

TITLE 5. SPECIAL PROCEEDINGS

Chapter 5.3

EXCLUSION OF PERSONS FROM THE PORT MADISON INDIAN RESERVATION

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5.3.1. Grounds for Exclusion from the Reservation. Any person, except an Indian entitled to reside upon it, may be excluded from the Port Madison Indian Reservation for the following reasons:

(a) Unauthorized prospecting, surveying, or timber cruising on land owned or in the lawful possession of the Tribe or an Indian person;

(b) Unauthorized mining, timber cutting, including Christmas trees and firewood, or other activity causing physical loss or damage of any nature to tribal or Indian property;

(c) Conduct which would constitute a crime as defined by tribal, state, or federal law - including, but not limited to, criminal fish and wildlife violations and illegal drug activity;

(d) Entry into or upon any Indian home, including the curtilage of that home, without consent of the owner or lawful occupant, or entry into or upon tribally or Indian-owned property that is fenced, posted, gated, locked, or otherwise made publicly known to be closed to public entry without consent of the owner or occupant;

(e) Interfering with or photographing religious ceremonies, funerals, or traditional cultural ceremonies of the Suquamish Tribe or any member of the Tribe, without permission of the sponsor of the ceremony;

(f) The conduct of any unauthorized business, trading, or peddling;

(g) Committing fraud, confidence games, or usury against the Tribe or any Indian person or upon Indian property or inducing the Tribe or any Indian person to enter into grossly unfavorable agreements of any nature;

(h) Breach of the peace or repeated public drunkenness;

(i) Repeated violation of traffic regulations;

(j) Removing or attempting to remove any minor Indian from the Port Madison Indian Reservation without proper authority;

(k) Causing or contributing to dangerous or unsanitary conditions on the Port Madison Indian Reservation;

(l) Willful and deliberate interference, determined by resolution of the Council, with treaty fishing rights or the exercise of Suquamish cultural and traditional practices; or

(m) Living as a registered sex offender on the Port Madison Indian Reservation. (Prior code Ch. IV, Art. IX, §1(a): amended by Res. 93-094, passed Oct. 4, 1993; amended by Res. 2016-117, passed Aug. 8, 2016)

5.3.2. Petition for Exclusion. The Suquamish Tribal Council will by resolution authorize the tribal prosecutor or other attorney for the Tribe to petition the Suquamish Tribal Court (“Court”) to serve notice, in accordance with this chapter, upon any person when the Council has reason to believe cause may exist for exclusion of that person. This petition and notice will be filed with the Court within ten (10) business days of the date of the Tribal Council resolution authorizing the petition. The notice will state the reason for the order and will name a time within not less than five (5) days, unless an emergency exists, when the person will appear before the Court for a hearing to determine whether the person should be excluded from the exterior boundaries of the Port Madison Indian Reservation. (Prior code Ch. X, Art. I, §28 (part); amended by Res. 93-094, passed Oct. 4, 1993; amended by Res. 2016-117, passed Aug. 8, 2016)

5.3.3. Exclusion Hearing. (a) After notice to the person proposed for exclusion, the Court will hold a hearing to decide whether or not to exclude that person from the exterior boundaries of the Port Madison Indian Reservation.

(b) Hearings upon exclusion petitions will generally be held within twenty (20) days of service of the notice upon the person to be excluded. Such hearings will take precedence over all other matters, except requests for temporary restraining orders or other matters which must be heard immediately to prevent the expiration of a time period for judicial action established by tribal ordinance.

(c) Any testimony taken under oath in a criminal proceeding, with opportunity and similar motive for cross-examination, may be used as evidence against the same

defendant in an exclusion proceeding, regardless of the fact that the witness was not present at, but could be made available for, the hearing on exclusion.

(d) If the person does not appear at the hearing at the time and place scheduled or if at the hearing the judge finds by a preponderance of the evidence that cause does exist to exclude that person from the exterior boundaries of the Port Madison Indian Reservation, the Court will issue an order excluding the person from all or any part of the Port Madison Indian Reservation or permitting such person to remain on the Port Madison Indian Reservation under such conditions as are specified in the order, which conditions will include, in any event, a reasonable time not to exceed forty-eight (48) hours to collect any necessary clothing or personal effects and remove them from the reservation. The order will remain effective unless vacated, revoked, or modified by the Court. (Prior code Ch. X, Art. I, §28 (part); amended by Res. 93-094, passed Oct. 4, 1993; amended by Res. 94-153, passed Oct. 10, 1994; amended by Res. 2016-117, passed Aug. 8, 2016)

5.3.4. Appeals. Final orders of the Court under this chapter may be appealed to the Suquamish Tribal Court of Appeals as provided in this code. Unless otherwise ordered by a judge of the Court, an order of exclusion will not be stayed pending appeal. (Prior code Ch. X, Art. I, §28(d); amended by Res. 93-094, passed Oct. 4, 1993; amended by Res. 2016-117, passed Aug. 8, 2016)

5.3.5. Order of Removal. Upon the issuance of an order of exclusion, a copy thereof will be served upon the person to be excluded, in accordance with the service provisions of this chapter. Any person in violation of an order of exclusion, having been served with the order or having actual knowledge of the order, may, in addition to any other penalty or remedy under tribal law, be removed bodily from the Port Madison Indian Reservation by any tribal law enforcement officer, without further judicial process. (Prior code Ch. X, Art. I, §28(e); amended by Res. 93-094, passed Oct. 4, 1993; amended by Res. 2016-117, passed Aug. 8, 2016)

5.3.6. Immediate Removal. (a) In cases involving immediate danger to the life, health, or property of the Suquamish Tribe, Indian residents of the reservation, or any tribal member and where delay would result in irreparable injury or harm, a judge of the Court upon petition of the Suquamish Tribal Council through its authorized attorney may issue an order directing any law enforcement official to remove a person from the Port Madison Indian Reservation immediately, using only so much force as is reasonable and necessary to effect the removal. No such order will issue unless it is based upon affidavit or sworn testimony that sets forth specific facts clearly showing the required element of threat of immediate and irreparable injury or harm and that also states, where the order is issued ex parte, the efforts, if any, that have been made to give notice of the petition to the opposing party.

(b) Any ex parte order for the immediate removal of a person from the Port Madison Indian Reservation will state:

- (1) The date and hour it was issued;
- (2) The threatened irreparable injury or harm and why it would be irreparable;
- (3) Why the order was issued ex parte;
- (4) The duration of such order, which will not exceed ten (10) days unless extended for a like period for good cause or unless the party subject to the order consents to a longer extension; and
- (5) The date and time for and the conditions under which the person may return for a hearing upon the petition for exclusion and for appeal of the judgment if the person files notice of appeal as allowed by this code.

(c) Except as otherwise set forth in this section, proceedings for immediate removal under this section are subject to all the provisions of this chapter. (Prior code Ch. X, Art. I, §28(f), (g); amended by Res. 93-094, passed Oct. 4, 1993; amended by Res. 2016-117, passed Aug. 8, 2016)

5.3.7. Public Space Removal. (a) A duly commissioned Suquamish Tribal Police officer may remove individuals from the Port Madison Indian Reservation for a period not to exceed twenty-four (24) hours.

(b) Such removal may only be completed:

- (1) By an officer duly commissioned by the Suquamish Tribal Police;
- (2) After a duly commissioned officer finds probable cause that the individual subject to removal has violated tribal, state, or federal criminal law; and
- (3) The individual subject to removal is in a public space.

(c) For the purposes of this section, “public space” is a place exposed to the public, where the public gather together or come and go. Public space includes, not exclusively: hotels, casinos, restaurants, golf courses, fueling stations, stores, government buildings and parking lots, rights of way, beaches, parks, and community centers. (Res. 2016-117, passed Aug. 8, 2016)

5.3.8. Limitations on Exclusion. This chapter does not authorize the exclusion of any person who owns real property within the reservation and has a right to reside upon that property from exclusion from and access to (by shortest right of way) the excluded person’s real property. (Res. 93-094, passed Oct. 4, 1993; amended and renumbered by Res. 2016-117, passed Aug. 8, 2016)

5.3.9. Service. Any notice to be given under this chapter may be served by any one or more of the following means:

(a) Personal service;

(b) Registered or certified mail;

(c) Delivery to a person of suitable age and discretion at the usual living place or place of employment of the person who is the subject of the order;

(d) Posting on the exterior of a dwelling known to be frequented by the person who is the subject of the order, but only if that person's presence at the location is supported by a sworn witness declaration; or

(e) Publication at least one (1) time in the Kitsap Sun, or in any newspaper of general circulation on or adjacent to the Port Madison Indian Reservation, or in a newspaper of general circulation in the town closest to where the person who is the subject of the order was last known to reside.

Proof of service will be made by affidavit or in any manner permitted in other civil proceedings. (Res. 93-094, passed Oct. 4, 1993; amended and renumbered by Res. 2016-117, passed Aug. 8, 2016)

5.3.10. Vacating an Order of Exclusion. Individuals who have been excluded from the Port Madison Indian Reservation for more than forty-eight (48) months may petition the Suquamish Tribal Council to request to have their exclusion order vacated by the Court.

(a) Excluded persons requesting to have their exclusion order vacated must mail by certified mail, addressed to the Chair of the Suquamish Tribal Council, the Suquamish Legal Department, and the Chief of the Suquamish Police, a written petition to request a Council recommendation to repeal the exclusion. The request to vacate the order of exclusion must be signed by the excluded person and may contain any documents, signed declarations, or other evidence of circumstances supporting the petitioner's request.

(b) Within sixty (60) days, the Suquamish Tribal Council will review the submitted petition. The Suquamish Tribal Council may request the excluded person or other persons (including, but not exclusively, the Chief of Police, the Suquamish Legal Department, any other interested parties, or any victims of the excluded person) to discuss the petition with the Suquamish Tribal Council. The Suquamish Tribal Council will hold a vote whether to recommend by resolution to the Court that it vacate the order of exclusion.

(c) In the event the Suquamish Tribal Council fails to vote to recommend vacating the order of exclusion, further petitions for the Suquamish Tribal Council to

recommend vacating the order of exclusion for that person will not be permitted for twenty-four (24) months following the date the original request was submitted.

(d) In the event the Suquamish Tribal Council votes to recommend vacating the order of exclusion, the excluded individual may then petition the Court to vacate the exclusion. The Suquamish Legal Department must be served with the petition. The petitioner may include any supporting documentation in the filing. The Court lacks jurisdiction to hear a petition to vacate an order of exclusion that is not accompanied by a recommendation by the Suquamish Tribal Council to vacate the order of exclusion.

(e) The Court will set a hearing within thirty (30) days of the filing of the petition to vacate the order of exclusion. The Court will provide the petitioner and the Tribe with notice of this hearing. At the hearing, the Court will determine whether the Suquamish Tribal Council has recommended vacating the order of exclusion by resolution. If the Court finds that the Suquamish Tribal Council has recommended vacating the order of exclusion, the Court will enter an order vacating the prior order of exclusion within thirty (30) days of the hearing. The Court will forward copies of its order to the Suquamish Chief of Police and Suquamish Legal Department.

(f) Vacating an order of exclusion is a privilege. This section does not recognize or create any right under Suquamish law.

(g) An excluded person appearing on the Port Madison Indian Reservation for any of the purposes permitted in this chapter will not be in violation of his or her exclusion order. (Res. 2016-117, passed Aug. 8, 2016)

Note: Subsections 5.3.1(1)-(10) renumbered to 5.3.1(a)-(j) for consistency by res. 2016-097, Jul. 11, 2016.