cease and Desist Orders.

- (a) If the Director determines that a Tribally-Licensed Retailer’s failure to comply with any provision of this Code, the Agreement, or any provision of the Spokane Tribal Law and Order Code, poses a direct and immediate threat to the peace, safety, morals, or general welfare of persons residing upon Spokane Tribal Lands, or constitutes a willful violation of this Code or the Agreement, the Director shall issue an order commanding the Tribally-Licensed Retailer immediately to cease and desist any and all cigarette sales.
- (b) Any employee of a Tribally-Licensed Retailer who is served by the Director with a cease and desist order is deemed to be an agent of the Tribally-Licensed Retailer, and issuance of the cease and desist order to the employee is notice to the Tribally Licensed Retailer.
- (c) If the Director personally serves upon an employee a cease and desist order, the Director, within 4 working days, shall send a copy of the cease and desist order, by certified mail, to the holder of the Spokane Tribe Cigarette Outlet License.
- (d) The Tribally-Licensed Retailer shall cease and desist operation immediately upon service of the cease and desist order.
- (e) Within 15 days of the issuance of the cease and desist order, the Tribally Licensed Retailer may request, in writing, an expedited appeal hearing before the Spokane Tribal Court, which hearing

shall be held no later than 48 hours, excluding weekends and holidays, from the time of submission of the Notice of Appeal and Request for Expedited Hearing to the Tribal Court.

- (f) The filing of a Notice of Appeal and Request for an Expedited Hearing shall not stay the effect of the Case and Desist Order.
- (g) Cease and desist orders shall be adjudicated as notices of infraction pursuant to Chapter 44-17, *hereof*.
- (h) If the Director reasonably determines that a person is selling cigarettes without a Spokane Tribe Cigarette Outlet License, the Director shall issue a cease and desist order pursuant to this Section.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-31.03 Infractions.

- (a) Any violation of this Code shall constitute a civil infraction.
- (b) The Director may issue a Notice of Infraction if the Director reasonably believes that a person has committed an infraction under this Code.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-31.05 Sovereign Immunity: Tribal Retailer Employees.

- (a) All Tribal Retailers shall act in conformity with the requirements of this Title and the requirements of the Agreement.
- (b) Any person employed by the Tribe to work for or manage a Tribal Retail Establishment is directed to comply with the requirements of this Title and the requirements of the Agreement.
- (c) Any person employed by the Tribe to work for or manage a Tribal Retail Establishment who does not comply with the requirements of this Title, or with the requirements of the Agreement, hereby is determined to not be acting within his official capacity or within the scope of the employee's authority.
 - (1) The Sovereign Immunity of the Tribe shall not extend to a person employed by the Tribe to work for or manage a Tribal Retail Establishment when such person does not act within their official capacity or within the scope of their authority.
 - (2) The STCTED is authorized to issue a notice of infraction to any person employed by the Tribe to work for or manage a Tribal Retail Establishment who violates any provision of this Title.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-31.07 Infractions: Issuance.

- (a) The Director shall serve a Notice of Infraction issued under this section:
 - (1) by personal service upon the person who has committed the infraction; or
 - (2) by certified mail directed to the person who has committed the infraction.
- (b) If the Director personally serves a Notice of Infraction upon an employee, the Director, within 14 days, shall send a copy of the notice of infraction by certified mail to the Manager of the Tribal Retail Establishment or to the holder of the Spokane Tribe Cigarette Outlet License.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-31.09 Infractions: Form.

- (a) The form of a Notice of Infraction issued under this Code shall include the following:
 - (1) a statement that the Notice represents a determination that the person has committed an infraction named in the notice, and that the determination shall be final unless contested as provided in this Title;
 - (2) a statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;
 - (3) a statement of the specific violation that necessitated issuance of the infraction;
 - (4) a statement of the penalty involved if the infraction is established;
 - (5) a statement of the options provided in this Title for responding to the Notice and the procedures necessary to exercise those options;
 - (6) a statement that, at any hearing to contest the Notice of Infraction, the Director has the burden of proving, by a preponderance of the evidence, that the person committed the

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infraction;

- (7) a statement notifying the person that they may subpoena witnesses, including the Director;
- (8) a statement that the person who the Director has served with the Notice of Infraction shall sign, that the person promises to respond to the Notice of Infraction in 1 of the ways provided in this Title;
- (9) a statement that refusal to sign the infraction, as directed in subsection 44-16.04(8), does not affect the validity of the infraction nor deprive the Spokane Tribal Court of personal and subject matter jurisdiction to adjudicate the infraction; and
- (10) a statement that a licensee's failure to respond to a Notice of Infraction shall result in a determination that the infraction was committed and shall result in the assessment of the penalty set forth in the infraction.

(b) Unless contested in accordance with this Title, the notice of infraction represents a determination that the infraction was committed.

Legislative History - Adopted 12/04/07, Resolu 2008-071

Section 44-33 Responses and Appeals

44-33.01 Response To Notice of Infraction.

- (a) A person who is issued a Notice of Infraction shall respond within 20 days of the date of issuance of the Notice of Infraction.
- (b) If the person named in the Notice of Infraction does not elect to contest the Notice of Infraction, the licensee shall pay to the Spokane Tribe, by check or money order, the amount of the penalty prescribed for the infraction.
- (c) If the Director receives a response that does not contest the Notice of Infraction, but that includes payment of the appropriate penalty, the Director shall make the appropriate entry in the records and close the matter.
- (d) If the person named in the Notice of Infraction elects to contest the Notice of Infraction, the person shall respond by filing a Notice of Appeal to the Spokane Tribal Court specifying the grounds for the appeal.
- (e) If any person issued a Notice of Infraction fails to respond within 20 days of the issuance of the infraction, the person shall be deemed to have admitted to committing the infraction and shall be liable for the penalty set forth in the notice of infraction.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44.33.03 Appeal Procedure.

- (a) A hearing held for the purpose of contesting the determination that an infraction has been committed shall be without a jury.
- (b) The Court may consider the Notice of Infraction and any other written report made under oath and submitted by the Director, or the written statement of the Director that was the basis for the issuance of the notice, in lieu of the Director's personal appearance at the hearing.
- (c) The Office of the Spokane Tribal Attorney may represent the Director.
- (d) The person may subpoena witnesses, including the Director, and has the right to present evidence and examine witnesses present in Court.
- (e) The burden of proof is upon the Director to establish the commission of the infraction by a preponderance of the evidence.
- (f) After consideration of the evidence and argument, the Court shall determine whether the person committed the infraction.
- (g) Where it is not established that the infraction was committed, the Court shall issue an order dismissing the Notice.
- (h) Where it is established that the person committed an infraction, the Court shall issue an appropriate order.
 - (1) The final order shall include findings showing that:

- A. the Tribal Court has jurisdiction over the subject matter and the parties;
 - B. the judgment was consistent with the Law and Order Code of the Tribe.
- (i) A decision by the Tribal Court on the appeal shall be final and unreviewable.
 - (j) If, after final determination by the Spokane Tribal Court that a person has committed the infraction, the person fails to pay a monetary penalty within 30 days, the person shall be subject to contempt of court.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-33.05 Infraction Penalty.

- (a) For all violations of this Title for which a specific penalty is not established, the Director shall assess a monetary penalty of \$500 upon a person found to have committed an infraction under this Title.

- (b) The Director shall deposit monetary penalties collected under this Code in the general fund.

Legislative History - Adopted 12/04/07, Resolu 2008-071

Section 44-35 Miscellaneous

44.35.01 Cigarette Tax – Prior Resolutions. This Title shall supersede all previous Tribal Council resolutions dealing with the levy of Tribal cigarette taxes.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-35.03 Cigarette Sales – Permitted. Tribal Retailers and Tribally-Licensed Retailers are the only retail businesses authorized to sell cigarettes within Spokane Tribal Lands.

Legislative History - Adopted 12/04/07, Resolu 2008-071

44-35.05 Prohibition Against Resale.

- (a) Consumers shall not purchase for resale any cigarettes sold by Tribal Retailers and Tribally-Licensed Retailers.
- (b) Tribal Retailers and Tribally-licensed retailers shall post a notice advising that cigarettes may not be purchased for resale.
- (c) Any person who violates, or conspires to violate, this section shall be guilty of an infraction punishable by a \$1000 fine, confiscation of all cigarettes purchased for resale, and, if applicable, a 3-year revocation of any Spokane Tribe Cigarette Outlet License.

Legislative History - Adopted 12/04/07, Resolu 2008-071

CHAPTER 45 – TERO CODE

SPOKANE TRIBAL EMPLOYMENT RIGHTS ORDINANCE

SECTION 1.0 NAME

This Ordinance shall be known as the “Spokane Tribal Employment Rights Ordinance”.

1.1 PURPOSE

The purpose of this Ordinance is to assist in and require the fair employment of Indians on or near the Spokane Indian Reservation and to prevent discrimination against Indians in the employment practices of Reservation employers through the creation of the Tribal Employment Rights Commission and the establishment of rules, regulations and policies governing its responsibility and authority to insure Reservation-wide compliance with this Ordinance.

SECTION 2.0 DEFINITION OF IMPORTANT TERMS AND WORDS

2.1 AGENT(S)

Any employee or individual authorized to act on behalf of the Commission.

2.2 BUSINESS FOR PROFIT

Shall mean any business enterprise or operation which is not considered a non-profit or not-for-profit organization by the IRS.

2.3 CHAIRPERSON

Shall mean the Chairperson of the Spokane Tribal Employment Rights Commission

2.4 COMISSION

Shall mean the Spokane Tribal Employment Rights Commission.

2.5 COMMISSIONER

Shall mean a Commissioner of the Spokane Tribal Employment Rights Commission.

2.6 CORE CREW

Shall mean key personnel required by the employer who are regular, permanent employees and are in a supervisory or other key position; only the first and thereafter every seventh employee may be employed as key personnel and/or core crew by an employer.

2.7 COUNCIL

Shall mean the Business Council of the Spokane Tribe of Indians.

2.8 DIRECT FEDERAL CONTRACTS

A direct Federal Contract is a contract let by the Federal agency directly to a prime contractor.

2.9 DIRECTOR

Shall mean the Director of the Spokane Tribal Employment Rights Program.

2.10 EEOC

Shall mean the Equal Employment Opportunity Commission of the United States.

2.11 EMPLOYER

Shall mean any person, company, contractor, subcontractor or other entity located or engaged in work on the Spokane Reservation. However, the Spokane Tribe, the State of Washington and the

Federal Government along with any subdivision are excluded from the definition of employer and not subject to the Tribal Employment Rights Ordinance.

2.12 ENGAGED IN WORK ON THE RESERVATION

An employer is "engaged in work on the Reservation" if during any portion of conducting business for a business enterprise or working on a specific project, contract or subcontract, he or any of his employees spend a majority of his (their) time performing work within the exterior boundaries of the Reservation on a continuing basis.

2.13 FEDERALLY FUNDED CONTRACTS

A Federally funded contract is one in which the Federal Government has contracted or granted funds to an entity which, in turn, lets the prime contract.

2.14 FOR THE BENEFIT OF INDIANS

Work to be performed under a Federal or Federally funded contract is for the benefit of Indians if the benefits provided to Indians are in addition to or incidental to any benefits which might occur to the general public.

2.15 HRC

Shall mean the Human Rights Commission of the State of Washington.

2.16 INDIAN

Shall mean any person recognized as an Indian by the United States pursuant to its trust responsibilities to American Indians.

2.17 INDIAN CONTRACTOR OR SUBCONTRACTOR

Contractor or Sub-Contractor that is 51% or more Indian owned and controlled.

2.18 INDIAN OWNED BUSINESS

Shall mean a business entity of which at least 51% is actively owned, operated and managed by Indians.

2.19 INDIAN PREFERENCE APPLICANT

Shall mean any person recognized as one of the following in the stated order, except any order may be followed on Federal and State projects:

- a) Enrolled member of the Spokane Tribe of Indians.
- b) Child or an enrolled member of the Spokane Tribe of Indians.
- c) Spouse of an enrolled member of the Spokane Tribe of Indians.
- d) Enrolled member of a recognize tribe of Indians.

2.20 LOCAL INDIAN OR LOCAL INDIAN OWNED BUSINESS

Is any Indian Preference applicant or Indian owned business having social and economic ties to the Spokane Tribe of Indians with primary place of residence or business on the Spokane Reservation which is owned by a Spokane Tribal member living on or near the Reservation.

2.21 LOCATED NEAR THE RESERVATION

Near shall mean any employer located within daily commuting distance of the Reservation.

2.22 LOCATED ON THE RESERVATION

An employer is located on the Reservation if during any portion of a business enterprise or specific project, contract or sub-contract, he maintains a temporary or permanent office or facility within the exterior boundaries of the Reservation.

2.23 OFCCP

Shall mean the Office of Federal Contract Compliance Programs of the United States.

2.24 PRIME CONTRACTOR

A prime contractor is the prime construction, forestry or mining contractor responsible for construction or mining projects.

2.25 RESERVATION

Shall mean the Spokane Indian Reservation, Washington and includes all land, Indian and non-Indian, within the exterior boundaries of the Spokane Indian Reservation and any trust lands under jurisdiction of the Spokane Tribe, wherever they are located.

2.26 SECRETARY

Shall mean the Secretary of the Interior or his duly authorized representatives.

2.27 SUBCONTRACT

A subcontract is any contract let by a prime contractor to its subcontractors for supplies or work on prime contracts regardless of tier.

2.28 TRIBAL MEMBER

Shall mean any person who is a duly enrolled member of the Spokane Tribe of Indians.

2.29 TRIBE

Shall mean the Spokane Tribe of Indians.

SECTION 3.0 SPOKANE TRIBAL EMPLOYMENT RIGHTS COMMISSION

3.1 APPOINTMENT

The Spokane Tribal Employment Rights Commission shall be comprised of five members and two alternates appointed by the Spokane Tribal Business Council.

3.2 TERMS OF OFFICE

The members of the Commission shall be appointed for a term of three years. To ensure continuity, the Tribal Council shall appoint two members plus two alternates for a three-year term, two members for a two-year term and one for a one-year term. The Council shall fill each vacancy by appointing a new member or reinstating the member whose term is expiring. An alternate shall replace any member who is removed or for some other reason cannot fulfill his term. An alternate shall also sit in place of any member of the commission absent whose presence is required to create a quorum.

3.3 REMOVAL FROM OFFICE

A Commissioner may be removed by the Tribal Council only for good cause shown after notice and hearing by the Council.

3.4 VACANCY AND INTERIM APPOINTMENT

If a Commissioner shall die, resign, be incapacitated or be removed from office, a vacancy on the Commission shall be created automatically, and the unexpired term shall be filled by the Alternate and in *such a* case where 2 or more vacancies are created, Council members shall be appointed to serve the unexpired terms.

3.5 CHAIRPERSON

The Chairperson of the Commission shall be elected by the members of the Commission on an annual basis. The chairperson shall preside at all formal and informal meetings and hearings of the full Commission.

3.6 DUTIES OF THE COMMISSION

The Commission or its authorized representatives shall administer the Employment Rights Program of the Spokane Tribe of Indians in Accordance with this Ordinance and shall adopt by-laws under which it shall operate internally.

3.7 POWERS OF THE COMMISSION

The Commission or its authorized representatives shall have the power:

- a) To make recommendations to the Tribal Council when hiring and firing Commission employees and to pay salaries pursuant to a salary schedule established by the Council.
- b) To establish rules and regulations governing all activities of the Commission and the Director consistent with this Ordinance and as approved by the Tribal Council.
- c) To make recommendations to the Tribal Council on amendments to the Ordinance after public participation and comments are reviewed by the Commission in accordance with the procedures established by the Commission.
- d) To expend funds appropriated by the Council for the Spokane Tribal Employment Rights Program and funds collected from employers as provided herein.
- e) To obtain funding from Federal, State or other sources to supplement Council appropriations.
- f) To establish numerical hiring goals and timetables specifying the minimum number of Indians an employer must hire by craft or skill level.
- g) To require employers to establish or participate in job training programs as the Commission or the Director deems necessary to increase the pool of Indians eligible for employment on the Reservation.
- h) To establish and administer the Tribal Hiring Hall and require employers to use the Hiring Hall.
- i) To prohibit employers from using job qualifications criteria or personnel requirements that may bar Indians from employment unless such criteria or requirements are bona fide and necessary occupational qualifications for employment. Commission regulations may adopt EEOC guidelines or may adopt additional requirements to eliminate employment barriers unique to Indians and the Reservation.
- j) To enter into agreements with the unions to insure union compliance with this Ordinance.
- k) To require employers to give preference to Tribal and other Indian-owned businesses in the award of contracts and subcontracts.
- l) To establish counseling programs to assist Indians in obtaining and retaining employment.
- m) To hold hearings and to subpoena witnesses and documents in accordance with this Ordinance.
- n) To require employers to submit reports and take all action deemed necessary by the Commission or the Director for fair and vigorous implementation of this Ordinance.

- o) To enter into cooperative agreements with Federal Employment Rights agencies such as EEOC and OFCCP to eliminate discrimination against Indians both on and off the Reservation as well as to enter into agreements with the Council for the same purposes.
- p) To take such other actions consistent with this Ordinance as are necessary to achieve the purpose and objectives of the Spokane Employment Rights Program established in this Ordinance.
- q) The Commission including any of its agents, employees or delegates, shall retain all rights and privileges of Sovereign Immunity of the Spokane Tribe of Indians.

3.8 DIRECTIVE TO THE COMMISSION

- a) In establishing and maintaining the numerical goals provided for in Paragraph (g) and the requirements for training programs as provided for in the first sentence of Section 4, Paragraph 4.4, The Commission, the Director and staff, whenever practical, shall consult with the affected employers so as to consider their input and recommendations.
- b) The Commission may hold such formal and informal meetings, and regulate the times and procedures thereof as it may deem necessary in order to carry out effectively its duties and powers under this Ordinance.
- c) The Commission shall attempt whenever possible to administer this Ordinance and execute its powers hereunder by a consensus approach. If a consensus cannot be achieved, the affirmative vote of at least three Commissioners shall be required to render effective any decision or action of the Commission, and the Chairperson shall be entitled to vote on any decision or action.
- d) All written agreements or plans, directives, orders, complaints, and appeals which the Commission is authorized or required to issue or file hereunder shall bear the signature of at least two Commissioners.

3.9 APPOINTMENT AND REMOVAL OF EMPLOYMENT RIGHTS DIRECTOR

The Council shall appoint the Director to serve on a full-time basis as the staff director for the Commission. The Director may be removed by the Council for good cause shown after notice and hearing by the Council. The Council may consider Commission recommendations concerning appointment and removal of the Director.

3.10 DUTIES AND POWERS OF THE DIRECTOR

- a) Subject to the supervision and direction of the Commission, the Director shall exercise all those duties and powers under this Ordinance which may be delegated to the Director by the Commission, provided, however that any decision which the Commission is authorized or required to make hereunder, including the issuance or filing of the written materials listed in Section 3.8 hereof, shall not be so delegated. Routine or administrative correspondence not involving any decision making powers of the Commission may be delegated by it to the Director.
- b) As soon as practicable after their appointment, the initial Commissioners shall define by rule or regulation the specific powers and duties hereunder which the Director shall exercise. Pending the appointment of the initial Commissioners, the Council may act as it deems necessary to exercise the duties and powers conferred by this Ordinance upon the Commission, including delegation of interim authority by the Council to the Director.

SECTION 4.0 SPOKANE EMPLOYMENT RIGHTS PROGRAM

4.1 COVERAGE AND SCOPE

- a) All employers are required to give preference to local Indians in hiring, promotion, training and all other aspects of employment, contracting or subcontracting, must comply with this ordinance and the Rules, Regulations and orders of the Commission. The foregoing shall apply to all facilities of an employer including a subcontractor located or engaged in work on the Reservation.
- b) The foregoing requirements shall apply only to an employer located or engaged in work while on the Reservation. When an employer has previously agreed in a contract, lease or other document to give preference to Indians, this Ordinance and authorized Commission Rules, Regulations, and directives shall define the specific minimum obligations of the employer pursuant to such written agreement.

4.2 CONTRACTORS AND SUBCONTRACTORS

The Indian Preference requirements contained in this Ordinance shall be binding on all contractors and sub-contractors of employers, regardless of tier, and shall be deemed part of all contract and sub-contract specifications. The employer shall have the initial and primary responsibility for insuring all contractors and sub-contractors comply with these requirements. The employer as well as any of his contractors or sub-contractors shall be subject to penalties provided herein for any violation of this Ordinance if the contractor or sub-contractor fails to comply

4.3 MINIMUM NUMERICAL GOALS AND TIMETABLES FOR INDIAN EMPLOYEMENT

- a) The Commission or the Director may establish the minimum number of Indians each employer must employ on his work force during any year that he or any of his employees are engaged in work on the Reservation. Numerical goals may be set for each craft, skill, job classification, etc., used by the employer and shall include, but not be limited to administrative supervisory and professional categories. The goals shall be expressed in terms of man hours of Indian employment as a percentage of the total man hours worked by the employer's work force in the job classification involved.
- b) For both new and existing employers, the goal shall be reviewed by the Commission at least annually and shall be revised as necessary to reflect changes in number of Indians available or changes in employer hiring plans.
- c) Each employer shall submit a monthly report to the Director indicating the number of Indians in his work force, how close he is to meeting his goals, all persons hired or fired during the last month, the job positions involved, and other information required by the Commission.

4.4 TRAINING

Employers may be required by the Commission to participate in training programs to assist Indians to become qualified in the various job classifications used by the employer. The Commission shall set the ratio of Indian trainees to fully qualified workers after consultation with the Director and employers.

4.5 TRAINING ADMINISTRATIVE FEE

Every building trade's employer that is a prime contractor on the Reservation of \$10,000.00 or more shall pay a training fee of 3% (three percent) of the total contract dollar amount. This revenue shall be used for Journeyman upgrade training and/or Apprenticeship Trainee.

4.6 JOB QUALIFICATION AND PERSONNEL REQUIREMENTS

Employers are prohibited from using job qualification criteria or personnel requirements which bar Indians from employment unless such criteria or requirements are required by business necessity

and are bona fide occupational qualifications for employment as listed in the Dictionary of Occupational Titles established by the Commission, or unless they are unemployable for other valid reasons.

- a) Employers who employ more than two employees may designate key personnel who are regular, permanent employees in a supervisory or other key position. Only the first and thereafter every seventh employee may be employed as key personnel and core crew by an employer.
- b) At no time shall core crew and/or key personnel displace Indian Preference Employee(s) and/or potential Indian Preference Employee(s) by performing work outside their normal classification.

4.7 TRIBAL HIRING HALL

The Commission will cause to be established and administer a Tribal Hiring Hall to assist the Commission and employers in placing Indians in job positions. An employer may recruit and hire workers from whatever process he chooses, as long as he complies with this Ordinance, and the Federal Equal opportunity Act, in hiring practices, Indian job preference regulations and agreements pertaining to his operation.

4.8 COUNSELING AND SUPPORT PROGRAMS

The Commission shall cause to be established counseling and other support programs to assist Indians to obtain and retain employment:

- a) Every employer shall be required to cooperate with the Commission or the Director regarding such counseling and support programs.
- b) Every employer must provide opportunity to any employee to enter any such program for counseling prior to termination unless the employee was terminated for good cause as defined herein.
- c) The Commission is authorized to develop a Local Indian Business Support Program to promote, facilitate and encourage the success of local Indian owned Businesses. It is authorized to develop and set criteria allowing for the reimbursement of certain administrative fees to said businesses with contracts of \$200,000 or less. The Commission shall develop and adhere to specific standards providing for equal treatment of those seeking such reimbursements.

4.9 LAYOFFS AND/OR TERMINATIONS

- a) In making any layoffs and reductions in force, all employers shall maintain required ratios of Indian Preference Employees. Furthermore, no Employer shall terminate or layoff any Indian Preference person who is employed pursuant to this Ordinance without good cause for such termination. Good cause for termination shall be defined as: "Failure to adequately perform the job, failure to follow orders, any illegal or fraudulent act pertaining to employment or any act which puts the employer or other employees in an unsafe position in the course of employment."
- b) The employer in determining layoffs shall apply the layoffs in a reasonable and fair fashion. Furthermore layoffs should only occur when there is not adequate work to keep all employees on the job or when the employer has a cash flow shortage necessitating reduction in the work force.

4.10 PROMOTION

Every employer shall in accordance with required ratios give Indians preferential consideration for all promotion opportunities

and shall encourage Indians to seek such opportunities.

4.11 SUMMER STUDENTS

Employers shall give Indian students preferential consideration for summer student employment. The Employer shall make every effort to promote after-school, summer and vacation employment for Indian students.

4.12 INDIAN PREFERENCE REQUIREMENTS IN AWARDING PRIME CONTRACTS AND SUB-CONTRACTS

- a) Employers shall give preference in the award of contracts to tribally owned and "Local Indian-owned" businesses. These rules and regulations apply to all construction, forestry and mining that will take place on or near the Spokane Indian Reservation. A contract or sub-contract taking place "on or near the Spokane Indian Reservation" means 50% of the unfinished products or by-products comes from within Reservation boundaries. The Indian contract preference requirements set out herein shall apply to:
 - i. All contracts and sub-contracts which are not Direct Federal or Federally funded contracts; and
 - ii. All sub-contracts or Direct Federal contracts which are for the benefit of Indians and which are covered by Section 7(b) of the Indian Self Determination Act, P.L. 93-638, 25 U.S.C. 45(e) (b).

In granting such preference, the following order shall be adhered to:

- i. Local Indian-owned Businesses.
 - ii. Other Indian-owned Businesses.
- b) Any Business or Indian-owned Business may bid as a supplier, prime contractor or subcontractor on the Reservation, but shall not submit bids for a sub-contract or to be supplier if bidding on the prime contract and shall sign a non—collusive statement for each contract.
 - c) The Tribal employment Rights Office shall maintain a list of tribally-owned, locally Indian-owned and Indian-owned businesses which shall be supplied to the employers for their use. On all contracts of \$75,000 or over, employers shall provide an approved INDIAN CONTRACTING UTILIZATION PLAN which shall conform to the Indian Preference Contracting/sub-contracting rules and regulations contained in this Ordinance and must provide documentation to:
 - i. How Indian and local Indian Preference Bids were solicited; and
 - ii. Who was awarded the contract; and
 - iii. Why each contractor was awarded said contract.
 - d) On all contracts \$75,000 or over, no employer may commence work on the Spokane Reservation until it has submitted a Commission-approved INDIAN CONTRACTING UTILIZATION PLAN setting forth how the employer intends to meet the requirements when awarding prime contracts and sub-contracts.
 - e) Employers on or near the Spokane Reservation shall comply with these requirements when awarding prime contracts and sub-contracts.

- i. If the entity asking for bids has reason to believe that two or more qualified local Indian firms will bid, then the Invitation for bids shall be restricted to qualified local Indian-owned enterprises and Indian Organization.
 - ii. If there are less than two local Indian bidders then, the Invitation for Bids shall be open competition to Indian and non-Indian firms alike.
- f) In the case of (i) above, the Lowest Qualified Local Indian Preference bidder shall be awarded the Contract or Sub-contract, if within budgetary limits of the project or within the fixed percentage as outlined below. In the case of (ii) above, the Lowest Indian bidder shall be awarded if:
- i. The lowest responsible Indian Preference bidder is within budgetary limits established for the specific project or component of the project, and;
 - ii. The lowest responsible Indian Preference bidder is not more than a fixed percentage higher than the total bid price of the lowest responsive bid from any qualified bidder. The fixed percentage is determined as follows:

PERCENTAGE OF BID OR When the lowest responsive bid is <u>At LEAST</u>	<u>but LESS than</u>	DOLLAR AMOUNT, WHICH <u>EVER IS LOWEST</u>
\$000,000	\$100,000	10% or \$ 9,000.
\$100,000	\$200,000	9% or \$16,000.
\$200,000	\$300,000	8% or \$21,000.
\$300,000	\$400,000	7% or \$24,000.
\$400,000	\$500,000	6% or \$25,000.
\$500,000	\$1 million	5% or \$40,000.
\$1 million	\$2 million	4% or \$60,000.
\$2 million	\$4 million	3% or \$80,000.
\$4 million	\$7 million	2% or \$105,000.
\$7 million or more responsive responsive		1% of lowest bid, w/no \$ amt

- g) Any contractor or sub-contractor failing to provide an Indian Contracting Utilization Plan shall be deemed a violation of this Ordinance and subject to the sanctions as provided for in Section 7.

4.13 **BURDEN OR PROOF**

In any hearing before the Commission where the issue is employer compliance with any of the requirements or provisions of the foregoing subsections of Section 4, the burden of proof shall be on the employer to show compliance within said subsection.

SECTION 5.0 COMPLIANCE PLANS

Every employer of two or more employees and every contractor or sub-contractor obtaining a contract or subcontract of \$10,000 or more dollars on the Reservation shall establish and abide by a hiring and employment Compliance Plan approved by the Director. Such plan shall set forth how the employer will meet the goal of 100% Indian employment in each job classification and other obligations set out herein. Final approval of the commission shall be obtained by the Director within 30 days of his initial approval.

No employer as identified above may commence work unless it has submitted a Commission-approved Compliance Plan setting forth how the employer intends to meet the Compliance Provision hereunder.

5.1 COMPLIANCE PLAN FOR NEW EMPLOYERS

- a) Employers who shall locate or engage in work on-Reservation after the effective date of this Ordinance, Compliance plans shall establish hiring and employment goals for the entire work force of that employer.
- b) Each new employer shall meet with the Director as soon as possible prior to actually beginning work and shall furnish the Director with a precise list of the number and kinds of employees he expects to employ. They shall conclude a Compliance Plan after considering any special factors or circumstances the employer wishes to present.
- c) Every plan shall establish the goal of 100% Indian employment in each job classification if:
 - i. Qualified Indians are reasonably available when the Plan is adopted to fill all job positions anticipated by the new employer in the job classification; or
 - ii. Qualified Indians can reasonably be expected to become available from training programs or other sources to fill all such positions during the one year period of the Plan.
- d) If qualified Indians are not available, then Plans may provide for goals of less than 100% Indian employment in affected job classifications.

5.2 COMPLIANCE PLANS FOR EXISTING EMPLOYERS

- a) Employers who have located or engaged in work on-Reservation prior to the effective date of this Ordinance, Compliance Plans shall establish hiring and employment goals for new employment goals for new employees expected to be employed during the one-year period of any Plan.
- b) After due notice, each existing employer shall meet with the Director, as required, and shall furnish a reasonably specific list of the number and kinds of new employees he expects to employ in the ensuing year. The Director and the employer shall conclude a Compliance Plan after considering any special factors or circumstances the employer wishes to present.
- c) Compliance Plans for existing employers shall establish the goal of 100% Indian employment for new hiring in each job classification if qualified Indians can reasonably be expected to become available to fill such new positions during the duration of the Plan. If qualified Indians are not thus available, then Plans may provide for goals of less than 100% Indian employment in affected job classifications.

5.3 REVISION OF COMPLIANCE PLANS: MONTHLY EMPLOYER REPORTS

- a) Each employer who has agreed to a Compliance Plan shall submit a monthly report to the Director, or other report as otherwise directed by the Commission, on a form provided indicating:
 - i. The number of Indians in his work force;
 - ii. How close he is to meeting his goals;
 - iii. The number of persons hired or terminated during the month and affected job positions; and
 - iv. Any other information specified by the Commission and reasonably necessary in monitoring the employer's efforts to abide by the Compliance Plan.
- b) The Director shall meet at least annually with each new and existing employer to review the goals of every Compliance Plan. Any Plan may be revised at any time, after meetings between the Director and employer, when necessary to reflect changes in the number of qualified Indians available or changes in employer hiring practices.

5.4 FINAL APPROVAL OF COMPLIANCE PLANS

Each Compliance Plan or revision thereof shall be approved in writing by at least two members of the Commission prior to said Plan being effective.

5.5 NON-COMPLIANCE OR VIOLATIONS

If any employer fails or refuses to comply with the Compliance Plan requirements herein or with the terms of this Compliance Plan as writing, such non-compliance shall be deemed a violation of this Ordinance and subject to sanctions provided for in Section 7 of this Ordinance.

5.6 COMPLIANCE BY UNIONS

Every union with a collective bargaining agreement with an employer must file a written agreement stating the union will comply with this Ordinance and the rules, regulations and orders of the Commission. Until such agreement is filed with the Director and approved by the Commission, the employers thereunder may not commence work on the Reservation.

a) Contents of Union Agreements

Every union agreement with an employer must be filed with the Director and must provide:

- i. Indian Preference
The union will give preference to Indians in job referrals regardless of which union referral list they are on.
- ii. Cooperation with the Commission
The union will cooperate with the Director in all aspects and assist in the compliance and enforcement of this ordinance and related regulations and agreements.
- iii. Registration
The union will establish a mechanism allowing Indians to register for job referral lists by telephone or mail.
- iv. Training Programs
The union will establish journeyman upgrade and advance apprenticeship programs.
- v. Temporary Work Permits
The union will grant temporary work permits to Indians who do not wish to join the union.

b) Memorandum of Agreement

The Director will provide a memorandum of agreement for use by all unions who have collective bargaining agreements with any employer.

- c) Recognition of Unions
Nothing herein or any activity by the Commission or the Director authorized hereby shall constitute official Tribal recognition of any union or Tribal endorsement of any union activities on the Reservation.
- d) Burden of Proof
In any hearing before the Commission where the issue is compliance by an employer with any of the requirements and provisions of the foregoing subsections of Section 5, the burden of proof shall be on the employer rather than on the employee or other complainant to show compliance with said provisions.

SECTION 6.0 COMPLAINTS AND HEARINGS

6.1 NOTICE

If a hearing is requested by the Commission, the Director, an individual, an employer, or a union pursuant to this section, the Commission shall cause a written notice of hearing to be served upon all concerned parties stating the nature of the hearing and the evidence to be presented. The notice shall advise such parties of the violation, their required presence or the presence of a representative on their behalf, their right to be present at the hearing, to present testimony of witnesses or other evidence, and to be advised by counsel at their own expense.

6.2 COMPLAINTS

- a) Complaints Regarding Violations
Any individual, employer, entity or organization that believes any covered employer or its agents has violated or is in violation of this Ordinance or any Rules or Regulations issued pursuant to it may file a complaint with the Director, a Commissioner, or the Commission's authorized agent. The complaint shall be in writing and shall provide such information as is necessary to enable the Director to carry out an investigation. The Director shall investigate every complaint filed. If upon investigation, he has reason to believe a violation has occurred, he shall proceed pursuant to the provisions of Section 7. Within 20 days after receipt of the complaint, and on a regular basis thereafter, the Director shall provide the complaining party with a written report on the status of the complaint.
- b) Time and Place of Filing Complaints
Complaints filed under subsection (a) above shall be filed by the charging party with the Commission or its authorized agent within seven working days after the alleged unlawful violation(s) occurred or seven working days after the charging party learned of the alleged unlawful violation(s), but no complaint shall be accepted after 180 days from the date of alleged violation or occurrence. The complaint shall include the date, place and circumstances of the alleged unlawful violation(s) and shall be served upon the person(s) against whom the charge(s) are made within 10 days thereafter.
- c) Complaints Regarding Administrative Acts of TERO Director
Any individual employer, employee or other party may challenge any action of the Commission or the Director by filing a written complaint with the Director, the Commission, or its authorized agent within 5 days from said action and requesting a hearing no later than 10 days from the date said complaint was filed
- d) Service of Complaints
Service may be made by registered mail or hand delivery with receipt.

6.3 INVESTIGATIONS

On its own initiative or pursuant to a complaint, the Commission or Director shall make such public or private investigation within the Spokane Reservation as the Director or the Commission deems appropriate and necessary to determine whether any provision of this Ordinance or any rules, regulations or orders hereunder have been violated.

- a) The Director or his duly authorized delegate may enter, during business hours, the place of business or employment of any employer he deems necessary to monitor compliance with the requirements of this Ordinance or any Rule or orders hereunder.
- b) The Director or his delegate shall bear and show official identification adequate to identify them as the authorized agents of the Commission to make such investigation.

6.4 HEARING PROCEDURE

Hearing shall be governed by the following rules of procedure:

- a) All parties may present testimony of witnesses and other evidence and may be represented by counsel at their own expense.
- b) The Commission may have the advice and assistance of counsel provided by the Tribe.
- c) The chairperson of the Commission, or the Vice-Chairperson, shall preside and the Commission shall proceed to ascertain the facts in a reasonable and orderly fashion.
- d) The hearing may be adjourned, postponed and continued at the discretion of the Commission.
- e) At the final close of the hearing, the Commission may take immediate action or take the matter under advisement.
- f) The Commission shall notify all parties in writing 30 days after the hearing of its decision in the matter.
- g) If any party fails to appear for a hearing then it may be ruled as forfeiture by default.

6.5 POWER TO REQUIRE TESTIMONY AND PRODUCTION OF RECORDS

For the purpose of investigations or hearings which, in the opinion of the Director or the Commission are necessary and proper for the enforcement of this Ordinance, the Commission or the Director, or any designee may administer oaths or affirmation, subpoena witnesses, take evidence, and require, by citation, the production of books, papers, contracts, agreements or other documents, records or information which the Director or the Commission deems relevant or material to the inquiry.

6.6 PRE-HEARING PROCEDURES

a) Review of TERO Files

The Respondent (the employer or entity against whom a charge has been filed) shall have the right to review the case file of the Director by scheduling an appointment with him for that purpose during regular working hours at any point after receiving notice of a hearing. The Director shall remove any portion of the file to protect what is deemed confidential.

b) List of Witnesses

Ten days prior to the hearing (or as soon as possible if the hearing is to be held within 10 days after notice), the Respondent and the Director shall submit to the Commission Chairperson a list of witnesses each intends to call at the hearing, the approximate length of their testimony, and the general substance of said testimony. It shall indicate any witnesses

that must be subpoenaed. The Commission shall then cause necessary subpoenas to be issued.

c) Expert Witnesses

Any party who intends to present testimony of an expert on their behalf shall within 15 days of hearing provide the Commission and the opposing party the name, qualifications, and the substance of said expert testimony. Failure to do so shall disqualify such testimony from hearing.

d) Pre-hearing Interview of Witnesses

The Respondent and the Director shall have the right to interview the witnesses of the other party prior to hearing. The director's witnesses shall be interviewed in the presence of the Director or his delegate. The Respondent's witness shall be interviewed under such reasonable conditions as are established by the Respondent. Either party may appeal to the Chairperson of the Commission if cooperation is not forthcoming on this matter. The Chairperson is empowered to require such steps as are necessary to resolve the problem.

e) Production of Documents and Things

The Parties shall provide each other with a list of documents, papers and tangible evidence intended to be introduced at hearing, including a statement regarding the substance and relevance of each. Said documents, papers and tangible evidence shall be made available to one another forthwith, no later than 10 days prior to the hearing or within two days if the hearing date is noticed less than 10 days before the hearing. Failure to produce such list and the documents listed within the time prescribed may render said documents inadmissible at hearing on motion of opposing party in the Commission discretion.

f) Postponements

Any request for a postponement of the hearing must be submitted in writing to the Chairperson of the Commission no fewer than three days prior to the hearing. However, if the Director and Respondent mutually submit a request for a postponement because there is a possibility of settling the matter, the request for a postponement may be submitted at any time prior to hearing.

6.7 CONDUCT OF THE HEARING

a) Presiding Official

As presiding official, the Chairperson or a designated Commissioner of the Tribal Employment Rights Commission will control the proceedings. He or she will take whatever action is necessary to insure an equitable, orderly, and expeditious hearing. Parties will abide by the presiding official's rulings. The presiding official has the authority to:

- i. Administer oaths or affirmations;
- ii. Regulate the course of the hearing;
- iii. Rule on offers of proof;
- iv. Limit the number of witnesses when testimony would be unduly repetitious; and
- v. Exclude any person from the hearing for conduct or misbehavior that obstructs the hearing.

b) Director

The director may represent the Tribal Employment Rights Commission on all charges filed by it, even if the charge was initiated by a complaint filed by a private individual.

c) Respondent

The Respondent shall be present for the entire hearing and he or his representative (other than an attorney) shall represent him during the proceeding.

- d) Attorneys
Either party may have an attorney present as an advisor. However, the attorney may not make any presentations, cross-examine witnesses or address the Commission.
- e) Recording of the Hearing
All hearings shall be recorded in full and the Commission shall retain the tape(s) for no less than one year after the hearing. The Respondent shall also be permitted to tape the hearing upon request.
- f) Prohibition Against Reprisals
All parties shall have a right to testify on their own behalf, without fear of reprisal.
- g) Starting Time
The hearing shall be opened promptly at the time specified by the Commission.
- h) Opening Statements
Both parties will be afforded the opportunity to present opening statements with respect to what they intend to prove at the hearing.
- i) Order of Proceeding
The complainant or his representative will present his case first.
- j) Examination and Cross Examination of Witnesses
Both parties may subpoena and examine friendly and hostile witnesses. Both parties may examine and cross examine witnesses. However, no harassment or efforts to intimidate witnesses shall be permitted. The commission members may examine witnesses at any point in their testimony. The testimony of all witnesses shall be under oath or affirmation.
- k) Irrelevant Testimony
Parties may object to clearly irrelevant material, but technical objections to testimony as used in a court of law will not be entertained. The Commission shall prohibit any testimony that it deems clearly irrelevant in order to keep control of the hearing.
- l) Written Testimony
Evidence or exhibits may be presented. Written testimony will be admitted into evidence during the hearing only when a witness cannot appear in person. When a party wishes to use the written testimony of a witness who cannot appear, the party must submit, in advance of the hearing, a written explanation for the nonappearance of the witness to the Tribal Employment Rights Commission. If the Commission is satisfied with the explanation, the party will obtain the testimony by means of deposition. When, for reasons satisfactory to the Tribal Employment Rights Commission, a deposition cannot be used, an affidavit or a sworn statement from the witness may be used. A signed but unsworn, statement will not be admitted in evidence.
- m) Closing Statement
Closing statements for each party will be permitted. The Complainant shall proceed first.
- n) Audience
The hearing shall be open to the public. However, the Commission may remove any person who disrupts the hearing or behaves in an inappropriate manner.

6.8 THE DECISION

The decision shall be in writing and issued within 30 days after the hearing. The decision shall consist of the following parts, in the following order.

- a) The facts as found to be true by the Commission;
- b) The finding of violation or no violation on each charge along with the legal and factual basis for the finding;
- c) The orders and or sanctions imposed, if any;
- d) Information on rights to appeal;
- e) Information on the authority of the Commission to act if the party fails to comply with its orders or fails to appeal; and
- f) The injunctive or bonding requirements, if any, that the Commission will seek from the court pending the completion of the appeal if an appeal is filed.

6.9 THE RECORD

The Commission shall include in the record copies of all documents and descriptions of information used in arriving at the decision and shall maintain and store said record for a period of one year from the date of the decision.

6.10 FINALITY OF THE DECISION – APPEAL

Decisions of the Commission shall be effective immediately and final when the time for filing a Notice of Appeal has expired. Appeal may be taken by an aggrieved party, to the Spokane Tribal Court as provided in Section 8.0.

The Commission's decision is final and shall be in writing. It shall be served on the charged party by registered mail or in person no later than 30 days after the close of the hearing. Should the party fail to comply immediately with the Commission's orders, the Commission shall request the Tribal Court, and the Tribal Court shall grant, such injunctive relief as necessary to preserve the rights of the beneficiaries of this Ordinance, pending the party's appeal or expiration of the time for appeal.

SECTION 7.0 ENFORCEMENT AND PENALTIES FOR VIOLATIONS

7.1 ENFORCEMENT AND PENALTIES FOR VIOLATIONS

The Director is authorized to police and enforce this Ordinance and the Rules and Regulations of the Commission. He may issue citations to violators and initiate investigations for the purpose of settling disputed violations or formally enforcing this Ordinance and the Rules and Regulations of the Commission as follows:

a) Informal Settlement

If upon investigation initiated by the filing of a complaint pursuant to Section 6.2 hereof or on his own initiative, the Director has reason to believe a violation has occurred; the Director shall issue written notice of violation to the alleged violator. The Director and the employer shall seek to achieve an informal settlement of the alleged violation immediately. If no settlement can reasonably be made, he shall issue a formal Citation and Notice of Non-Compliance.

b) Formal Citation and Notice of Non-Compliance

The formal Citation and Notice of Non-Compliance shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. The violator shall be provided no more than five days to comply with said Notice of Non-Compliance or request in

writing a hearing before the Commission on the matter. This time may be shortened in the Director's discretion should he feel irreparable harm will occur should the violation continue.

If the violator refuses to comply with requirements within the time imposed by the Director and has not requested a hearing before the Commission on the matter pursuant to Section 6.2(c) the Director may seek to impose one or more penalties below upon said violator. After being fully advised on the matter, the Commission may issue an order imposing such penalties it deems necessary.

Said order shall constitute a final decision of the Commission and can be appealed only pursuant to Section 8.0 below.

7.2 ENFORCEMENT

Any employer, contractor, sub-contractor or union who is found in violation of this Ordinance or Rules, Regulations or Orders of the Commission or the Director shall be subject to the following penalties for such violations:

7.3 PENALTIES

- a) Denial of right to commence or continue business inside the Reservation.
- b) Suspension of operations inside the Reservation.
- c) Payment of back pay and damages to compensate any injured party.
- d) An order to summarily remove employees hired in violation of this Ordinance or rules, regulations or orders of the Commission or the Director.
- e) Imposition of monetary civil penalties.
- f) Prohibition from engaging in future operations on the reservation.
- g) An order requiring changes in procedures and policies necessary to eliminate the violation(s).
- h) An order requiring employment, promotion and training of Indians injured by the violation.
- i) An order making any other provision deemed by the Commission necessary to alleviate, eliminate, and compensate for any violation(s).
- j) Imposition of a one-time 10% penalty fee on all amounts due on monetary judgments ordered by the Commission if not paid by the employer within 30 days of the initial judgment. If said judgments are to paid within 60 days of the initial billing, the employer will be assessed a one-time 30% penalty fee in addition to the 10% referred to above. After 60 days, interest will accrue at the rate of 1% per month on any unpaid balance.
- k) If enforcement and collection action becomes necessary for any Commission order, the Respondent shall pay all attorney fees and costs incurred in such proceeding.

The maximum penalty which may be imposed is \$5000.00 for each violation. Each day during which a violation exists shall constitute a separate violation.

SECTION 8.0 APPEALS

8.1 RIGHT TO APPEAL

Any party to a hearing shall have the right to appeal any decision of the Commission to the Spokane Tribal Court by filing a Notice of Appeal with the said Court within 20 days of the Final Decision of the Commission.

8.2 SCOPE OF REVIEW

The Tribal Court shall uphold the decision of the Commission unless it is demonstrated that the decision of the Commission is arbitrary, capricious, unsupported by the weight of the evidence or in excess of the authority of the commission.

8.3 METHOD OF APPEAL

The appeal shall be taken by serving a written Notice of Appeal with the Tribal Court, with a copy to the Director within 20 days after the date of the entry of the order. The Notice of Appeal shall:

- a) Set forth the order from which appeal is taken;
- b) Specify the grounds upon which reversal or modification or order is sought; and
- c) Be signed by appellant.

8.4 ABATEMENT OF ORDER ON APPEAL

Except as provided below, the order of the Commission shall not abate pending the outcome of the appeal in Tribal Court. If the order of the Commission is reversed or modified, the Court shall by its mandate specifically direct the Commission as to further action in the matter, including making and entering any order or orders in connection therewith and the limitations or conditions to be contained therein.

8.5 BOND ON APPEAL

The Director may petition and, for good cause shown, the Court may order the party requesting a hearing to post a bond sufficient to cover monetary damages that the Commission previously assessed against the party or some other amount to assure the party's compliance with other sanctions or remedial actions imposed by the Commission's order if that order is upheld by the Court.

8.6 SECURITY FOR COMPLIANCE

If the Commission, in its discretion, has reason to believe a party will remove itself or its property from the jurisdiction of the Commission or the Tribal Court during any stage of an enforcement action, the Commission may petition the Tribal Court pursuant to the rules and procedures of the Court to attach such property as necessary to ensure payment of any fees or damages owed or to secure compliance or for such other relief as is necessary and appropriate to protect the rights of the Commission and other affected parties.

SECTION 9.0 CONFISCATION AND SALE

9.1 PURPOSE OF PROCEDURE

- a) If a party as has failed to pay monetary damages imposed on it or failed to otherwise comply with an order of the Commission within 21 days after its decision and no appeal has been filed, the Commission may petition the court to order the Tribal police to confiscate, and hold for sale, such property of the party as is necessary to ensure payment of said monetary damages or to otherwise achieve compliance.
- b) Said petition shall be accompanied by a list of property belonging to the party which the Commission has reason to believe is within the jurisdiction of the Tribal Court, the value of which approximates the amount of monetary damages at issue. If the Court finds the petition to be valid, it shall order the Tribal police to confiscate and hold said property. The Tribal police shall deliver in person or by certified mail a notice to the party informing it of the

confiscation and of its right to redeem said property by complying with the order outstanding against it.

- c) If, 30 days after confiscation, the party has not come into compliance, the Court shall order the police to sell said property, the proceeds of which shall be used to pay any outstanding fees and damages and to pay any costs incurred by the Court and police in the confiscation and sale.
- d) Any sale made pursuant hereto shall be made in a commercially reasonable manner.

SECTION 11.0 COMMISSION FUNDS/FEE WAIVERS

- a) All fees collected pursuant to this Chapter shall be deposited into the Tribe's General Fund.
- b) The Tribe reserves the right to waive any fees required under this Chapter for contracts under which the Tribe is a party.

SECTION 12.0 EMPLOYMENT ADMINISTRATIVE FEE

The Director shall assess employers on Employment Administrative Fee to provide revenue for the operation of the Tribal Employment Rights Office as follows:

12.1 CONTRACTS

Every prime contractor obtaining a contract of \$10,000.00 or more shall pay an employment Administrative Fee equal to 2% (two percent) of the total amount of each contract on the Reservation.

12.2 OTHER EMPLOYERS

Every employer, other than the contractor with 20 or more employees shall pay an Employment Administrative fee of 3% (three percent) of the Employers annual Payroll. This fee shall be paid in quarterly installments and shall not be required of Education, Health, or Nonprofit Employers.

12.3 ACCOUNTING

Employment Administrative Fees shall be paid to the Spokane Tribe of Indians and placed in a Special Account for use by the Tribal Employment Rights Office. The Tribal Employment Rights Office is authorized to establish such rules and regulations as are necessary to assure fair and timely fee collection process. Any employer or contractor who fails to pay the required Employment Administrative Fee shall be subject to sanctions provided for in Section 7 of this Ordinance.

SECTION 13.0 EQUAL EMPLOYMENT OPPORTUNITIES

No employer shall discriminate against any Indian Preference employee or applicant for employment because of color, religion, sex, national origin or age and must assure advertisements include equal opportunity for access.

SECTION 14.0 WAGE AND HOUR STANDARDS

14.1 EQUAL PAY

Every employer shall be required to provide equal pay to Indian Preference Employees performing work similar or comparable to other employees.

14.2 RATE OF PAY

Every employer shall be required to pay whichever rate of pay is highest when Federal, State, or Tribal wage, rates and guidelines are used.

14.3 FEDERAL, STATE, AND LOCAL AGENCIES

The Commission or the Director may use Federal, State, or Tribal agencies in resolving a discrepancy concerning wages and hours worked.

Any employer who is in violation to the above paragraphs shall be subject to the penalties outlined in Section 7.

SECTION 15.0 HEALTH, WELFARE, AND PENSION FUND BENEFITS

Payroll deductions shall be permissible for health, welfare, and pension funds benefits, but any payroll deduction constituting a contribution on behalf of the person employed to any fund established by the employer, employees or both, for the purpose of providing medical or hospital care, pensions, annuities, retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or which are applied to payment of insurance to provide any of the foregoing, including unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents shall be permissible, PROVIDED HOWEVER, the following standards must be met:

- a) The deduction is not otherwise prohibited by law;
- b) It is either:
 - i. Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or
 - ii. Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;
- c) No profit or other benefit is otherwise obtained directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise;
- d) The deduction shall serve the convenience and best interest of the employee.

SECTION 16.0 SAFETY, HEALTH AND ENVIRONMENTAL PROTECTION

Contracts of \$75,000 or greater, and any project or contract work the Commission determines may have an impact on the environment, shall provide a written plan with the Director providing for the protection of health and environment of employees and other persons and prevent damage to property, materials, equipment and the physical environment of the Spokane Indian Reservation. Any employer contractor who fails to provide such plan or failure to follow or carry out such plan shall be deemed a violation of this Ordinance and is subject to penalties outlined in Section 7.

SECTION 17.0 RETALIATION OR REPRISAL

Any harassment, discrimination or threat against any person or business which has filed a charge, opposed any unlawful employment practice, or testified, assisted or participated in any manner in an investigation, proceeding or hearing involving an unlawful employment practice is a violation of the Spokane Employment Rights Ordinance and said violation shall be subject to the penalties outlined in Section 7.

SECTION 18.0 QUALIFIED PRIME CONTRACTORS, SUBCONTRACTORS OR SPECIALTY CONTRACTOR LICENSES

All prime contractors, qualified subcontractors or specialty contractors in the building trades must acquire a Spokane Tribal Contractors license to operate within the boundaries of the Spokane Reservation. The applicant is required to provide proof of an operational record with a minimum of two successful consecutive years of contracting or subcontracting in a specified component or field or the applicant must provide proof that they are journeymen employees of a subcontracting firm and worked as a journeymen for a minimum of five years in a specified trade before a license may be issued. A fee of \$100.00* (One hundred Dollars) will be charged for said license. (*Subject to change without notice)

The application must be renewed on a yearly basis, expiring one year from the day said license was purchased, and failure to renew or obtain a Spokane Tribal Contractor License shall be a violation of this Ordinance and is subject to sanctions outlined in Section 7

SECTION 19.0 PUBLICATION OF ORDINANCE

The Commission or the Director shall post a public notice for all amendments to this Ordinance. It shall be the employers' obligation to make a written request for a copy of said Ordinance or amendments. All bid announcements issued by any Tribal, Federal, State or other private or public entity shall contain a statement that the successful bidder will be obligated to comply with this Ordinance and all rules, regulations and orders of the Commission.

19.1 LICENSING AND BUSINESS PERMITS

All Tribal agencies responsible for issuing business permits for Reservation activities or otherwise engaged in activities involving contact with prospective employers on the Reservation shall be responsible for advising such prospective employers of their obligations under this Ordinance and all rules, regulations and orders of the Commission.

Copies of the Ordinance are available for Tribal members from the TERO Office upon written request.

SECTION 20.0 EFFECTIVE DATE

This Ordinance shall be effective from the date of its approval by the Spokane Tribal Business Council.

SECTION 21.0 RULES AND REGULATIONS

The Commission may from time to time adopt detailed rules, regulations, policies and guidelines consistent with and necessary for full implementation of this Ordinance.

SECTION 22.0 SEVERABILITY

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

CHAPTER 49 – POLLUTION PREVENTION AND CONTROL

Section 1 Pollution Prevention & Control

49-1.01 Purpose

It is the legislative intent and purpose of the Spokane Tribal Business Council in enacting this Chapter:

- (1) to protect and preserve the physical environment of the Spokane Indian Reservation as the permanent homeland of the Spokane Tribe of Indians;
- (2) to protect from the direct negative effect pollution has on the political integrity and sovereignty of the Tribe;
- (3) to promote the health, safety, welfare, and economic well-being of the Spokane Tribe, its people, and all residents of the Spokane Indian Reservation;
- (4) to prevent the damaging effects of pollution and, where pollution has already occurred, to provide for abatement and clean-up; and
- (5) such other more specific purposes as are described in sections of this Chapter.

49-1.02 Jurisdiction

(a) This Chapter shall apply to all persons and conduct on all land, water and air within the exterior boundaries of the Spokane Indian reservation and any extensions thereof, and all Spokane Tribal and allotted Indian lands and waters outside the exterior boundaries of the Reservation, as well as those lands fulfilling the definition of "Indian Country" in 18 United States Code § 1151.

(b) This Chapter also applies to persons and conduct outside the above-described jurisdictional boundaries when pollution enters into the Tribe's jurisdiction.

49-1.03 Definitions

For purposes of this Chapter, unless otherwise required by the context, the following words and phrases shall have the designated meanings:

"Approved site or facility" - a waste disposal site for which Tribal permission has been obtained.

"Burn barrel" - a container or a specific contained area used for burning solid waste for purposes of disposal.

"Burn Ban" – temporary ban on open burning when air pollution levels rise to unhealthy levels.

"Commercial waste" – waste generated by a non-industrial business, such as a retail store, business or governmental office, or other non-manufacturing facility.

"Dumping" – disposing of wastes in an unapproved site or in a manner that is not protective of the environment.

"Hazardous Waste" – including but not limited to any products including household products that contain paints, oils, toxic ingredients, pesticides, corrosive materials, poisons, radioactive material, explosive material, and the like.

"Industrial waste" – waste generated by an industry, such as a manufacturing facility, raw materials processing facility (gravel, timber, minerals, etc.), or similar enterprise.

"Junk" – solid waste comprised primarily of large bulky items not easily transported in garbage bins, including: non-functioning vehicles, machinery, and equipment; appliances; large objects of metal, wood or plastic; rotten building materials; uninhabitable mobile homes, and the like.

"Landfill" – site for disposal of solid waste on top of or into a depression or excavation in the land.

"Littering" – disposing of small quantities (less than 4 cubic feet) of solid waste in an unapproved site or in a manner that does not protect the environment.

"Medical Waste" – any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the testing of biological, including but not limited to: surgical instruments, gloves, needles used to give shots, draw blood, cultures and swabs, body parts or fluids, and lancets.

"Nuisance" – activity by one person which unreasonably obstructs the use and enjoyment of property by another person; that which disturbs one in possession of property from its ordinary use or occupation due to physical intrusion by smoke, odors, noise, vibration, actual or threatened contamination, visual obstructions, or the like.

"Nuisance per se" – a condition which is considered to be a nuisance at all times and under all circumstances.

"Occupant" – the person who occupies and/or has the use of a parcel of real property and any buildings and appurtenances thereon.

"Owner" – the actual owner of a parcel of real property and any buildings and appurtenances thereon, or the agent of the owner in charge of said property.

"Open Burning" – Open burning is the burning of materials where the smoke, gasses, chemicals, and other products from the burning enters the air directly, without first going through a chimney, flue, vent, or other similar path. For example, a burn barrel or outside fire pit.

"Person" – a natural person, a corporation, institution or other entity.

"Pollution" – the discharge or disposal of any waste, rubbish, garbage, junk, trash, sewage, or other harmful or unsightly substance into water or air or onto any lands. Includes possession or use of a pesticide in violation of the provisions of Section 49-11 of this Chapter.

"Recreation Area" – an area used by the Tribal Membership and/or the general public for recreation, including areas around lakes, streams and rivers, and campgrounds.

"Residential Waste" – waste generated by residential household, normally consisting primarily of kitchen waste, discarded retail packaging, diapers, used paper products and the like.

"Septic Waste" – human waste, primarily collected in septic tanks and sewage facilities.

"Solid Waste" – all garbage, refuse, trash, rubbish, yard waste, dead animals and animal wastes, construction and demolition materials, and solid materials generated from residential, commercial or industrial activities. Includes combustible and non-combustible refuse, paper, wood, metal, glass, cloth, ashes, lumber and concrete.

"Tribe" – as used in this Code means the Spokane Tribe of Indians or an agency of the Spokane Tribe of Indians.

Section 2 Pollution Prohibited

49-2.01 Pollution Prohibited

Except as otherwise provided, no person shall cause any pollution within the exterior boundaries of the Spokane Indian Reservation, or outside of the Reservation in a manner, which allows pollution to come onto the Reservation.

Section 3 Nuisances Prohibited

49-3.01 Nuisances Prohibited

No person shall cause or allow the existence of a public or private nuisance within the Spokane Tribe's jurisdiction, or outside Tribal jurisdictional boundaries in a manner, which allows the nuisance to affect any health, safety, welfare, or economic well-being within the Tribe's jurisdiction.

49-3.02 Certain Activities Constitute Nuisances Per Se

The following activities are considered by law to be nuisances per se, and are to be considered as such by the Court without any party presenting evidence on the issue of establishing the existence of a nuisance:

- (1) unlawful dumping;
 - (2) the accumulation of garbage in excess of quantities and time periods prescribed in this Code;
 - (3) junk disposal in violation of this Code;
 - (4) septic waste disposal in violation of this Code;
 - (5) use, storage, handling or disposal of pesticides in violation of this Code;
 - (6) using or maintaining fuel storage tanks in violation of this Code;
 - (7) use, storage, handling or disposal of toxic and/or hazardous substances in violation of this Code;
- and
- (8) use, storage, handling or disposal of ionizing radiation in violation of this Code.

Section 4 Solid Waste Disposal

49-4.01 Specific Purpose

It is the legislative intent and purpose of the Spokane Tribal Business Council in enacting this Section:

- (1) to maximize the efficiency and cost-effectiveness of solid waste management on the Spokane Indian Reservation;
 - (2) to reinforce the Tribe's effort to recycle and prevent the improper disposal of recyclable wastes;
- and
- (3) to prevent and control adverse environmental and health impacts of uncontrolled waste disposal.

49-4.02 Unlawful Dumping Prohibited

(a) No person shall cause or allow unlawful dumping within the Spokane Tribe's jurisdiction, or outside Tribal jurisdiction boundaries in a manner, which allows the unlawful dumping to affect the health, safety, welfare, or economic well-being within the Tribe's jurisdiction.

(b) The minimum civil fine for unlawful dumping shall be set at \$250.00 with a maximum fine of \$5000.00 per incident.

- (1) the judge shall consider the facts and circumstances of the unlawful dumping when determining the fine amount.
- (2) the judge shall specifically consider the amount of material dumped and the cost of clean-up.

49-4.03 Proper Waste Disposal/Unlawful Dumping

Waste shall be disposed of only in an approved site or facility. Disposal of waste in any unauthorized manner shall be considered unlawful dumping.

49-4.04 Landfills

(a) Landfills – No landfill may exist or be operated on the Reservation without the express written approval of the Spokane Tribe, and such approval may be granted only after an environmental review by the Spokane Tribe's Department of Natural Resources Interdisciplinary Team ("ID Team") and an opportunity for public comment.

- (1) Public comment shall be solicited and considered by utilizing the then current ID Team policy.
- (2) The existing landfill at Wellpinit is expressly acknowledged and authorized.

(b) Spokane Tribal landfills are for the exclusive use of Reservation residents, businesses and offices. No other persons may dispose of waste in Tribal landfills without express written authorization of the Tribe. It is considered unlawful dumping for Reservation residents to accept garbage from off-Reservation and dispose of it within the Reservation.

(c) Any contractor who does business with the Tribe – regardless of whether the Contractor is subject to the Tribal Employment Rights Ordinance (TERO) – may not dispose of wastes generated under the contract in an approved landfill within the Spokane Indian Reservation without a negotiated contractual right to do so.

(d) It is unlawful to allow, encourage, or assist a person in the unlawful disposal of waste in a Tribal landfill.

(e) It is unlawful to dump hazardous waste, medical waste, toxic waste, and household hazardous waste within Spokane Indian Reservation landfills.

(f) It is unlawful to scavenge at any Spokane Tribal landfill.

(g) Violations of (b)-(e) of these sections are subject to a minimum civil fine of \$250.00 with a maximum fine of \$5000.00 per incident.

(1) the judge shall consider the facts and circumstances of the violation when determining the fine amount.

(2) the judge shall specifically consider the amount of material involved and the cost of clean-up.

(h) Violations of (f) of this Section are subject to a maximum civil fine of \$50.00 per incident.

49-4.05 Garbage Collection and Disposal

(a) Property owners are responsible for the proper collection and disposal of waste to ensure that unlawful dumping does not occur.

(1) Waste must be collected at sufficiently frequent intervals to prevent nuisances.

(2) Collection and disposal of wastes shall be by methods that do not create: fire hazards; breeding places for rodents, insects or vermin; endangerment to the safety and welfare of any persons; nuisances or inconveniences to adjoining property interests.

(3) The accumulation on private or allotted property of greater than 5 cubic yards of waste for a time exceeding 30 days shall be considered unlawful dumping.

(b) Violations of this Section are subject to a minimum civil fine of \$250.00 with maximum fine of \$5000.00 per incident.

(1) the judge shall consider the facts and circumstances of the violation when determining the fine amount.

(2) the judge shall specifically consider the amount of material involved and the cost of clean-up.

Section 5 Open Burning

49-5.01 Specific Purpose

It is legislative intent and purpose of the Spokane Tribal Business Council in enacting this subsection:

(1) to protect Reservation residents against the health impacts of open burning; and

(2) to limit the kinds of materials that can be burned.

49-5.02 Exemptions

The following activities are exempt from this subsection:

(1) Outdoor fires set for cultural or traditional purposes;

- (2) Fires set inside structures such as sweat houses or lodges for cultural or traditional purposes;
- (3) Campfires or other fires set for recreational purposes as long as no banned materials are burned, and no burn ban has been issued.
- (4) Open outdoor fires used to train firefighters (requires written authorization from the Tribe), as long as no burn ban has been issued.

49-5.03 Open Burning

- (a) Any person who is planning on open burning must obtain a permit from the Fire Management Office.
- (b) Burn Barrels – Burn barrels are not to exceed a 55-gallon volume capacity and may be used for disposal of solid waste at single-family residential property, so long as burning complies with fire control and air quality regulations and the waste burned is strictly of residential character and listed as an Acceptable Material below.
- (c) Acceptable Materials
 - (1) Paper, paper products, or cardboard used to start a fire
 - (2) Paper, paper products, or cardboard that is produced at a single-family residential property
 - (3) Yard clippings, brush, and other vegetation
 - (4) Material that is burned during open burning must be kept as dry as possible and fires must not be allowed to smolder (burn slowly with no flame).
- (d) These materials **cannot** be burned:
 - (1) Garbage, dead animals, or parts of dead animals
 - (2) Junk motor vehicles or salvage operation parts and materials
 - (3) Tires or rubber materials and products
 - (4) Plastics, plastic products, and Styrofoam
 - (5) Asphalt or roofing (shingles) or any other material or product that contains asphalt
 - (6) Tar, tar paper, petroleum products (including oil, gas, and grease), and paint
 - (7) Paper, paper products, or cardboard not used to start a fire; not produced at a single family residence
 - (8) Treated lumber or timbers
 - (9) Construction waste or demolition waste
 - (10) Chemical insect and pest killers, weed and plant killers, fertilizers, or other chemicals
 - (11) Insulated or coated wire, batteries, and light bulbs
 - (12) Materials that have mercury, such as thermometers
 - (13) Asbestos or material that contains asbestos
 - (14) Waste that can cause disease
 - (15) Hazardous waste
 - (16) Any material that makes dense smoke or strong fumes when burned.
- (e) Violations of this Section are subject to minimum civil fine of \$250.00 with a maximum fine of \$5000.00 per incident.
 - (1) the judge shall consider the facts and circumstances of the violation when determining the fine amount.
 - (2) the judge shall specifically consider any property damage and/or fire suppression expenses.

49-5.04 Burn Bans

- (a) The Tribe or EPA can declare a burn ban whenever air quality concentrations approach, or are predicted to approach, the health standards for particulate matter. A burn ban may also be called when smoke management and/or hazardous burning conditions present issues for the safety of the firefighters, public and/or property. Safety issues include examples such as poor visibility near roads, in favorable wind conditions that increase the potential for communities to be exposed to smoke, or when other fire activities in the region are also having an effect on air quality.
 - (1) Burn bans and air quality advisories will be distributed to local television and radio stations in the area. Announcements will also be posted on the EPA Region 10 website and on the Spokane Tribe's Air Quality website. These announcements will indicate that air

pollution levels exist that could potentially be harmful to human health and indicate actions that people can take to reduce exposure. The announcements will also request voluntary actions to reduce emissions from sources of air pollutants as well as indicate that a ban on open burning is in effect.

(b) Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited when a burn ban is declared.

(c) Violations of this Section are subject to a minimum civil fine of \$250.00 with a maximum fine of \$5000.00 per incident.

(1) the judge shall consider the facts and circumstances of the violation when determining the fine amount.

(2) the judge shall specifically consider any property damage and/or fire suppression expenses.

Section 6 Junk Disposal

49-6.01 Specific Purpose

It is the legislative intent and purpose of the Spokane Tribal Business Council in enacting the subsection:

(1) to prevent and control adverse environmental, health and economic impacts of uncontrolled junk disposal; and

(2) to limit the accumulation of junk and discarded vehicles and to prohibit the accumulation of abandoned vehicles on the Spokane Indian Reservation.

49-6.02 Junk Disposal Prohibited

(a) Dumping, collecting and accumulating junk on the Reservation is prohibited, unless specific written authorization has been granted by the Tribe for junk disposal under controlled conditions to prevent adverse environmental and health impacts.

(1) Junk vehicles, machines, equipment, and appliances are specifically and strictly prohibited on property owned by the Tribe.

(2) Junk vehicles, machines, equipment, and appliances are prohibited on property now owned by the Tribe when the junk:

(a) constitutes a nuisance;

(b) endangers the health, safety and welfare of the public; or,

(c) pollutes or has the potential to pollute the water, air or land of the Reservation.

(3) The accumulation of more than 5 junk cars per single-family household for more than 12 months shall be considered unlawful dumping, unlawful junk disposal, and a nuisance per se.

(a) This Section is not a defense against stricter regulations imposed by the Spokane Housing Authority regarding junk cars.

(b) This Section is not a defense against stricter regulations imposed by Spokane Realty regulations and restrictions contained in home site leases regarding junk cars.

(b) Violations of this Section are subject to a minimum civil fine of \$250.00 with a maximum fine of \$5000.00 per incident.

(1) the judge shall consider the facts and circumstances of the violation when determining the fine amount.

(2) the judge shall specifically consider the amount of material involved and the cost of clean-up.

49-6.03 Abandoned Vehicles

The tribe may require the title owner of record to remove any vehicle that reasonably appears to be abandoned within the Tribe's jurisdiction. The title owner must remove the vehicle within 15 days after service of the Tribe's notice to remove, and removal must be to a lawful location where the vehicle will not violate prohibitions on junk or nuisances.

- (1) For the purposes of this section, vehicle shall mean: automobile, trailer, motorcycle, boat, recreational vehicle, tractor or any similar property;
- (2) Notice shall be posted on the vehicle by Spokane Tribal Law Enforcement, Spokane Tribal Park Rangers, or the Spokane Tribal Environmental Officer, and after 15 days of such posting, the Tribe may take possession of the vehicle and dispose of it under the current Tribal policies and practices.

Section 7 Recycling

49-7.01 Mandatory Recycling

- (a) Where the Tribe has provided for the recycling of certain wastes to prevent their entry into the landfill, recycling of those wastes shall be mandatory.
- (b) The minimum civil fine for a violation of this Section is \$50.00

Section 8 Littering

49-8.01 Littering

- (a) All littering on the Reservation is unlawful and may be controlled through both the enforcement mechanisms in this Chapter and under the criminal provisions of the Spokane Tribe's Revised Law and Order Code Chapter 14 Section 9.01 and 10.01.
 - (1) In areas of Cultural Significance, as designated by the Tribe, penalties for littering shall be treble the penalties for littering on the Reservation, generally.
 - (2) In Recreation Areas, as designated by the Tribe, penalties for littering shall be double the penalties for littering on the Reservation, generally.
- (b) Littering in the amount of less than 1 cubic foot shall result in a minimum fine of \$250.00 and \$100.00 for each additional cubic foot.

Section 9 Septic Waste Disposal

49-9.01 Septic Waste Disposal

- (a) Septic waste shall be disposed of only in a manner and in specific locations authorized by the Spokane Tribe.
- (b) Violations of this Section are subject to a minimum civil fine of \$250.00 with a maximum fine of \$5000.00 per incident.
 - (1) the judge shall consider the facts and circumstances of the violation when determining the fine amount.
 - (2) the judge shall specifically consider the amount of waste involved and the cost of clean-up.

Section 10 Waste Motor Oils & Fluids

49-10.01 Waste Motor Oils & Fluids

- (a) Disposal of waste motor oils and fluids onto the ground, into water, or into the air (by evaporation or burning, except in EPA approved burners) is strictly forbidden without express written authorization of the Tribal Council, acting upon the advice of the Tribal Natural Resources Department ID Team, and pursuant a valid Tribal Council Resolution.
- (b) The minimum civil fine for a violation of this Section is \$500.00 with a maximum fine of \$5000.00 per incident.
 - (1) the judge shall consider the facts and circumstances of the violation when determining the fine amount.
 - (2) the judge shall specifically consider the amount of material involved and the cost of clean-up.

49-10.02 Application of Oil on Roadways

(a) Application of oil as a dust-control agent on roads within the Reservation is strictly forbidden without express written authorization of the Tribal Council, acting upon the advice of the Tribal Natural Resources Department ID Team, and pursuant a valid Tribal Council Resolution.

(b) The minimum civil fine for a violation of this Section is \$500.00 with a maximum for of \$5000.00 per incident.

(1) the judge shall consider the facts and circumstances of the violation when determining the fine amount.

(2) the judge shall specifically consider the amount of material involved and the cost of clean-up.

Section 11 Waste Hauling

49-11.01 Waste Hauling

(a) Hauling of any wastes through, across, or over the Spokane Indian Reservation is unlawful unless:

(1) in small quantities (< 13 gallons volume) of litter and residential wastes are transported in private vehicles for proper later disposal; or

(2) residential, commercial, industrial, construction, demolition and septic waste loads are covered and contained adequately to prevent any waste from escaping the vehicle en route to the disposal site.

(b) Any release of waste onto the Reservation during hauling shall be deemed unlawful dumping and subject to a minimum civil fine of \$250.00 and a maximum civil fine of \$5000.00 per incident.

(1) the judge shall consider the facts and circumstances of the violation when determining the fine amount.

(2) the judge shall specifically consider the amount of material involved and the cost of clean-up.

49-11.02 Placarding Required

(a) Any vehicle transporting any quantity of toxic, hazardous, radioactive, flammable or combustible waste through, across, and over the Spokane Indian Reservation must be placarded in compliance with U.S Department of Transportation regulations.

(b) The only exception to this requirement is the transporting, in private vehicles, of small volumes of household hazardous waste, less than 2 gallons.

(c) Violations of part (a) of this paragraph are subject to a minimum civil fine of \$250.00.

Section 12 Pesticides

49-12.01 Specific Purpose

It is legislative intent and purpose of the Spokane Tribal Business Council in enacting this subsection:

(1) to minimize the potentially harmful effects resulting from exposure of people and animals to pesticides and pesticide residues; and

(2) to provide for safe production, processing, transportation, handling, storage, application and other use, and disposal of pesticides within the Reservation.

49-12.02 Specific Definitions

For purpose of this subsection, unless otherwise required by context, the following words and phrases shall have the designated meanings:

"Adulterated" – in the condition of having the strength or purity of the pesticide differ from that expressed on its label.

"Applicator" – any person who uses or supervises the use of a pesticide.

"Biological Pest Control" – a living organism, such as a bacterium or insect, used to control pests (such as noxious weeds).

"Certification" – a process whereby a person seeks the government's permission to possess and use pesticides within that government's jurisdiction.

"Defoliant" – any substance or mixture of substances intended to induce foliage to drop from a plant, with or without abscission.

"Desiccant" any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

"Disposal" – the discarding of a pesticide, or pesticide container, except when used to apply the pesticide in accordance with label directions.

"Distribute" – to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or revive for delivery or offer to deliver.

"Drift" – to go beyond the boundaries of the target area.

"Environment" – the geographic area within the exterior boundaries of Spokane Tribal Indian Lands, including air, water, land, people, animals and plants living therein, and the interrelationships existing among them.

"Environmental Protection Agency (EPA)" – agency of the United States government charged with protecting the environment.

"Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)" – an act of the United States Congress intended to regulate pesticides due to the adverse impacts of pesticides on the environment. (7 U.S.C §§ 136-136y, as amended).

"Fertilizer" – any organic or inorganic material of natural or synthetic origin added to soil to enhance growth of plants.

"General Use Pesticide" – a pesticide designated by the EPA for purchase and application by the general public without a license or certification.

"Interdisciplinary Team" – a Spokane Tribal workgroup, comprised of representatives from multiple professional disciplines and perspectives, charged with advising the Tribal Council on proposed activities, which potentially impact the Tribal environment.

"Label" – the written, printed or graphic material on or attached to or accompanying a pesticide or pesticide application device, or on any pesticide or application device containers or wrappers.

"Pest" – an insect, rodent, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life, virus, bacteria, or other microorganism (except those living on or in man or other living animals) which is destructive to crops, livestock, stored food, and/or environmental or public health.

"Pesticide" – means:

(1) any substance, mixture of substances, or device intended for controlling, destroying, repelling, or mitigating any pest; and,

(2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

Unless otherwise specified, in this Chapter, "pesticide" specifically refers to chemical pesticides, not inclusive of biological pest control agents.

"Possess" – means acquire, have, transport, and store a pesticide, whether the pesticide is in a person's immediate possession or is in the person's control.

"Restricted Use Pesticide" – a pesticide designated by the EPA for distribution and application only with a license of certification.

"Target Area" – the specifically bounded area within which an applicator intends to apply a pesticide.

"Use" – produce, process, handle, apply, distribute, and/or dispose of any pesticide.

49-12.03 Certification Required

(a) Any person who, within Spokane Tribal jurisdiction, acquires, possesses, distributes, handles, stores, transports, applies, uses, or disposes of any restricted use pesticide, or any general use pesticide in excess of reasonable household quantities, must obtain Spokane Tribal certification of the pesticide and the applicator.

(b) The minimum civil fine for a violation of this Section is \$500.00 and a maximum civil fine of \$5000.00 per incident.

(1) the judge shall consider the facts and circumstances of the violation when determining the fine amount.

(2) the judge shall specifically consider the amount of material involved and the cost of clean-up.

49-12.04 Purpose and Effect of Certification

(a) The purposes of certification are:

(1) the track the types, quantities, rates of application and areas of use of pesticides, to determine whether Tribal resources are or potentially will be affected by the cumulative and synergistic effects of pesticides in the environment; and

(2) to ensure the competence of persons distributing, handling, or using pesticides.

(b) The effect of certification is to grant an applicator the Tribe's permission to apply a pesticide for the time period indicated, in the specific area described on the certification document.

49-12.05 Exceptions to Certification Requirement

The possession or use of reasonable quantities of general use pesticides need not be certified so long as such possession and use does not injure, or expose to injury, any people, animals, or habitat within Tribal jurisdiction.

49-12.06 Supervision of Uncertified Applicators

A non-certified applicator may apply restricted use pesticides only when the person has received explicit instruction from and is under the direct supervision of a certified applicator who remains available within ready contact, even though not physically present at the time and place the pesticide is applied.

49-12.07 Certification Procedure

The Tribal Natural Resources Department is authorized and instructed to promulgate rules and procedures regarding the certification of pesticides and pesticide applicators that shall be approved by the Spokane Tribal Business Council prior to enforcement.

49-12.08 Recognition of Federal and State Certification

The Tribe will take into consideration the approval of pesticide products by the U.S. EPA and/or similar agencies of the State of Washington. The Tribe also will take into consideration the federal and/or state certification or licensing of pesticide applicators. However, the Tribe reserves the right to deny Tribal certification of pesticides and/or pesticide applicators based on the Tribe's own assessment of unacceptable effects on the Tribal government.

49-12.09 Denial/Revocation of Certification

(a) Certification may be denied when the Tribe determines, after due consideration, that the proposed pesticide possession or use will or potentially may cause unacceptable harm or risk to Tribal resources.

(b) Certification may be revoked upon the Tribe's finding, based on credible evidence, that:

(1) the terms of the certification have been violated; or

(2) conditions have changed since the date of issuance of certification in such a way that Tribal resources have come to be harmed or potentially will be harmed by the continued possession or use of the certificated pesticide.

49-12.10 Record-Keeping Requirements

(a) All persons holding Tribal, federal or state certification must maintain, at a minimum, the following records:

(1) the brand or product name and EPA registration number of any and all pesticides used under the certification;

(2) total amount of each pesticide applied per month;

- (3) location of each pesticide application, using one of the following designations:
 - (A) county, range, township, section, partial section;
 - (B) maps and/or written descriptions, which accurately identify the location;
 - (C) an identification system established by the Spokane Tribe, including any numbering system identifying area locations;
 - (D) the legal property description.
- (4) month, day and year on which the pesticide was applied; and
- (5) name and certification number of each person who applied or supervised the application of the pesticide.

(b) All such records must be maintained for a minimum of six years and shall be provided to the Tribe's Department of Natural Resources annually or shall upon the written request of the Department of Natural Resources be provided within 5 days after such notice.

49-12.11 General Restrictions on Pesticide Use

Regardless whether the pesticide is or is not subject to certification:

- (1) No aerial applications are allowed onto or over the Spokane Reservation without specific written authorization of the Tribal Council, after review by the ID Team.
- (2) Pesticide must not be applied in a faulty, careless or negligent manner, or in a manner that results in drift to a non-target area.
- (3) No restricted use pesticide may be applied within 150 feet of a town, school, medical facility or home without at least 15 days advance notice to occupants. If occupants object to the pesticide application, all reasonable efforts must be made by the certificate holder to substitute a alternative pesticide or minimize the exposure of the objecting occupants.
- (4) No pesticide of any kind may be applied within 50 feet of the perimeter of a water body, riparian area, or wellhead protection area (except during ID Team and Tribally approved applications to remove invasive species).
- (5) No pesticide may be applied to agricultural or forestland during prescribed burning operations by forest managers.
- (6) No pesticide may be used in a manner inconsistent with its label, except:
 - (A) a pesticide may be applied at a dosage, concentration or frequency that is *less than* that specified on the label; and
 - (B) a pesticide may be applied against any target pest not specified on the label is application is to the crop, animal, or site specified on the label.
- (7) No pesticide may be possessed or used which is mislabeled, adulterated, or not contained in its original container.
- (8) Possession or use of any pesticide for which federal or state registration has been cancelled or suspended is strictly prohibited.
- (9) Whenever water is being added to a pesticide spray tank from a source physically connected to surface or ground water, a backflow protection device or air gap must be utilized to prevent water contamination.

49-12.12 Pesticide-Fertilizer Mix Restrictions

- (a) No person shall distribute, sell, and offer for sale, hold for sale, use or possess any fertilizer that has been adulterated with a pesticide.
- (b) The minimum civil fine for a violation of this Section is \$500.00 and a maximum civil fine of \$5000.00 per incident.
 - (1) the judge shall consider all facts and circumstances of the violation when determining the fine amount.
 - (2) the judge shall specifically consider the amount of material involved and the cost of clean-up.

49-12.13 Application Equipment

- (a) All pesticide application equipment must be maintained in good working conditions.

(b) The minimum civil fine for a violation of this Section is \$50.00.

49-12-14 Worker Protection Requirements

All federal requirements for protection of pesticide applicators and handlers must be observed by all persons possessing and using restricted use pesticides.

49-12.15 Storage and Disposal of Pesticides

(a) Storage of Pesticides:

(1) No person shall handle, transport, display or distribute pesticides in such a manner as to endanger the human environment, or to contaminate food, feed, or any other product that may be transported, stored, displayed, or distributed with such pesticides.

(2) Containers of pesticides must be stored in a manner to prevent unauthorized persons or livestock and animals from gaining entry.

(3) Warning notices, visible from any accessible direction, must be posted around all storage areas where full or partially full or empty pesticide containers are stored. Each warning notice must use the signal words "Warning" or "Danger – Poison," in a size and color readable at a distance of 25 feet.

(b) Exceptions to Storage Requirements: The provisions of this section do not apply to residential storage of less than one-gallon liquid capacity or less than five pounds solid capacity of general use pesticide.

(c) Disposal of partially full or empty pesticide containers must be in full compliance with all applicable federal laws and regulations.

49-12.16 Inspections

(a) Tribal Law Enforcement, Spokane Tribal Park Rangers, the Spokane Tribe's Environmental Officer, and Inspectors authorized by the Director of the Department of Natural Resources may enter onto public and private premises, at reasonable times: to observe the use and application of pesticides; to inspect records; to inspect application equipment, storage facilities, and disposal areas; and, to investigate complaints. Inspection may include taking photographs, recording information, sampling soils, plants, animals, water, air and other media.

(b) In the event a landowner or occupant denies access to Tribally authorized inspectors, the Tribe may petition the Court to order access to premises for the Tribe to exercise its valid police powers under this Chapter.

49-12.17 Spills and Accidental Releases

(a) Any person who possesses or uses pesticides in Spokane Tribal jurisdiction is responsible for preventing spills and accidental releases. Should such spills or releases occur, the possessor or user must immediately notify the Tribal and BIA emergency response personnel, and must assist to the greatest extent feasible in the immediate containment and clean-up of the spill or release; and

(b) The possessor or user of the pesticide is strictly liable for all costs associated with damage caused by spill or release of the pesticide, including but not limited to site remediation, economic damages, personal injury and all other damages resulting from the spill or release.

49-12.18 Strict Liability

Due to the foreseeability of harm from the improper and/or authorized use of pesticides, and/or the spill or accidental release of pesticides, all possessors and users of pesticides will be held strictly, jointly and severally liable for harm, without regard to causation.

Section 13 Fuel Storage Tanks

49-13.01 Certification Required

(a) Any person who, within Spokane Tribal jurisdiction, owns or possesses a tank of any material composition that is used to hold more than 200 gallons of petroleum products must obtain Spokane Tribal certification of the storage tank.

(b) The minimum civil fine for a violation of this Section is \$500.00 and a maximum civil fine of \$5000.00 per incident.

(1) the judge shall consider all facts and circumstances of the violation when determining the fine amount.

(2) the judge shall specifically consider the amount of material involved and the cost of clean-up.

49-13.02 Purpose and Effect of Certification

(a) The purpose of certification are:

(1) to track the quantities and locations of petroleum products being stored, to determine whether Tribal resources are or potentially will be affected by the cumulative and synergistic effects of petroleum products in the environment; and

(2) to ensure the competence of persons owning or possessing the storage tanks to take all prudent measures to ensure that no petroleum product escapes from the tanks into the environment.

(b) The effect of certification is to grant the owner/user of a fuel storage tank the Tribe's permission to install and use the tank for the time period indicated, in the specific location and for the specific purpose described on the certification document.

49-13.03 Certification Procedure

The Tribal Natural Resources Department is authorized and instructed to promulgate rules and procedures regarding the certification of fuel storage tanks that shall be approved by the Spokane Tribal Business Council prior to enforcement.

49-13.04 Recognition of Federal Certification

The Tribe will take into consideration the approval of fuel storage tanks by the U.S. EPA. However, the Tribe reserves the right to deny Tribal certification of fuel storage tanks based on the Tribe's own assessment of unacceptable effects on the Tribal environment.

49-13.05 Denial/Revocation of Certification

(a) Certification may be denied when the Tribe determines, after due consideration, that the proposed fuel storage tank will or potentially may cause unacceptable harm or risk to Tribal resources;

(b) Certification may be revoked upon the Tribe's finding, based on credible evidence, that:

(1) the terms of the certification have been violated; or

(2) conditions have changed since the date of issuance of certification in such a way that Tribal resources have come to be harmed or potentially will be harmed by the continued possession or use of the certificated storage tank.

49-13.06 Record-Keeping Requirement

All persons holding Tribal storage tank certification must maintain, at a minimum, the records required to maintained under federal law in Subchapter IX of the federal Solid Waste Disposal Act (42 U.S.C § 6991, et seq.), as amended, and any federal regulations promulgated there under, specifically including all records required in connection with inspections, monitoring, testing and corrective action.

Section 14 Miscellaneous Provisions

49-14.01 Savings

All Tribal law or parts thereof which relate to the subject matter of this Chapter, and which are inconsistent with the provisions of this Chapter, are hereby repealed, except that such repeal shall not affect any proceedings pending on the date of enactment of this Chapter and this Chapter **shall not** affect any provisions of Chapter 34-Hazardous Substances Control. All pertinent Tribal law which is *not* consistent with this Chapter shall stand and shall be deemed supplemental to the provisions of this Chapter. Examples of such supplemental Tribal law are:

- The Tribal Employment Rights Ordinance (TERO)
- Tribal common law regarding nuisance and trespass; and,
- Tribal Water Quality Standards and Law and Order Code Chapter on Surface Water and Ground Water Protection.

49-14.02 Reconciling Federal Law

If any part of this Chapter is found to overlap with federal law addressing identical subject matter, such part of this Chapter **may** be declared inoperative solely to the extent federal law is in conflict with Tribal law by the Tribal Court. However, this Chapter expressly recognized the Tribe's concurrent jurisdiction over the subject matter covered in this Chapter that may be covered by federal law. Such finding shall not affect the operation of the remainder of this Chapter. Examples of federal law under which both federal and Tribal provisions might apply are:

- The Federal Resource Conservation and Recovery Act (42 U.S.C §§ 6901-6992k, as amended);
- The Comprehensive Emergency Response, Clean-up and Liability Act (42 U.S.C. §§ 9601-9675, as amended);
- The Clean Air Act (42 U.S.C. §§ 7401-671q, as amended);
- The Clean Water Act/Water Pollution Prevention and Control (33 U.S.C. §§ 1251-1387, as amended);
- The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §§ 136-136y, as amended); and,
- The Solid Waste Disposal Act (42 U.S.C. §§ 6901-6992k, as amended).

Section 15 Enforcement

49-15.01 Enforcement

(a) The provisions of this Chapter shall be enforced through all methods available to the Tribe, including administrative actions, collection of field bonds, civil actions for injunction, forfeiture and/or damages, and/or criminal actions in courts of proper jurisdiction.

(b) Civil fines designated in sections of this Chapter are the minimum fines, if a fine is not designated the Court shall use factors (1)-(4) of this paragraph when deciding the fine amount. The Tribe may by motion to the Court request additional restitution. The Court shall consider the following factors when such a motion is made:

- (1) The dollar cost to make the Tribe/Landowner whole;
- (2) Actual cost of cleanup, including the Tribe's legal fees;
- (3) The sensitivity of the area in which the violation occurred; and
- (4) Likelihood of future costs to mitigate the long-term environmental damage.

(c) Other Remedies:

- (1) The Court may enjoin a violator from continuing to pollute.
- (2) The Court may assess civil fines in excess of the published civil fines upon finding that a fine is inadequate in a particular case to provide full restitution to the Tribe.
- (3) The Court may assess punitive damages upon finding that violations have been committed wantonly, willfully, or maliciously.
- (4) In addition to the payment of fines, the Court may order a violator to remove the pollution source and remediate the polluted site.

(d) The provisions of this Chapter may be enforced by Tribal Law Enforcement Officers, Tribal Park Rangers, the Tribe's Environmental Officer, and other staff that the Tribe's Director of the Department of Natural Resources designates.

Section 16 Disposition of Permit Fees and Civil Fines

49-16.01 Disposition of Permit Fees

All fees paid to the Tribe for permitting under this Chapter shall be designated to the funds of the management program corresponding to the permit (e.g., solid waste permit fee to the Solid Waste Program, pesticide certification fee to the Pesticide Program, etc.).

49-16.02 Disposition of Civil Fines

All monies collected in payment of civil fines for violations of this Chapter shall be designated to the funds of the management program corresponding to the type of violation (e.g., a fine for a solid waste violation goes to the Solid Waste Program, etc.), after all court fees and prosecution expenses have been paid from the fine amount.

Section 17 Severability

49-17.01 Severability

If any provisions of this ordinance or the application thereof to any person or set of facts is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without regard to the invalid provision or application, and to this end, the provisions of this Chapter are severable.

CHAPTER 50 – SPOKANE TRIBE RIGHT TO WORK CODE

Section 50-1 Findings and Purpose

50-1.01 Findings. The Spokane Tribal Business Council makes the following findings:

- (a) The People of the Spokane Tribe have established a government to promote and protect the sovereignty, rights, and interests of the Spokane Tribe of Indians, including, among other reasons, to develop their community resources and to promote their economic and social welfare.
- (b) Work is central to Tribal personal and family existence, and to the promotion of the Tribe's overall economic and social welfare.
- (c) The federal government and many states (22) have enacted statutes or state constitutional amendments that ensure that joining or paying fees to a labor union is not a requirement of lawful employment within their jurisdictions.
- (d) Within the Tribe's jurisdiction:
 - (1) workers should be free both to join unions and to refrain from joining unions;
 - (2) unions should not be able to force employers to include clauses in their union contracts that require all employees to either join the union, or pay union dues as a condition of employment;
- (e) Right-to-work jurisdictions experience higher economic growth and job creation than do non-right to work law jurisdictions.
- (f) Right-to-work jurisdictions typically have lower unemployment rates.

Legislative History - Adopted 02/12/09, Resolu 2009-140

Section 50-3 Definitions

50-3.01 Definitions. The purpose of this Spokane Tribe Right to Work Code, this section defines certain terms. The word "shall" is always mandatory and never advisory. The word "may" is discretionary.

- (a) "Employer" means any person, firm, association, corporation, and other entity operating in or upon the Spokane Indian Reservation or lands held in trust for the benefit of the Tribe outside the exterior boundaries of the Reservation, and directly or indirectly employing 1 or more employees to perform work.
 - (1) This Code does not apply to any such person, firm, association, corporation, or other entity that has a principal place of business located outside the jurisdiction of the Tribe, and operates within the jurisdiction of the Tribe pursuant to an agreement with the Tribe to perform construction-related activities or to deliver goods or services.
- (b) "Employee" means any person who works on behalf of an "Employer."
- (c) "Labor Organization" means any organization, agency, or group of employees, or employee committee, or plan in which employees participate, that is organized or exists for the purpose of dealing with an employer or employers concerning hours of employment, wages, rates of pay, benefits, working conditions, or grievances of any kind relating to employment.
- (d) "Union Dues" means dues, fees, assessments, or other charges of any kind or amount, or their equivalents paid or payable, directly, or indirectly, to a labor organization, or its agents, and includes payments to any charity or other third party in lieu of such payments to a labor organization.
- (e) "Person" means any individual, labor organization, corporation, partnership, company, association, or other legal entity, including the Spokane Tribe of Indians and any of the Spokane Tribal Enterprises.

Legislative History - Adopted 02/12/09, Resolu 2009-140

Section 50-5 Right To Work

50-5.01 Prohibited Actions.

- (a) No Employee shall be required, as a condition of employment or continuation of employment within the jurisdiction of the Spokane Tribe of Indians, to do any of the following:
 - (1) Become or remain a member of a Labor Organization; or

(2) Pay Union Dues as defined by this Code.

- (b) Any agreement between any Labor Organization and any Employer that requires Employees of such Employer to obtain or maintain membership in any Labor Organization, or to pay Union Dues, as defined in this Code, or otherwise, violates the rights of the Employees provided in this Code, is against the public policy of the Spokane Tribe of Indians, and shall have no legal effect.

Legislative History - Adopted 02/12/09, Resolu 2009-140

50-5.03 Jurisdiction.

- (a) The Spokane Tribal Court shall have jurisdiction over all causes of action alleging violations of this Code.
- (b) There shall be no cause of action in the Spokane Tribal Court against the Spokane Tribe of Indians or any of its Enterprises owned wholly or partially by the Tribe, and nothing in this Code shall be deemed to be a waiver of the Sovereign Immunity of the Spokane Tribe of Indians from suit in Spokane Tribal Court or any other forum or context.

Legislative History - Adopted 02/12/09, Resolu 2009-140

Section 50-7 Civil Remedies

50-7.01 Civil Remedies.

- (a) Any person injured as a result of any violation or threatened violation of the provisions of the this Code shall be entitled to petition the Spokane Tribal Court for injunctive relief from or against any person who violates or threatened any violation of this Code, and may, in addition thereto, file a claim to recover any and all damages, including costs and reasonable attorney's fees, resulting from the violation or threatened violation of this Code.
- (b) The remedy shall be independent of, and in addition to, any other penalties and remedies prescribed by applicable Code.

Legislative History - Adopted 02/12/09, Resolu 2009-140