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TITLE 22

EXCLUSION

Chapter 22.01 General Provisions

22.01.01 Purpose

The Port Gamble S'Klallam Reservation was acquired by purchase, under the provisions of Section 5 of the Indian Reorganization Act, and proclaimed on June 16, 1938 to be an Indian reservation "...for the benefit and use of the Port Gamble Band of Clallam Indians.." The land was subsequently paid for in full by the Port Gamble S'Klallam Tribe.

This chapter is enacted to provide a process to the Port Gamble S'Klallam Tribal Council for the exercise of its authority and duty to protect the peace, health, safety, welfare, property and cultural identity of the Port Gamble S'Klallam Tribe. The Tribe's inherent sovereign power to remove and exclude non-members from the reservation provides the Tribe with a means to protect the Port Gamble S'Klallam Tribe and the reservation community.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02.]

22.01.02 Jurisdiction

The Port Gamble S'Klallam Tribal Council shall have jurisdiction over all matters arising under this chapter. If, in the exercise of its jurisdiction under this chapter a course of proceeding is not specified, any suitable process may be adopted by the Tribal Council, in keeping with the spirit of the laws of the Tribe.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02. Amended – Resolution 03 A 063, passed 5/13/03.]

22.01.03 Who May Be Excluded

Any person who is not a member of the Port Gamble S'Klallam Tribe may be removed and excluded from the territory of the Port Gamble S'Klallam Tribe.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02.]

22.01.04 Civil Remedy

An exclusion order is a discrete civil remedy, which is neither dependent upon nor necessarily connected with any criminal remedy.

The intent of an order is not to punish persons but to protect the Tribe and the tribal community by providing the Tribe with a means of civil regulation of the community's internal order.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02. Amended – Resolution 03 A 063, passed 5/13/03.]

22.01.05 Definitions

The following terms when used in this chapter shall have the meaning set forth in this section.

- a) Exclusion - is an order denying entry onto property, which is under the jurisdiction of the Port Gamble S'Klallam Tribe.
- b) Child is any person under the age of eighteen (18) years who is the biological, foster, or adoptive child of a member of the Port Gamble S'Klallam Tribe.
- c) Natural Resources includes but is not limited to fish, wildlife, shellfish, timber, water, and minerals.
- d) Port Gamble S'Klallam Tribal Council or Tribal Council is the duly constituted governing body of the Port Gamble S'Klallam Tribe delegated by the Port Gamble S'Klallam General Council to conduct and regulate the business of and act on behalf of the Port Gamble S'Klallam Tribe.
- e) Port Gamble S'Klallam Tribal Police is any person or agency authorized by the Port Gamble S'Klallam Tribal Council to enforce this chapter.
- f) Port Gamble S'Klallam Tribal Community consists of enrolled members of the Port Gamble S'Klallam Tribe, residents of the Port Gamble S'Klallam Reservation and residents of land owned by the Port Gamble S'Klallam Tribe.
- g) Person includes individuals, organizations, and business entities.
- h) Proper Authority is either 1) a court order recognized as valid by the Port Gamble S'Klallam Community Court or Port Gamble S'Klallam Tribal Council; or 2) permission to remove a child, granted by a parent or other person who has lawful authority to give permission to remove.
- i) Removal is the physical removal of a person from the territory of the Port Gamble S'Klallam Tribe.
- j) Territory of the Port Gamble S'Klallam Tribe is all lands held in trust or subject to a restriction against alienation by the United States for

the benefit of the Port Gamble S'Klallam Tribe and all lands owned by the Port Gamble S'Klallam Tribe.

- k) Tribal Court is the Community Court of the Port Gamble S'Klallam Tribe.
- l) Usury refers to the usury rates prevailing in the State of Washington at the time of the loan.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02.]

22.01.06 Severability

If any portion of this chapter or its application to any person, legal entity or circumstance, is held invalid, the remainder of this chapter, or its application of the provision to other persons legal entities or circumstances shall not be affected.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02.]

22.01.07 Sovereign Immunity

Nothing in this chapter shall be construed as a waiver of the sovereign immunity of the Tribal Council and other tribal officials and employees.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02.]

22.01.08 Liberal Construction

This chapter shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02.]

Chapter 22.02 Grounds for Removal and Exclusion

22.02.01 Grounds for Removal and Exclusion

Any person subject to this chapter may be removed and excluded from the territory of the Port Gamble S'Klallam Tribe for any of the following reasons:

- a) Committing an act, which violates the laws of the Port Gamble S'Klallam Tribe whether or not the Tribe has jurisdiction to prosecute the person for the act.
- b) Any act which violates the criminal laws of the State of Washington or of the United States of America, whether or not the person may be prosecuted by the State or United States.

- c) Evading arrest or prosecution for an offense committed in another jurisdiction.
- d) Failure to comply with any legal process, notice, subpoena, order, or other decree issued by the Port Gamble S'Klallam Tribal Court, General Council, or Tribal Council or any tribal administrative panel.
- e) Removing or attempting to remove any child from the territory of the Port Gamble S'Klallam Tribe, without proper authority.
- f) Any act causing physical loss or damage to property not his own.
- g) Disturbing or destroying grave sites, artifacts, or other sites and objects of spiritual, scientific, historical or anthropological value without authorization from the Tribal Council.
- h) Unauthorized possession of, taking, or injury to natural resources within the territory of the Port Gamble S'Klallam Tribe.
- i) Hunting, fishing, shellfishing, trapping, woodcutting, or dumping without authorization from the Port Gamble S'Klallam Tribe.
- j) Repeated violation of tribal, county, or state civil traffic laws.
- k) Interference or threats to interfere with the business activities of the Port Gamble S'Klallam Tribe.
- l) Interfering with the official, political, governmental, business or religious affairs of the Tribe.
- m) Failure to pay taxes, assessments or user fees imposed by the Tribe.
- n) Inducing any member of the Port Gamble S'Klallam Tribe to enter into a grossly unreasonable contract of any nature.
- o) Committing fraud, confidence games or usury against any tribal member.
- p) Defrauding any member of the Port Gamble S'Klallam Tribe of just compensation for labor or service done at the request of the non-member.
- q) Repeated harassment of members of the Port Gamble S'Klallam Tribe tribal officials, tribal employees, or persons who are on contract with the Tribe.
- r) Photographing, tape recording, or interfering with any ceremony if requested not to do so by the participants.

- s) Failure to comply with any tribal law, policy, or contractual obligation regarding employment practices.
- t) Repeated breaches of the peace including but not limited to those breaches of the peace committed while under the influence of alcohol or drugs.
- u) Conducting illegal drug activities.
- v) Unauthorized removal or attempt to remove tribal property or property of tribal members.
- w) Presence within the jurisdiction of the Port Gamble S'Klallam Tribe during a time when that person is legally required to be in school. This applies only to persons under the age of eighteen years who are not members of the Port Gamble S'Klallam Tribal Community.
- x) Failure to obtain a tribal permit or to comply with the terms of such permit when required to do so under the laws or procedures of the Tribe.
- y) Entering an area closed to non-members without the authorization of the Tribe.
- z) Conducting business activities on the reservation if requested to cease and desist by the Tribal Council or Administrative Director.
- aa) Conducting door-to-door missionary activities on the reservation without authorization of the Tribe.
- bb) Presence within the reservation while infected with a dangerous communicable or contagious disease.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02. Amended – Resolution 03 A 063, passed 5/13/03.]

Chapter 22.03 Emergency Removal

22.03.01 Emergency Removals - Grounds

Tribal Police may remove from the jurisdiction of the Port Gamble S'Klallam Tribe any person subject to removal under this chapter if Tribal Police observes that an immediate danger to peace, health, safety or property exists and delay would result in irreparable harm. Emergency removals shall be in effect for 72 hours from the time of issue. Tribal Police, in its discretion and under its supervision, may allow the person to gather any necessary belongings from the jurisdiction of the Tribe, prior to removal. Tribal Police shall advise the Tribal Council of emergency removals under this section within two (2) business days of taking the action.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02. Amended – Resolution 03 A 063, passed 5/13/03.]

22.03.02 Notice of Emergency Removal

The Port Gamble S'Klallam Tribe shall give the person removed a notice, which shall include:

- a) The grounds for the removal; and
- b) A statement that the person or entity shall not return to the reservation within 72 hours from the time of issuance.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02. Amended – Resolution 03 A 063, passed 5/13/03.]

22.03.03 Extension of Emergency Removal

The Tribal Council may enter an emergency removal order to extend the original 72 hour emergency removal until a hearing and final decision on the exclusion can take place under Chapter 22.04 if it finds that a sufficiently serious threat to the peace, health, safety, welfare, property or cultural identity of the Tribe and the tribal community exists and a return to the reservation could result in irreparable harm.

The Tribal Council shall indicate in the emergency removal order whether the matter will be referred to the Port Gamble S'Klallam Community Court for consideration.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02. Amended – Resolution 03 A 063, passed 5/13/03, Resolution 04 A 114, passed 12/14/04. Amended-Resolution No. 05-A-054, passed 6/14/05.]

Chapter 22.04 Exclusion Hearing, Notice

22.04.01 Petition for Exclusion - Who May File

Any tribal member, or Port Gamble S'Klallam police officer may file a written petition to the Port Gamble S'Klallam Tribe Tribal Council requesting the removal or exclusion of any person who is subject to this chapter.

The person filing the petition is not a party to the exclusion proceeding, but may be called as a witness by the Tribal Council.

The Tribal Council may initiate exclusion proceedings by preparing its own petition.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02. Amended – Resolution 03 A 063, passed 5/13/03.]

22.04.02 Petition - Contents

A petition shall include:

- a) The name of the person to be removed or excluded;
- b) The specific grounds, under section 22.02.01, for the removal or exclusion;
- c) The factual basis for the request; and
- d) The signature of the petitioner.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02. Amended – Resolution 03 A 063, passed 5/13/03.]

22.04.03 Tribal Council's Consideration of Petition for Exclusion

The Tribal Council shall have exclusive authority to determine whether to act on a petition for exclusion. The Tribal Council may, in its discretion, refer an exclusion petition to the Port Gamble S'Klallam Community Court for consideration under the procedures in section 22.04.14.

The Tribal Council may pursue a petition for exclusion if:

- a) The petition meets the requirements for a petition under section 22.04.02; and
- b) The petition sets forth circumstances, which the Tribal Council considers pose a sufficiently serious threat to the peace, health, safety, welfare, property or cultural identity of the Tribe and the tribal community.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02. Amended – Resolution 03 A 063, passed 5/13/03, Resolution 04 A 114, passed 12/14/04.]

22.04.04 Notice of Opportunity for Hearing-Content

If the Tribal Council extends an emergency exclusion under section 22.03.03 and chooses to hear the matter rather than refer it to the Community Court or wishes to pursue a petition for exclusion, it shall cause a notice to be served as provided in section 22.04.05. The notice shall include:

- a) The name of the person to be removed or excluded;
- b) The specific grounds, under section 22.02.01, for the removal or exclusion;
- c) The factual basis for the request; and

- d) A statement that the person may request a hearing before the Port Gamble S'Klallam Tribal Council within seven (7) calendar days of service of the notice to contest his or her removal from the reservation.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02. Amended – Resolution 03 A 063, passed 5/13/03, Resolution 04 A 114, passed 12/14/04. Amended-Resolution No. 05-A-054, passed 6/14/05.]

22.04.05 Notice of Opportunity for Hearing-Service

Service of the notice shall be made by Tribal Police or by any person at least eighteen (18) years old and not a party to the case. If personal service fails, the order may be served by certified mail, return receipt requested, to the person's last known address. If this fails, service may be made by posting the notice on the person's last known residence if the person resides within the territory of the Port Gamble S'Klallam Tribe. If the person does not reside within the territory of the Port Gamble S'Klallam Tribe, the order may be served by posting the notice at two prominent locations on the Port Gamble S'Klallam reservation.

The process server shall return an affidavit of service to the Tribal Council.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02. Amended – Resolution 03 A 063, passed 5/13/03.]

22.04.06 Time of Hearing, Notice

If the Tribal Council receives a timely request for a hearing, it shall schedule a hearing to be held not less than ten ((10) working days and not more than sixty (60) calendar days after the request for hearing is received.

A notice of hearing advising the person of the date, time and place of the hearing shall be served in the same manner as a notice of opportunity for hearing under section 22.04.05. The notice shall also contain a statement that the person may be represented by counsel, at his or own expense; may present testimony of witnesses and other evidence on his or her behalf; and that failure to attend the hearing may result in permanent exclusion.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02. Amended – Resolution 03 A 063, passed 5/13/03.]

22.04.07 Conduct of Hearing

The person named in the petition shall have an opportunity to present witnesses and other evidence. The Tribal Council may compel the appearance of witnesses and presentation of evidence. All evidence, which is necessary and relevant to decide the matter, is admissible. The Tribal Council and the person named in the petition may be represented

by counsel, at their own expense. Hearings may be conducted by conference telephone call, if requested by either the Tribal Council or the person named in the petition.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02. Amended – Resolution 03 A 063, passed 5/13/03.]

22.04.08 Standard for Decision

The Tribal Council may enter an order for removal or exclusion if, based on the evidence presented, the Tribal Council is reasonably certain that:

- a) The person committed an act or omission which falls within one or more grounds for exclusion; and
- b) That removal or exclusion is necessary to protect the peace, health, safety, welfare, property or cultural identity of the community.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02.]

22.04.09 Order of Exclusion

The Tribal Council may orally advise the parties of its decision at the hearing or may issue a written decision no later than five (5) working days from the date of the hearing. In either case, the Tribal Council shall prepare a written order and cause it to be served on both parties. Written orders for exclusion shall include:

- a) The grounds for the decision;
- b) The date and time the person must remove himself or herself, if applicable;
- c) The duration the order is to be in effect;
- d) A statement that any return to the territory of the Port Gamble S'Klallam Tribe in violation of the order of exclusion constitutes trespass and may be referred for prosecution to the appropriate jurisdiction,
- e) Whether the Tribal Police are requested to supervise the removal of the person and any belongings the person may have within the territory of the Port Gamble S'Klallam Tribe,
- f) Any circumstances under which the person may be permitted to return. For example, payments of restitution, evidence of rehabilitation, visitation of children, visitation during certain times only, and a limited time to return to pick up belongings; and

- g) A date by which the Tribal Council will review the order and circumstances or conditions attached, if the person requests a review; or the circumstances under which the Tribal Council may consider a review, such as those set out in subsection (f).

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02.]

22.04.10 Order of Exclusion - Service

An order for exclusion shall be served on the person as provided in section 22.04.05.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02. Amended – Resolution 03 A 063, passed 5/13/03.]

22.04.11 Continuance, Failure to Appear

The Tribal Council may, in its discretion, grant a continuance of the hearing upon the person's request. If the person fails to appear at the time set for a hearing, after proper notice of the hearing has been given, the Tribal Council may enter an order of exclusion and cause it to be served as provided in this chapter.

A person excluded after his or her failure to appear may petition the Tribal Council for a hearing. The petition shall fully explain the reasons for the failure to appear, in writing. If the Tribal Council finds the person's failure to appear was for good cause, it shall reschedule a full hearing on the matter of exclusion.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02. Amended – Resolution 03 A 063, passed 5/13/03.]

22.04.12 Order of Exclusion - Enforcement

The Tribal Police shall supervise the removal of the excluded person and his or her belongings, if requested by the Tribal Council and may do so if the order of exclusion is silent. If the person has been given the option to voluntarily remove himself within a time limit stated in the order, and fails to do so, Tribal Police may physically remove him. Tribal Police shall use only so much force as is reasonable to accomplish the removal.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02.]

22.04.13 Duration of Exclusion Order

The exclusion order shall remain in effect until modified or revoked by the Tribal Council following a hearing properly requested under section 22.05.01 or, if applicable, until the time noted on the order itself.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02.]

22.04.14 Judicial Exclusion Procedures

The Tribal Council may, in its discretion, file a written petition meeting the requirements of section 22.04.02 in the Port Gamble S'Klallam Community Court requesting the removal or exclusion of any person who is subject to this code.

- a) Notice of Hearing, Service. If the Court finds that the petition meets the requirements of section 22.04.02, it shall cause a notice of hearing to be served on the respondent, as provided under sections 22.04.04 and 22.04.05, except that the affidavit of service shall be returned to the Court and modified as needed to meet the Court's requirements.

If the Court finds that the petition does not meet the requirements of section 22.04.02, it shall cause a notice to be served on the Tribal Council stating the manner in which the petition was defective. The Court may extend the emergency exclusion while giving the Tribal Council an opportunity to amend its petition, if needed for the protection of the community.

- b) Time of Hearing, Notice. If a timely request for a hearing is filed with the Court, a hearing shall be scheduled not less than ten ((10) working days and not more than sixty (60) calendar days after the request for hearing is received. The notice shall include:

- 1) The date, time, and place of the hearing;
- 2) A statement that the respondent may be represented by counsel, at his own expense;
- 3) A statement that the person may present testimony of witnesses and other evidence on his behalf;
- 4) A copy of the petition; and
- 5) A statement that failure to attend the hearing may result in an order of permanent exclusion or removal.

- c) Conduct of Hearing. Hearings before the Court shall follow the same procedure as hearings conducted by the Tribal Council under section 22.04.07. Tribal Law Enforcement shall provide evidence on behalf of the Tribe and any recommendations regarding the order of exclusion including conditions, if any.

- d) Standard for Decision. The Court shall follow the same standard for decision as the Tribal Council under section 22.04.08.

- e) Order of Exclusion. The Court shall follow the same procedure as the Tribal Council under section 22.04.09 for its order of exclusion, as applicable, except the Court shall have up to ten (10) working days to

prepare its written order. The order shall be served as provided under section 22.04.05.

- f) Conditions. The Court may allow the excluded person to return to the reservation during the period when the exclusion order is in effect only under exceptional and limited circumstances, such as attending the funeral of a close family member. The Court may require the individual to check in with the police department prior to and after any such exceptional visit.
- g) Continuances, Failure to Appear. The Court has the same authority as the Tribal Council for continuances and for addressing failure to appear, provided in section 22.04.11
- h) Order of Exclusion, Enforcement. The Court has the same authority to request the assistance of law enforcement in enforcing the order as provided under section 22.04.12.
- i) Duration of Exclusion Order. The exclusion order shall remain in effect until modified or revoked by the Tribal Council following a hearing properly requested under section 22.05.01 or, if applicable, until the time noted by the Court, on the order itself.

[HIST: Source - Resolution 04 A 114, passed 12/14/04. Amended-Resolution No. 05-A-054, passed 6/14/05.]

22.04.15 Notice of Exclusion to Community

A notice that a person has been excluded, along with a statement that harboring an excluded person is a crime, shall be posted for the duration of the order at the Police Department and the Tribal Center. Such notices shall also be posted for at least three weeks at the Tribe's Housing Authority building, tribal store and in two other prominent locations on the reservation and shall be published for at least three weeks in the Community Memo or equivalent publication.

[HIST: Source - Resolution No. 05-A-054, passed 6/14/05.]

Chapter 22.05 Review Hearings

22.05.01 Request for Review of Final Exclusion Order

The person subject to an exclusion order may request the Tribal Council to reconsider the order and circumstances or conditions attached. The request must be made within the time limits stated on the order and in accordance with any conditions specified in the order itself. The request shall:

- a) Be in writing;

- b) Signed before a notary public;
- c) State an address where the Tribal Council shall mail all notices and documents associated with the review;
- d) Explain the factual circumstances, which support reconsideration of the order;
- e) State the changes to the order that they are seeking; and
- f) Be mailed to the Port Gamble S'Klallam Tribal Council at the Tribe's regular business address.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02. Amended – Resolution 03 A 063, passed 5/13/03, Resolution 04 A 114, passed 12/14/04.]

22.05.02 Review or Reconsider Final Exclusion Order

The Tribal Council shall decide whether to grant any of the changes requested based primarily on the written materials presented. The Tribal Council, in its sole discretion may require the person to appear before it in person or by telephone to provide testimony on why the request should be granted, and shall provide notice of the time and date this testimony will be taken. If the request is deficient in any material way, the Tribal Council shall so notify the person.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02, Resolution 04 A 114, passed 12/14/04.]

22.05.03 Decision

The decision of the Tribal Council on a review or reconsideration of an exclusion order shall be in writing and mailed to the address provided by the person within fifteen (15) business days of the hearing.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02.]

Chapter 22.06 Appeal

22.06.01 Who May Appeal Exclusion Order

Any person subject to a Port Gamble S'Klallam Tribe exclusion or removal order may appeal the final order to the Port Gamble S'Klallam Tribal Court. Appeals from a judicial exclusion shall be made to the Port Gamble S'Klallam Court of Appeals under Title 7 of the Port Gamble S'Klallam Law and Order Code, appeals from an exclusion order entered by the Tribal Council shall be governed by this chapter.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02, Resolution 04 A 114, passed 12/14/04.]

22.06.02 Grounds For Appeal

The Port Gamble S'Klallam Tribal Court may review a final order solely for the purpose of determining whether the procedural requirements of this chapter were followed.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02.]

22.06.03 Rules for Appeal of Procedure

The Tribal Court may use the appellate procedures set out in Title 7 of the Port Gamble S'Klallam Law and Order Code as a guide. Pursuant to the inherent authority of the Port Gamble S'Klallam Tribal Court, the Court may adopt such other procedures as are necessary to conduct the appeal, in keeping with the spirit of Port Gamble S'Klallam law.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02.]

22.06.04 Standard of Review

If the Court, or Court of Appeals if the exclusion order was entered by the Community Court, finds the following, it shall order the matter remanded to the Tribal Council or Community Court, respectively:

- a) The procedural requirements of the chapter were not followed; and
- b) The person excluded has suffered actual harm as a direct result.

If this standard is not met, the decision of the Tribal Council or Community Court shall be affirmed.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02, Resolution 04 A 114, passed 12/14/04.]

22.06.05 Remand to Tribal Council or Community Court

The Court shall state in a remand order the specific provisions of the chapter not followed, the nature and extent of the harm suffered and the steps the Tribal Council or Community Court shall take to ensure the requirements of the chapter are met.

[HIST: Source - Resolution No. 02 A 065, passed 5/14/02, Resolution 04 A 114, passed 12/14/04.]