

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 enrolled member of the Suquamish Tribe, is subject to exclusion from all lands subject to the Suquamish Tribe's jurisdiction 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) Engaging in 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) Engaging in any act constituting a criminal or civil trespass under tribal, state, or federal law;

(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) Conducting 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) Breaching the peace or repeated public drunkenness;

(i) Repeatedly violating 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) Willfully and deliberately interfering with treaty fishing rights or the exercise of Suquamish cultural and traditional practices as determined by resolution of the Tribal Council; or

(m) Having been adjudicated to be a sex offender by any court of competent jurisdiction. (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; amended by Res. 2022-170, passed Oct. 24, 2022)

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 or portion of the 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; amended by Res. 2022-170, passed Oct. 24, 2022)

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. A respondent to an exclusion petition has no right to a jury trial.

(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) 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; amended by Res. 2022-170, passed Oct. 24, 2022)

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 seventy-two (72) 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; amended by Res. 2022-170, passed Oct. 24, 2022)

5.3.8. Limitations on Exclusion. (a) Any person who owns real property within the reservation and has a legal right to reside upon that property may not be excluded from that property, but will be allowed to access that property by the shortest route via a legal right of way. This subsection does not permit access to real property acquired after the petition for exclusion is filed.

(b) Excluded persons may come onto the Port Madison Indian Reservation to attend the funeral of an immediate family member on the day of the funeral and during funeral hours. For purposes of this subsection, “immediate family member” means a spouse, significant other, child, stepchild, sibling, parent, step-parent, grandparent, or in-law (mother, father, sister, or brother). Before coming onto the reservation, the

excluded person must notify the Suquamish Chief of Police. 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 will not be allowed onto the reservation. The Chief of Police will use his or her discretion as to whether or not police supervision is necessary to ensure the safety of the community or other persons. An excluded person may be denied the right to attend a funeral if there is a substantial threat of harm or injury to the community or to a person. (Res. 93-094, passed Oct. 4, 1993; amended and renumbered by Res. 2016-117, passed Aug. 8, 2016; amended by Res. 2022-170, passed Oct. 24, 2022)

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 Office of the Tribal Attorney, 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 Office of the Tribal Attorney, 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 Office of the Tribal Attorney 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 Office of the Tribal Attorney.

(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; amended by Res. 2022-170, passed Oct. 24, 2022)

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