

CHAPTER 21 - EXCLUSION OF NONMEMBERS FROM THE SPOKANE INDIAN RESERVATION

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Section 21-1 Intent

21-1.01 Intent. It is the intent of the Spokane Tribe of Indians, in adopting this Chapter, to incorporate the firmly established powers of tribal governments to exclude individuals from tribal lands as necessary to protect the political integrity, economic security, and/or health or welfare of the Tribe, tempered according to the culture, customs, and traditions of the Spokane Tribe.

With this history in mind, exclusion should be used only when addressing particularly dangerous, destructive, or heinous crimes, including but not limited to child abuse, sexual assault, domestic violence, sale of controlled substances or drugs, and murder, or as the measure of last resort.

Adopted 11/7/18, Resolu. 2019-048.

Section 21-2 Definitions

21-2.01 Definitions. For purposes of this Chapter, the following words and phrases shall, unless otherwise indicated, have the following meaning:

- (a) "Respondent" means any person or entity named in a petition for exclusion or subject to an Order of Exclusion or Emergency Removal Order.
- (b) "Spokane Reservation" means the Spokane Reservation, in all its forms, and all Spokane tribal trust properties.
- (c) "Minor" means any person under the age of 18 years old.

Adopted 11/7/18, Resolu. 2019-048.

Section 21-3 Exclusion from Reservation

21-3.01 Exclusion from Reservation. Any person or entity, except a member of the Spokane Tribe, may be excluded from the Spokane Reservation for committing any of the following:

- (a) Any act which violates the criminal laws of any Tribe, State or the United States of America regardless of where said act occurred or in which jurisdiction.
- (b) Conduct or activity of such a nature as to be offensive to the morals of the Spokane Tribe or the inhabitants of the Spokane Reservation.
- (c) Unauthorized prospecting, mining, timber cutting, hunting, fishing, trapping, gathering, or other activity causing physical loss or damage to any Tribal natural resource.
- (d) Forcing entry into the home or living space of any Spokane tribal member, or any inhabitant of the Spokane Reservation, without the consent of the lawful occupant or occupants.

- (e) Committing fraud, confidence games, or usury against any Spokane Tribal member or any inhabitant of the Spokane Reservation, or inducing them to enter into grossly unfavorable agreements of any nature.
- (f) Defrauding any Spokane Tribal member or any inhabitant of the Spokane 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 any Spokane tribal member, or any inhabitant of the Spokane Reservation.
- (h) Repeated public drunkenness, or repeated use of any controlled substance or drug as defined by Chapter 13, regardless of where said acts occurred or in which jurisdiction.
- (i) Removing or attempting to remove any minor from the Spokane Reservation or any Spokane tribal property, whether in fee or in trust, 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 crime regardless of where said acts occurred or in which jurisdiction.
- (l) Activities which, if allowed to continue, which would result in substantial harm, loss or damage to the Spokane Tribe of Indians, the Spokane Reservation or any Spokane tribal property, whether in fee or in trust, or the general public or their property.
- (m) Evading arrest or prosecution for an offense committed in any other jurisdiction.
- (n) Causing disturbances of celebrations or ceremonies within the Spokane Reservation.
- (o) Disturbing or destroying gravesites, artifacts or other sites and objects of historical or anthropological value.

Readopted 8/01/06, Resolu. 2006-524; Amended 11/7/18, Resolu. 2019-048.

21-3.02 Mandatory Exclusion from Reservation. Any person or entity, except a member of the Spokane Tribe, shall be excluded from the Spokane Reservation upon any of the following grounds which have occurred within a ten (10) year period:

- (a) Any conviction, continuance for dismissal, stipulated order of continuance, or deferral, entered in any court of any jurisdiction for any crime or violation involving the production, distribution, barter, or sale of any controlled substances or drugs regardless of where said act occurred or in which jurisdiction.
- (b) Any felony conviction for any crime of domestic violence or sexual violence, or pattern of behavior of domestic violence or sexual violence, regardless of where said acts occurred or in which jurisdiction.
- (c) Any conviction for any crime of violence, or pattern of behavior of abuse or neglect, committed against any "Senior Citizen" or "Vulnerable Adult" as defined in Chapter 8.
- (d) Any conviction for any crime of violence, or pattern of behavior of abuse or neglect, committed by an adult against any "Minor", "Youth in Need of Care" as defined in Chapter 6, or person who is otherwise a ward of any court, pursuant to a dependency proceeding, regardless of where said acts occurred or in which jurisdiction.
- (e) Any conviction for any crime that would be a felony under Federal or State law committed against any "Minor", "Youth in Need of Care" as defined in Chapter 6, or person who is otherwise a ward of any court, pursuant to a dependency proceeding, regardless of where said act occurred or in which jurisdiction;

- (f) Any conviction which falls or would fall under the jurisdiction of RSLOC Chapter 8A, regardless of where said act occurred or in which jurisdiction.
- (g) Any conviction for any other crime of violence which would be a felony under State or Federal law, regardless of where said act occurred or in which jurisdiction.

Adopted 11/7/18, Resolu. 2019-048.

Section 21-4 Procedure for Exclusion

21-4.01 Procedure for Exclusion. The Spokane Tribal Court shall have jurisdiction to exclude persons or entities, except members of the Spokane Tribe, from the Spokane Reservation. The procedure for such exclusion is as follows:

- (a) Where reasonable grounds to believe cause under Section 21-3 exists to exclude a person or entity from the Spokane Reservation, the Spokane Tribal Prosecutor may present such grounds to the Spokane Tribal Council and request a resolution authorizing the Spokane Tribal Prosecutor to file a petition with the Spokane Tribal Court for an Order of Exclusion.
- (b) Upon review of information presented by the Spokane Tribal Prosecutor, the Spokane Tribal Council may pass a resolution authorizing the Spokane Tribal Prosecutor to petition the Spokane Tribal Court for an Order of Exclusion.
- (c) The filing of a petition under this Chapter shall constitute a civil cause of action.
- (d) The petition shall state the name of the person or entity to be excluded and the specific grounds for exclusion.
- (e) If the Spokane Tribal Court finds that the petition does not meet the requirements of this Chapter, it shall dismiss the petition without prejudice and shall cause notice to be served on the Spokane Tribal Prosecutor.
- (f) Upon the filing of a petition, the Spokane Tribal Judge shall issue a notice of hearing to the person or entity named in the petition to show cause why an Order of Exclusion should not be issued.
- (g) Within 15 days of service of notice, the Respondent shall file a written answer to the allegations described in the petition with the Spokane Tribal Court and the Spokane Tribal Prosecutor.
- (h) If the Respondent fails to file a written answer the Spokane Tribal Court shall enter an Order of Exclusion. The Spokane Tribal Prosecutor may present such an order ex parte.
- (i) The Spokane Tribal Court shall hold a hearing without a jury to determine whether to issue an Order of Exclusion not less than three (3) nor more than five (5) days after the Respondent files their written answer.

Readopted 8/01/06, Resolu. 2006-524; Amended 11/7/18, Resolu. 2019-048.

21-4.02 Notice.

- (a) Any notice issued by the Spokane Tribal Court pursuant to this Chapter shall include:
 - (1) the date, time, and place of the hearing;
 - (2) a copy of the petition;
 - (3) a copy of Chapter 21;
 - (4) a statement that the Respondent may be represented by legal counsel, at Respondent's expense;

- (5) a statement that the Spokane Tribal Court shall only grant a continuance if:
 - (i) the Spokane Tribal Court finds good cause for the continuance; and
 - (ii) if the Respondent requests the continuance, the Respondent must agree to a temporary Order of Exclusion from the Spokane Reservation, subject to enforcement under this Chapter, as a condition of the continuance.
 - (6) a statement that failure to file a written answer as required by Chapter 21 shall result in the Spokane Tribal Court entering a default Order of Exclusion;
 - (7) a statement that failure to appear at the time and date set for hearing shall result in the Spokane Tribal Court entering a default Order of Exclusion.
- (b) Notice shall be served upon Respondent by:
- (1) personal delivery of the notice summons and complaint to the Respondent or by leaving the summons and complaint at the place of Respondent's usual abode with some adult person who is a resident therein; and
 - (2) posting copies of the summons and complaint in two (2) public places on the Reservation for three (3) weeks and by publication of notice of the filing of said summons and complaint for one (1) week in the official Spokane tribal newspaper or any newspaper of general circulation on or adjacent to the Spokane Reservation.
- (c) The Spokane Tribal Court Shall attempt to serve notice by personal service and notice by publication at the same time, provided, however, that notice shall be deemed perfected upon completion of either method of service, whichever is established first.

Adopted 11/7/18, Resolu. 2019-048.

21-4.03 Hearing.

- (a) Any hearing to determine whether the Spokane Tribal Court shall issue an Order of Exclusion shall take place at the location, date, and time designated in the notice and shall be without a jury.
- (b) The parties may be represented by counsel, at their own expense.
- (c) If the Respondent fails to appear at the time set for hearing, the Spokane Tribal Court shall enter an Order of Exclusion. The Spokane Tribal Prosecutor may present such an order ex parte.
- (d) The Spokane Tribal Prosecutor and the Respondent shall have an opportunity to present witnesses and other evidence to the Spokane Tribal Court.
- (e) Witnesses may be subpoenaed for either party upon request. Failure of the Spokane Tribal Court's subpoena power to obtain a witnesses' presence shall not be cause to dismiss the petition.
- (f) The Spokane Tribal Prosecutor must prove one (1) or more of the items listed in Section 21-3.01 or Section 21-3.02 by a preponderance of the evidence.
- (g) Having so proven, the Spokane Tribal Court shall issue a lifetime Order of Exclusion against the Respondent unless the Spokane Tribal Prosecutor has petitioned for a shorter period of time.
- (h) Any Order of Exclusion issued pursuant to this Chapter, along with a photograph of the excluded person, shall be publicly available and posted at the Spokane Tribal Court, the Tribal Administration Building, the Public Safety Building, and any other public location deemed appropriate by the Spokane Tribal Council or the Spokane Tribal Prosecutor.
- (i) Any Order of Exclusion issued pursuant to this Chapter shall be published in the official Tribal newspaper or any newspaper of general circulation on or adjacent to the Spokane Reservation.

21-4.04 Appeal. Any person subject to an Order of Exclusion may appeal the decision of the Spokane Tribal Court as provided in Chapter 1 Section 1-7 of the Law and Order Code.

Section 21-5 Procedures for Emergency Removal

21-5.01 Procedures for Emergency Removal.

- (a) The Spokane Tribal Prosecutor may also request an immediate Emergency Removal Order at the same time it files for an Order of Exclusion under this Chapter, by filing an additional declaration which states the following:
 - (1) that reasonable grounds exist to believe the conduct or activity of the Respondent threatens to cause, or does cause, imminent and serious danger to the lives, health, safety, or morals of the inhabitants of the Spokane Reservation; and
 - (2) the specific conduct or activity which threatens the inhabitants of the Spokane Reservation; and
 - (3) that Respondent's conduct or activity falls under 21-3.01, or 21-3.02, or both; and
 - (4) that it is in the best interest of the Spokane Tribe or the inhabitants of the Spokane Reservation to issue an Emergency Removal Order prior to a hearing pursuant to Section 21-4.
- (b) Upon receipt of a valid petition for Permanent Exclusion and declaration for Emergency Removal, submitted the Spokane Tribal Prosecutor, the Spokane Tribal Court shall make an ex parte finding as to whether reasonable grounds exist to believe the conduct or activity of the Respondent threatens to cause, or does cause, imminent and serious danger to the lives, health, safety, or morals of the Tribe or the inhabitants of the Spokane Reservation.
- (c) The Spokane Tribal Court, upon finding reasonable grounds, shall issue an ex parte Emergency Removal Order directing law enforcement officers to serve the Respondent with the Emergency Removal Order and notice pursuant to 21-4.02, and remove the Respondent from the Spokane Reservation.
- (c) The Emergency Removal Order shall remain in full effect pending the Spokane Tribal Court's determination whether to issue an Order of Exclusion. Any violation of the Emergency Removal Order may result in enforcement as per Section 21-6 of this Chapter.
- (d) If the Court denies the request for an Emergency Removal Order, the petition for an Order of Exclusion shall proceed as per Section 21-4 of this Chapter.
- (e) If the Court denies the petition for an Order of Exclusion, the Emergency Removal Order shall be terminated at that time.
- (f) The Emergency Removal Order shall state that the Respondent shall have the right to make a written request for an expedited hearing on the petition for an Order of Exclusion.
 - (1) Respondent shall file the request with the Spokane Tribal Court and the Spokane Tribal Prosecutor.
 - (2) Such request may be granted, at the discretion of the Spokane Tribal Court, only after reasonable notice to the Spokane Tribal Prosecutor.

- (3) If a sooner hearing is not possible due to witness or personnel unavailability, or the Court's docket schedule, the originally scheduled hearing on the Order of Exclusion shall remain unchanged.

Readopted 8/01/06, Resolu. 2006-524; Amended 11/7/18, Resolu. 2019-048.

21-5.02 Re-Entering the Reservation. A person subject to an Emergency Removal Order may enter the Spokane Reservation to attend all necessary scheduled hearings before the Spokane Tribal Court. The excluded person shall not deviate from a direct route to and from the Spokane Tribal Courthouse without the prior, written, specific permission of the Spokane Tribal Court. Any deviation may lead to enforcement actions under any remedy provided under Section 21-6.

Readopted 8/01/06, Resolu. 2006-524; Amended 11/7/18, Resolu. 2019-048.

Section 21-6 Enforcement

21-6.01 Enforcement.

- (a) Any person subject to an Order of Exclusion or Emergency Removal Order who does not promptly obey such Order of Exclusion or Emergency Removal Order may be charged, at the discretion of the Spokane Tribal Prosecutor, with:
 - 1) Violation of Exclusion Order as provided in Section 21-6.02 of this Chapter; or
 - 2) Civil Contempt of Court as provided in Chapter 1, Section 1-8 of the Law and Order Code; or
 - 3) Any other penalty allowed by the Revised Spokane Law and Order Code.
- (b) Law Enforcement Officers shall escort any person excluded pursuant to an Order of Exclusion or Emergency Order of Removal off the Spokane Reservation as necessary.

Readopted 8/01/06, Resolu. 2006-524; Amended 11/7/18, Resolu. 2019-048.

21-6.02 Violation of Exclusion Order

- (a) Any person who shall willfully violate or disobey any Order of Exclusion or Emergency Removal Order issued by the Spokane Tribal Court shall be guilty of an offense.
- (b) Penalties. Upon conviction an individual shall be sentenced to confinement for a period of not more than one (1) year, pay a fine of not more than \$5,000, or both, provided, however, that:
 - (1) For the first conviction the mandatory minimum sentence shall be thirty (30) days confinement.
 - (2) For the second conviction the mandatory minimum sentence shall be one-hundred and eighty (180) days.
 - (3) For the third conviction, and for any subsequent offense, the mandatory minimum sentence shall be one (1) year of confinement.
- (c) The minimum sentences specified above are mandatory and may not be suspended or reduced.

Adopted 11/7/18, Resolu. 2019-048.

21-6.03 Federal or State Enforcement. The Spokane Tribal Council may refer an exclusion case or any violation of an Order of Exclusion to the Superintendent of the Spokane Indian Agency, the United States Attorney, or the applicable Washington State prosecutor's office for appropriate action, including but not limited to criminal trespass, violation of a court order, injunction, restraining order, and other remedies as allowed by law.

Readopted 8/01/06, Resolu. 2006-524; Amended 11/7/18, Resolu. 2019-048.

Section 21-7 Petition for Relief

21-7.01 Nullification of Order of Exclusion.

- (a) A person subject to an Order of Exclusion based on grounds under 21-3.01 may submit a written petition to the Spokane Tribal Council for nullification of said order no sooner than one (1) year after issuance.
- (b) A person subject to an Order of Exclusion based on grounds under 21-3.02 may submit a written petition to the Spokane Tribal Council for nullification of said order no sooner than three (3) years after issuance.
- (c) The Spokane Tribal Council, in its sole discretion, may choose to review the written petition for nullification and either:
 - (1) Deny the petition without further action;
 - (2) Pass a resolution granting the named individual permission to re-enter the Spokane Reservation limited to a specific date, time, and location; or
 - (3) Pass a resolution to nullify the Order of Exclusion on terms and conditions that the Spokane Tribal Council, in its sole discretion, considers just and equitable.
- (d) When deciding whether to nullify an Order of Exclusion, the Spokane Tribal Council shall consider the following:
 - (1) Whether the person has engaged in drug and alcohol treatment, anger management, counseling, therapy, and similar activities as applicable;
 - (2) Payment of restitution or court fines, as applicable;
 - (3) Current employment status and likelihood of continued employment;
 - (4) The period of time the person has exhibited changed and acceptable behavior; and
 - (5) Any other factor the Spokane Tribal Council determines applicable to evaluate whether the person is no longer a threat to the Spokane Tribe or the inhabitants of the Spokane Reservation.
- (e) The decision of the Spokane Tribal Council shall be final and nonreviewable.
- (f) The Spokane Tribal Council shall not review an excluded person's petition for nullification more than once every three (3) years.
- (g) The Spokane Tribal Court shall modify or vacate an Order of Exclusion consistent with resolutions of the Spokane Tribal Council enacted pursuant to this Section.
- (h) The Spokane Tribal Court shall not have the authority to grant permission to re-enter the Spokane Reservation.

Readopted 8/01/06, Resolu. 2006-524; Amended 11/7/18, Resolu. 2019-048.

21-7.03 Funerals.

- (a) Persons subject to an Order of Exclusion or Emergency Removal Order may enter the Spokane Reservation to attend the funeral of an immediate family member on the day of the funeral and during funeral hours only if the excluded person first notifies and obtains permission from the Chief of Police of the Spokane Tribal Police Department.

- (b) If the Chief of Police is unable to verify that the excluded person is an immediate family member of the deceased person the excluded person shall not be allowed onto the Reservation.
- (c) The Chief of Police shall use his or her discretion to determine whether or not police supervision is necessary to ensure the safety of the community or other persons.
- (d) A person may be denied the right to attend a funeral if there is a substantial threat of harm or injury to the community or a person.
- (e) "Immediate family member" shall mean a partner, parent, child, step-child, step-parent, fostered or adopted child, brother, sister, mother-in-law, father-in-law, sister or brother in-law, daughter or son in-law, grandchild, or grandparent.

Adopted 11/7/18, Resolu. 2019-048.

Section 21-8 Severability

21-8.01 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.

Readopted 8/01/06, Resolu. 2006-524; Amended 11/7/18, Resolu. 2019-048.

Section 21-9 Harboring an Excluded Person

21-9.01 Harboring an Excluded Person.

- (a) Any person who knowingly harbors, conceals, or gives assistance to a person subject to an Order of Exclusion or an Emergency Removal Order, or who shall allow such excluded or removed person in his or her dwelling, shall be guilty of an offense.
- (b) Penalties. and upon conviction, shall be sentenced to confinement for a period of not more than one (1) year and a fine of not more than \$5,000, or both, provided however, that there shall be a mandatory minimum five (5) days confinement and a \$100.00 fine. The minimum sentence is mandatory and may not be suspended or reduced.
- (c) Defenses. It shall be a complete defense if the defendant, within 24 hours of contact with the excluded person, reports the presence of the excluded person to law enforcement.

Adopted 11/7/18, Resolu. 2019-048.