THE

LAW AND ORDER CODE

OF THE

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LAW AND ORDER CODE
OF THE
KALISPEL TRIBE OF INDIANS

PREAMBLE

The Kalispel Tribe hereby adopts this Law and Order Code for the purpose of protecting the lives, property, culture and natural resources of the Kalispel Tribe of Indians and the people within the boundaries of the Kalispel Reservation.

CHAPTER 1 - KALISPEL TRIBAL COURT

SECTION 1-1: NAME

1-1.01: NAME

The Kalispel Tribe hereby establishes a Court to be known as the Kalispel Tribal Court, hereinafter referred to as the Tribal Court.

SECTION 1-2: JURISDICTION

1-2.01: JURISDICTION

The Kalispel Tribal Court is a legislatively created court of limited jurisdiction and shall have jurisdiction only over matters as delegated in this Code or by Resolution of the Kalispel Business Committee. Any action or jurisdiction exercised by the Court is subject to Chapter 35 – Sovereign Immunity. Any suit against the Tribe must have an explicit waiver of sovereign immunity in the KLOC or in a Business Council or Community Council Resolution, and without an explicit waiver of sovereign immunity giving the Court jurisdiction over a subject matter, the Court may not hear such matter. Also, the Court may not hear cases against the Tribe alleging a violation of the Kalispel Constitution unless it involves a constitutional issue related to a subject matter explicitly delegated by the KLOC or Business Committee Resolution.

1-2.02: CONCURRENT

The Kalispel Tribal Court shall have exclusive jurisdiction over any of the matters enumerated in this Code provided however, that should the Tribe not desire to exercise such exclusive jurisdiction and if the Federal or State Courts properly exercise jurisdiction over such matter, the jurisdiction so exercised shall be concurrent and not exclusive.

1-2.03 RESERVATION

For the purpose of the enforcement of the Regulations of this Code, the term “Reservation” shall mean the Kalispel Indian Reservation as set apart by Executive Order of March 23, 1914, and all other lands, wherever located, owned by the Kalispel Tribe of Indians, including lands held in fee, or any interest in lands held by the Tribe, whether or not such lands or interests are held in trust for the Tribe by the United States, and any lands, wherever located, held in trust by the United States for a member or members of the Kalispel Tribe of Indians unless located on another Federally Recognized Indian Tribe’s Reservation and having already been determined by the Federal Government to be in “reservation” status as to a Tribe other than the Kalispel Tribe of Indians. All waterways, roadways, rights of way, public lands, lakes and streams located on the above described lands held by the Tribe or its members

are considered Reservation lands, subject to applicable federal and Tribal laws and regulations.

1-2.04 MEANS TO CARRY JURISDICTION INTO EFFECT

When jurisdiction is vested in the Kalispel Tribal Court, it shall be empowered to utilize all the means inkeeping with the provisions of the Indian Civil Rights Act (25 U.S.C. § 1302) necessary to carry such jurisdiction into effect; and if, in the exercise of this jurisdiction, the course of proceeding is not specifically delineated by this Code, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of the Tribal Law.

SECTION 1-3: DEFINITIONS

1-3.01 DEFINITIONS

Unless specifically stated elsewhere in this Chapter, the meaning of the terms used in this Chapter shall be as follows:

(1) "Business Committee" means the Kalispel Tribal Business Committee, which is the governing body of the Kalispel Tribe of Indians pursuant to Article III of the Revised Kalispel Constitution of 1967.

(2) "Court" or "Tribal Court" means the Kalispel Tribal Court.

(3) "Judge" means a Judge or Magistrate appointed by the Kalispel Tribal Business Committee pursuantto Kalispel Law and Order Code (KLOC) Section 1-4, including all traditional, appellate, visiting, and pro-tempore judges.

(4) "Magistrate" means a person appointed by the Kalispel Tribal Business Committee who has the power to issue search and arrest warrants, hold arraignments, take bail, affidavits, oaths and enforce extradition. A Magistrate shall not be authorized to hear, determine and render judgments in civil, criminal or Youth Court cases.

(5) "Presiding Judge" means a Judge appointed by the Kalispel Tribal Business Committee, who has additional duties to preside over the Kalispel Tribal Court and to oversee court operations and the disposition of cases.

(6) "Relative in the first degree" means a person's parents, siblings, or children (or a person who culturally takes the place of such a relative).

(7) "Relative in the second degree" means a person's grandparent, grandchildren, aunt, uncle, nephew, niece, or half-sibling (or a person who culturally takes the place of such a relative).

(8) "Spokesperson" means a person who has been approved by the Tribal Court to appear in Tribal Court proceedings to assist an individual in presenting his or her case (see KLOC Section 1-12).

SECTION 1-4: JUDGES

1-4.01 AUTHORITY

The duly appointed Judges shall be empowered to hear and decide all matters properly brought before the Kalispel Tribal Court.

1-4.02 NUMBER OF JUDGES

The Kalispel Tribal Court shall consist of at least one Judge whose duties shall be outlined by the Business

Committee upon appointment. Traditional Judges, Associate Judges, Alternate Associate Judges, Pro-Tempore Judges, or Magistrates may be called to service when the occasion requires. The Kalispel Tribal Court shall have jurisdiction over all matters described in this Code. This jurisdiction shall extend over Indians and Non-Indians to the full extent allowed by Federal and Tribal Law.

1-4.03 ELIGIBILITY OF JUDGES

To be eligible to serve as Judge of the Tribal Court, a person must:

(1) be an enrolled member of a federally recognized Indian Tribe, unless waived by the Tribe.
(2) be over 21 years of age,
(3) never have been convicted or found guilty of a felony, or within one year convicted of a misdemeanor involving moral turpitude,
(4) be of high moral character and physically sound, and
(5) satisfy the Business Committee that he or she is familiar with the Constitution of the Kalispel Tribe, all Tribal ordinances, and laws of the United States applicable to the Reservation.

1-4.04 APPOINTMENT, COMPENSATION AND TERM OF JUDGES

Each Judge shall be appointed by the Business Committee and shall be compensated on a basis to be determined by the Business Committee. Each Judge appointed by the Business Committee shall hold office for a period of four years, unless sooner removed for cause as provided in this Chapter or by reason of the abolition of the office, but shall be eligible for reappointment. Each Judge, prior to appointment and reappointment, will be required to read the Kalispel Tribal Court's Judicial Code of Ethics, sign the Judicial Oath of Office, and to adhere to these guidelines to the best of their abilities.

1-4.05 APPOINTMENT OF UNEXPIRED TERM

In the event that a Judge is unable, for any reason, or unwilling to complete his term of office, a successor shall be appointed by the Kalispel Business Committee to fill the unexpired term.

1-4.06 LEGAL TRAINING OF JUDGES

The Tribal Business Committee may establish educational and in-service training requirements for Judges and set up programs therefore. Refusal of a Judge to participate in the required educational and in-service training may be grounds for suspension or removal of such a Judge.

1-4.07 VISITING JUDGES

In the event that the Court does not have the necessary number of Judges to hear a case on appeal, or in other appropriate circumstances, the Court Administrator of the Kalispel Tribal Court may request that a Judge from another tribe or an authorized entity such as the Northwest Intertribal Court System to hear the matter before the Court. Unless otherwise indicated in the KLOC or by Resolution, such request

shall be in writing, and submitted and approved by the Kalispel Tribal Business Committee. Compensation of such a Judge shall be determined by agreement between the Judge and the Tribal Business Committee or their agents.

1-4.08 JUDICIAL COOPERATION

All Judges and personnel of the Tribal Court shall cooperate with all federal, state, county and municipal agencies, when such cooperation is consistent with this Code, but shall ever bear in mind that their primary responsibility is to the people of the Tribe.

1-4.09 JUDICIAL CODE OF ETHICS

The Kalispel Tribal Court Judicial Code of Ethics is a guide for the personal and professional conduct of the Judges of this Court. The Judicial Code of Ethics shall apply to any person in a decision-making position in the Kalispel Tribal Court, including but not limited to Judges appointed by the Kalispel Tribal Business Committee, and to all appellate, visiting, and pro-tempore judges when presiding over cases in the Kalispel Tribal Court. If a Judge has or appears to have violated the Judicial Code of Ethics, such conduct must be brought to the attention of the Presiding Judge and Court Administrator. If a Presiding Judge has or appears to have violated these guidelines, such conduct must be brought to the attention of the Court Administrator. A complaint regarding a violation of the Judicial Code of Ethics must be in writing and must be signed by the complainant. Disciplinary action shall follow the provisions outlined in the Judicial Code of Ethics.

1-4.10 RECUSAL OF JUDGE FROM PROCEEDING

(1) Recusal

A Judge shall recuse or disqualify himself or herself from a proceeding when a Judge does not independently believe he or she can be impartial, and to remain on the case would be inconsistent with the Judicial Code of Ethics.

A Judge shall also disqualify himself or herself when his or her impartiality may be questioned, including instances where:

(A) The Judge has a personal bias or prejudice concerning a party or a party's spokesperson, or personal knowledge of the facts in the matter before the Court;

(B) The Judge has served as an advocate, attorney, or spokesperson, or was a party in the matter before the Court;

(C) The Judge is likely to be a material witness in the matter before the Court,

(D) The Judge has a financial interest or has any other interest that could be substantially affected by the matter before the Court, or

(E) The Judge is a relative in the first degree to a party or is married to a party.

(2) Alternative to Recusal

A Judge with a potential disqualification under KLOC Section 1-4.10(1) may, instead of withdrawing from the matter before the Court, disclose on the record the basis of the conflict. The parties must be given an opportunity to confer on this issue, out of the presence of the Judge. If, based on the Judge's disclosure, the parties all agree on the record and in writing that the Judge's participation is not prejudicial or that the interest is insubstantial, the Judge may participate in the proceeding. A waiver reflecting this decision must be signed by all parties and entered into the record. This waiver will not cover any subsequently disclosed disqualifications; in such a situation, the above procedure must be repeated and, if the parties agree to the Judge's continued participation, a new waiver must be signed.

1-4.11 DISQUALIFICATION OF JUDGE FROM PROCEEDING

(1) Disqualification for good cause.

(A) If a Judge does not disqualify himself or herself from a proceeding, a party may seek to disqualify a Judge for good cause.

(B) Good cause for disqualification shall be defined as the demonstration of fact that would indicate a prejudice which would make it unlikely that a fair hearing could be held. Good cause for disqualification are also described under KLOC 1-4.10(1)(A-E).

(2) Procedure to initiate disqualification.

(A) A party must file a request for disqualification. The request shall be in written form and signed by the party.

(B) The request for disqualification must be filed in a prompt and timely fashion after a party discovers the reason for disqualification.

(C) The Court Administrator will set a hearing on the issue of disqualification as soon as it is convenient to the Court to hear the request. The hearing may be waived by the party making the request.

(D) The Presiding Judge will hear and decide requests for disqualification of traditional, associate, pro-tempore, and appellate Judges.

(E) If the Presiding Judge is subject to the request, the Court Administrator will appoint an associateor traditional Judge to conduct this hearing.

(F) If a Judge determines there is good cause for disqualification, the Court Administrator will assignanother Judge to the case.

(G) A finding regarding disqualification is subject to appeal, but an overturning of the decision must be supported by a showing of an abuse of discretion.

1-4.12 REMOVAL OF THE JUDGE FROM OFFICE

During tenure in office, a Judge may be suspended, dismissed or removed for cause by a vote of the Business Committee. Copies of a written statement setting forth the facts and the reasons for such proposed action must be delivered to the Judge and to members of the Business Committee at least ten calendar days before the meeting of the Business Committee before which he is to appear. A hearing shall then be held by the Business Committee wherein the accused Judge shall be given an adequate opportunity to answer all charges. Causes judged sufficient for removal shall include, by way of example and not limit action: excessive use of intoxicants, immoral behavior, conviction of any offense other than minor traffic violations, use of official position for personal gain, desertion of office, or failure to perform duties. The decision of the Business Committee shall be final.

SECTION 1-5: COURT ADMINISTRATOR

1-5.01 COURT ADMINISTRATOR

The Kalispel Tribe shall hire a Court Administrator of the Kalispel Tribal Court to be paid from funds available to the Tribe in an amount determined by the Business Committee. The Court Administrator, or his or her designee, shall 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, and commitments and any other documents incidental to the lawful functions of the Court. It shall be the further duty of said Court Administrator to oversee administrative operations of the Court, including keeping written records of all proceedings of the Court, to administer oaths, collect all fines paid, to pay out all fees authorized in this Code, and to make an accounting thereof to the Business Committee. Before entering upon duty, the Court Administrator may be asked to post a fidelity bond in an amount determined by the Business Committee.

SECTION 1-6: RECORDS

1-6.01 RECORDS

The Kalispel Tribal Court shall keep a record of all proceedings of the Court. These records shall reflect the title of each case, the names of the parties, the substance of the complaint, the names and addresses of all witnesses, the date of the hearing or trial, by whom conducted, the findings of the Court or Jury and the Judgment, together with any other facts or circumstances deemed of importance to the case. This

obligation to keep such records may be extended, elaborated and clarified by the rules of the Court.

SECTION 1-7: COPIES OF LAWS

1-7.01 COPIES OF LAWS

The Tribal Court shall be provided with copies of the Kalispel Law and Order Code, all ordinances of the Business Committee and such regulations as may be applicable to the conduct of the business of the Court. The Code shall be publically available and regularly updated with changes and revisions approved by the Kalispel Business Committee.

SECTION 1-8: OPINION REQUESTED BY COURT

1-8.01 OPINION OF SUPERINTENDENT AND TRIBE'S LEGAL OFFICE

Whenever the Court is in doubt as to the meaning of any law, treaty, or regulation, it may request an opinion from the Superintendent, the regional solicitor's office or from the Tribe's Legal Office.

SECTION 1-9: GENERAL COURT SESSIONS

1-9.01 COURT SESSIONS

Sessions of the Tribal Court for the trial of cases shall be held by any appointed Judge of the Kalispel Tribal Court.

1-9.02 TIME AND PLACE OF COURT SESSIONS

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 Kalispel Business Committee. It shall be the duty of the Judges of the Kalispel Tribal Court to make recommendations to the Kalispel Business Committee for the enactment or amendment of such rules of Court.

SECTION 1-10: JURIES

1-10.01 NUMBER OF JUROR'S

A jury shall consist of six jurors.

1-10.02 REQUEST FOR JURY REQUIRED

All cases, both civil and criminal, shall be heard by the Court unless a jury trial is requested. 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 ten calendar days thereafter. At the time of defendant's first appearance before the Court, the Court shall advise him of his right to request a jury trial. In all non-criminal cases a

request for jury trial must be submitted to the Court in writing no later than ten calendar days before the date of trial.

1-10.03 JURY LIST

A list of eligible jurors shall be prepared by the Court Administrator of the Tribal Court each year. The criminal jury list shall be comprised of any member of the Kalispel Tribe of Indians who is at least 18 years of age and is residing within a 20 mile radius of the exterior boundaries of the Reservation. The civil jury list shall be comprised of adults at least 18 years of age and who have resided on the Reservation for at least one year.

1-10.04 JURY ROSTER

A roster of at least 24 names shall be drawn by the Court Administrator from the current jury list in preparation for a jury trial.

1-10.05 JURY SELECTION

The parties shall be permitted to alternately question the jurors as to their impartiality and fairness. The parties may each excuse up to three jurors without showing cause. The parties may challenge any juror for cause and the Judge shall excuse any juror they feel would not be completely fair and impartial. There shall be no limit to challenges for cause.

The first six of the remaining names shall be called for seating on the jury. A member may be excused from jury duty upon good cause shown to the Trial Judge.

1-10.06 JURY INSTRUCTIONS

The Judge shall instruct the jury in the law governing the case prior to deliberations.

1-10.07 JURY VERDICTS

In a criminal action, the jury shall bring a verdict of guilty or not guilty. A verdict of guilty shall be by unanimous accord of the jury. In a civil action the verdict of the jury may be rendered by a majority vote of four jurors and shall be returned by the jury to the Judge in open court.

1-10.08 JUDGMENTS

The Judge shall render judgment in accordance with the verdict and existing law.

1-10.09 DISCHARGE OF JURY

The jury may be discharged by the Court on account of sickness or any cause sufficient in the Court's opinion, including the consent of both parties or the unlikelihood of its agreeing upon a verdict. Whenever a jury is thus discharged and the matter is tried at a later date, the trial shall be de novo.

1-10.10 COMPENSATION

Each juror who serves upon a jury shall be entitled to compensation and expenses as provided in the rules of court.

SECTION 1-11: WITNESSES

1-11.01 SUBPOENAS

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

Service of such subpoena shall be by recognized Tribal, Federal or State law enforcement offices.

Failure to obey such subpoenas shall be deemed an offense as provided in KLOC Section 1-15 (Contempt).

1-11.02 COMPENSATION

Each witness answering a subpoena shall be entitled to a fee and expenses in accord with rules of court.

Witnesses who testify in noncriminal cases shall be paid by the party calling them.

The Kalispel Tribal Court shall not be responsible for compensating witnesses in such matters who testify without having been served with a subpoena by the court.

SECTION 1-12: SPOKESPERSON

1-12.01 ADMISSION AS SPOKESPERSON TO THE KALISPEL TRIBAL COURT BAR

Any person practicing as counsel in the Kalispel Tribal Court must be a spokesperson in good standing of the Kalispel Tribal Court Bar. In order to qualify as a spokesperson in good standing, the applicant must sign and take the Spokesperson's Oath, pay any applicable bar admission fees, and be a member in good standing in any other jurisdiction in which the applicant is licensed. The Court may adopt other standards for approval of the spokesperson as it may deem necessary.

1-12.02 SPOKESPERSON APPEARANCE IN TRIBAL COURT

Any person appearing in Tribal Court may be represented by a spokesperson in good standing with the Kalispel Tribal Court Bar. The spokesperson may appear at any proceedings before the Tribal Court to assist the individual in presenting his case, provided that such a spokesperson shall have first been approved to so act by the Tribal Court.

1-12.03 TRIBAL REPRESENTATION

The Tribe in a criminal case or a civil case in which it 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 Kalispel Business

Committee, to represent the Tribe as prosecutor or attorney.

SECTION 1-13: APPELLATE PROCEEDINGS

1-13.01 COURT OF APPEALS

A panel of three judges shall sit as the Appellate Court to hear appeals from final judgment, sentences and other final orders of the Tribal Court.

1-13.02 LIMITATIONS

The Appellate Court may only review cases where this Code has explicitly given the Tribal Court subject matter jurisdiction or the Business Committee has delegated such jurisdiction by Resolution.

1-13.021 GROUNDS FOR APPEAL

Grounds for requesting a new trial or limited appeal on issues of law and/or fact shall be limited to one or more of any of the following:

(1) Receipt by the jury of any evidence, paper, document or book not allowed by the Court;
(2) Misconduct of the prosecution, judge, or jury;
(3) Newly discovered evidence material for the defendant, which he could not have discovered with reasonable diligence and produced at the trial;
(4) Accident or surprise;
(5) Irregularity in the proceedings at the Court, jury, or prosecution, or any order of the Court, or abuse of discretion by which the defendant was prevented from having a fair trial;
(6) Error of law occurring at the trial and excepted to at the time by the defendant;
(7) That the verdict or decision is contrary to law and the evidence;
(8) That substantial justice has not been done. When the motion is based on matters outside the record, the facts shall be shown by affidavit.

1-13.03 NOTICE OF APPEAL

Within 20 calendar days from the entry of judgment, the aggrieved party may file with the Tribal Court written notice of appeal, and upon giving proper assurance to the Court, through the posting of a bond or any other way that will satisfy the judgment if affirmed, shall have the right to appeal, provided the case to be appealed meets the requirements established by this Code or by Rules of Court.

1-13.031 NOTICE OF APPEAL; CONTENTS

A Notice of Appeal must:

(1) Be titled a Notice of Appeal;

(2) Specify the party or parties seeking the review;

(3) Designate the decision or part of decision which the party wants reviewed, and/or be accompanied by a motion and affidavit which shall state with particularity:

(A) The grounds therefore pursuant to KLOC Section 1-13.021;

(B) The relief or order sought; and

(C) The governing rule and/or laws of the Kalispel Tribe.

1-13.04 STAY OF EXECUTION

In any case where a party has perfected his Right of Appeal as established by this Code or by Rules of Court, a Stay of Execution of judgment shall be granted and the sentence shall not be carried out unless affirmed by the Appellate Court.

1-13.05 APPELLATE COURT TRIAL

Within 45 days from the date of Written Notice of Appeal, the Appellate Court shall convene for the first time, unless delay is warranted by good cause, to hear the case on appeal at such place as may be designated. At this initial hearing the Appellate Court shall review the record and if so desires, hear oral arguments of counsel to determine whether or not the facts and/or laws as presented in the appealed case warrant a limited appeal on issues of law and/or facts, whether a new trial should be granted, or whether the appeal should be denied. A new trial shall be held at such time as is scheduled by the Appellate Court, to be no later than 20 days after the initial hearing of the Appellate Court unless delay is warranted by good cause, and the Court procedures shall be the same as in other cases before the Tribal Court.

1-13.06 APPELLATE COURT QUALIFICATIONS

The Appellate Court provided for herein shall include the Presiding Judge unless he is disqualified from sitting. The Business Committee shall appoint Judges as necessary to complete the three-judge panel in accordance with the standards and procedures of this Chapter. The Judge who originally presided over the case shall not sit on the Appellate Court.

If an entity such as the Northwest Intertribal Court System has a current contract approved by the Business Committee to provide judges to the Appellate Court, this may substitute for individual appointments by the Business Committee to the three-judge panel.

1-13.07 APPELLATE COURT - PRESIDING JUDGE

The Presiding Judge of the Court shall serve as Presiding Judge of the Appellate Court unless disqualified, in which case the Appellate Court shall elect one of its members to serve as Presiding

Judge. The Presiding Judge shall preside at all Appellate hearings and shall execute all documents related to the case, if of the majority view. In those cases where the Presiding Judge is not of the majority view, the Judges who are of such view shall designate one of their numbers to execute all necessary documents.

1-13.08 CONFLICT OF INTEREST DISQUALIFICATION

In addition to disqualifications provided for in KLOC Sections 1-4.11 and 1-13.06, no person shall be qualified to sit on a panel of the Appellate Court in any case wherein he has any direct interest or wherein any relative by marriage or blood, in the first or second degree, is a party.

SECTION 1-14: SEVERABILITY

1-14.01 SEVERABILITY

If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable.

SECTION 1-15: CONTEMPT

1-15.01 CONTEMPT

A Judge may punish persons for contempt in having disobeyed any lawful order or process made or issued by him.

No person shall be punished for such contempt until an opportunity shall have been given to him to be heard in his defense.

1-15.02 PUNISHMENT

Punishment for Contempt may be by fine, not exceeding $300.00, or by imprisonment in the Tribal Jail not exceeding 90 days, or by both such fine and imprisonment.

1-15.03 DISORDERLY CONDUCT IN COURT

Persons who willfully disrupt any proceeding of the Kalispel Tribal Court, thereby impeding, interfering with or obstructing the Court's business shall be subject to the immediate, summary jurisdiction of the Court. In such event the Court may either charge the person orally in open Court, with the person present, with Disorderly Conduct in Court, or if, the person is not present or the Court in its discretion prefers, charge the person by formal written complaint or citation.

1-15.04 PUNISHMENT FOR DISORDERLY CONDUCT IN COURT

Punishment for Disorderly Conduct in Court may be by fine not to exceed $100.00 or imprisonment not to exceed 30 days or both; provided, however, that if said matter is dealt with summarily without written complaint or a special hearing the penalty shall be limited to a fine of $35.00 or imprisonment of not more than 10 days or both such fine and imprisonment.

SECTION 1-16: HABEAS CORPUS

1-16.01 HABEAS CORPUS

The privilege of the Writ of Habeas Corpus, if legally available, shall be available to that person through the Federal Court of the United States, to test the legality of his detention by Order of the Kalispel Tribal Court. (Public Law 90-284, Title II, 5203, April 11, 1968, 82 Stat. 78)

SECTION 1-17: COMPUTATION OF TIME

1-17.01 COMPUTATION OF TIME

Except when otherwise provided in a chapter, the prescribed period of time within which an act is required to be done shall be computed by:

(1) Excluding the day of the event which triggers the period, and

(2) Including the last day of the period, unless the last day is Friday, Saturday, Sunday, or a holiday recognized by the Kalispel Tribe, in which case it shall also be excluded.

(3) If the period of time prescribed is less than seven days, intermediate Fridays, Saturdays, Sundays and holidays recognized by the Kalispel Tribe shall not be counted in the computation

SECTION 1-18: COURT RULES

1-18.01 COURT DECORUM

All persons present in the courthouse or before the Court will be required to behave in a courteous, dignified, and respectful manner. Failure to conduct business before the Court in an appropriate manner could give rise to a violation of Section 1-15 of the Kalispel Law and Order Code.

1-18.02 COURT SAFETY

No person, except for duly and regularly commissioned law enforcement officers of the Kalispel Tribe, any relevant state law enforcement agency with business before the Court, or the United States government are allowed in the Court while armed with any firearm, taser, explosive device, knife, billy club, blackjack, truncheon, bat, or other dangerous weapon, nor shall any person be in the courthouse while possessing any gas gun, or other device for the spraying of tear gas, mace or other noxious chemical substance, or any incendiary device. Any person found having any of the articles or devices mentioned in this rule is subject to having such

articles or devices removed and held for the duration of the Court session by law enforcement officers, bailiffs on court order, or as otherwise directed by the Court. Lawfully permitted items may be returned at the discretion of the Court.

1-18.03 COMMUNICATION WITH JUDGES

Unless explicitly permitted in the Kalispel Law and Order Code, no one shall have ex parte communications. A judge shall not consider other communications made to the judge outside of the presence of the parties concerning a given matter before the Court. This rule will have the following exceptions:

(1) When exigent circumstances arise that require ex parte communications, and such circumstances do not concern the substantive issues of the matter before the Court, the judge is authorized to engage in ex parte communications provided the Judge believes no part will gain a tactical benefit as a result of the ex parte communications, and the Judge notifies all parties of the substance of the ex parte communications and allows for a response.

(2) The Judge may seek the advice of a disinterested expert on the law applicable to a matter before the Court if the judge gives notice to all parties and allows for a response.

(3) A Judge who received an ex parte communication in violation of this section shall place on the record of the pending matter all written communication received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the Judge received an ex parte communication. The Judge shall advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record. If necessary, to eliminate the effect of an ex parte communication received in violation of this section, a Judge who receives the communication may be disqualified, and the portions of the record pertaining to the communication may be sealed by protective order.

1-18.04 FILING REQUIREMENTS FOR COMMENCEMENT OF A NEW ACTION

(1) Personal Service and Certificate of Service Required: At the time of the commencement of a new action, the filing party must personally file the pleading with the Court. At the time of the filing, a certificate of service may also be filed with the Court to ensure compliance with all other requirements of the Kalispel Law and Order Code. If a certificate of service is not filed at the time of the filing, it must be filed within twenty (20) calendar days, unless otherwise established in another Chapter of the Kalispel Law and Order Code.

(2) Exemptions to Personal Service Requirement: Protection orders, criminal matters, and emergency orders will be exempt from the personal service requirement.

(3) Failure to Comply with Filing Requirements: If a certificate of service has not been filed within thirty

(30) calendar days, the Court will issue a notice that failure to comply with these requirements will result in dismissal.

1-18.05 ELECTRONIC FILING

Parties will be authorized to file electronically with the Court Clerk under certain conditions, excluding the filing at the commencement of a new action, which is outlined above. This section is not intended to modify any specific requirement for filing established elsewhere in the Kalispel Law and Order Code.

The following requirements must be satisfied to constitute a proper filing under this section:

(1) All parties will be required to indicate a preferred email address for the purposes of electronic filing at the time of the initial filing, under this section. Pro se litigants will have the option to opt out of 1-18.05 Electronic Filing, which will be made explicit at the time of the initial filing. Pro se litigants shall provide a current mailing address and current contact information.
(2) Filings may be submitted electronically by emailing the Court Clerk and opposing counsel. All deadlines outlined in the Kalispel Law and Order Code or in scheduling orders must be followed for a proper filing.
(3) A certificate of service will be required at the time of the electronic submission that will indicate the date, the email addresses, and any mailing addresses that the submission was sent to at the time of submission and shall be signed. The certificate of service shall be attached to the electronic filing. For the purposes of electronic filing, a document that bears the filer's own signature scanned shall be permitted. All pleadings will require the contact information of the filer.
(4) The email subject line shall contain both the case number and/or caption, and the body of the email shall contain the contact information of the filer.
(5) Attachments shall not exceed the total capacity threshold of the Kalispel Tribe's email system. Any attachment that is too large to send shall be personally filed with the Tribal Court.
(6) Service to be made upon other parties may occur electronically, unless service is otherwise governed by a specific section of the Kalispel Law and Order Code.

1-18.06 DOCUMENTS REQUIRING NOTARIZATION

The following documents will require notarization in order to be submitted and successfully filed by the Tribal Court: Requests for admissions pursuant to Discovery under 1-18.09, affidavits, and documents attesting to voluntary submission and acceptance of Tribal Jurisdiction where applicable.

1-18.07 EXHIBITS

Petitioners shall mark all exhibits with letters, starting with "Exhibit A" and proceeding through "Exhibit Z," at

which point the lettering will continue at "Exhibit AA." Respondents shall mark all exhibits with numbers, starting with "Exhibit 1."

1-18.08 PROMPT ATTENDANCE

All parties shall appear for all proceedings before the Court in a prompt fashion. Failure to appear at the time indicated on a notice issued by the Court may result in the Court issuing a directed verdict or default judgment against that party, or a bench warrant in criminal matters. A party will be deemed absent for an appearance if they are tardy by a period of time that exceeds a grace period of five (5) minutes from the start time of the proceeding. An extension may be given for good cause if that is communicated to the Court Clerk or opposing party and is allowed by the Court.

1-18.09 DISCOVERY

(1) Scope: Parties may obtain discovery of nonprivileged and non-protected material that is relevant to any party's claim or defense. If a discovery request is in question, a party may petition the Court for an order clarifying scope. The Court may limit the scope of discovery.
(2) Limitations: Requests for Production, Admission or Interrogatories will be permissible, so long as they are reasonable, not overly burdensome upon the opposing party, and do not exceed twenty-five (25) interrogatories.
(3) Timing: Unless otherwise stipulated or established by Court order, all pre-trial disclosures must be made at least thirty (30) calendar days before trial.
(4) Objections: Any objections to the disclosures must be made within fourteen (14) calendar days from the date of receipt. Any objection not made within this timeframe will be waived.
(5) Protection Orders: Any party may file a motion for a protective order regarding disclosures under this Section. Such an order may forbid discovery or disclosure, place a disclosure under protective seal, designate an individual to receive confidential information, or any other reasonable stipulation as determined by the Court.
(6) Supplemental Disclosures: Parties are obligated to provide any additional or supplemental disclosures in a timely manner after they discover that it will render previous disclosures incomplete or incorrect or would otherwise significantly alter a disclosure previously made under this Section.
(7) Form: All disclosures must be in writing, signed, filed with the Court and served to opposing party. Failure to comply with these requirements could give rise to a violation of Section 1-15 of the Kalispel Law and Order Code, subject to the discretion of the Court.

1-18.10 INDIGENCY

The Kalispel Tribe of Indians is empowered to provide individuals with legal counsel for proceedings in Tribal Court. The Kalispel Tribe of Indians has determined that that the following circumstances will allow for the

appointment of counsel. This is subject to the budgetary constraints of the Kalispel Tribe of Indians.

(1) Indigent Defendants: Defendants are presumed indigent if they fall below 125% of the federal poverty guidelines. Once a financial form has been filled out and verified by the Tribal Court as satisfying a financial threshold, an individual will be provided counsel in certain types of proceedings.

(2) Qualifying Proceedings for Appointed Counsel: Indigent defendants will be entitled to appointed legal counsel in criminal proceedings, or when facing incarceration. Indigent parties may be appointed legal counsel in Youth in Need of Care cases under Chapter 7 of the Kalispel Law and Order Code. The Tribal Court has the discretion to appoint counsel for matters that are otherwise related substantively to matters that would qualify an indigent party for counsel. Any matter outside of this scope will not be grounds for the appointment of legal counsel, despite otherwise satisfying indigency status.

(3) Qualifications of Appointed Counsel: Counsel appointed by the Tribal Court will be admitted to the Kalispel Tribal Bar and will meet any other criteria established by the Tribal Court to ensure adequate representation.

1-18.11 STRUCTURING OF FILING FEES

The following actions will be assessed the corresponding fee in conjunction with the filing of the case of action. These fees are final, and a party shall not be exempt from them unless otherwise specified in the Kalispel Law and Order Code. In issues of hardship or duplication of payment, the Tribal Court has the discretion to reduce or waive fees.

Type of Action	**Filing Fee**
Adoption	$0.00
Child Custody	$100.00
Child Support	$50.00
Civil Action	$100.00
Court Bar Admission	$75.00
Court Bar Renewal	$50.00
Dependency (YINOC)	$0.00
Dissolution	$100.00
Domestic Partnership	$100.00
Elder Protection	$0.00
Exclusion Appeal	$100.00
Guardianship/Long Term Tribal Placement	$0.00
Harassment Protection	$0.00

Order	
Land Use and Development Appeal	$100.00
Marriage	$100.00
Name Change	$100.00
Paternity	$100.00
Probate	$100.00
Protection Order	$0.00
Traffic Appeal	$100.00
Tort Claim	$250.00
Unlawful Detainer	$100.00

SECTION 2-1: GENERAL PROVISIONS

2-1.01 JURISDICTION

(1) The Kalispel Tribal Court shall have criminal jurisdiction over any Indian who commits an offense prohibited by this Code or by other laws of the Kalispel Tribe, when the offense occurs within the exterior boundaries of the Reservation.

(2) The Kalispel Tribal Court shall have criminal jurisdiction over non-Indians when such jurisdiction is recognized by the laws of the United Sates or the State of Washington.

2-1.02 PRIORITY OF LAWS

The Kalispel Tribal Court, in criminal cases, shall apply, in the following order of priority, the applicable laws, resolutions, ordinances, or customs of the Tribe, the laws of the United States and regulations of the Department of the Interior. As to any matters not covered by the above, the Tribal Court shall apply Washington state statutes or rules of criminal procedure.

2-1.03 DEFINITIONS

Unless specifically stated elsewhere in this Chapter, the meaning of the terms used in this Chapter shall be as follows:

(1) “He,” “Him,” or “His” or other similar use of male gender pronoun shall be understood to include both male and female persons.

(2) “Contraband” means any property that is illegal to possess or produce.

(3) “Indian” means a member of a Federally-recognized tribe.

(4) “Judge” or “Tribal Judge” means the judge of the Kalispel Tribal Court.

(5) “Lawful stop” means a vehicle traffic stop conducted by a Kalispel Tribal Officer, based on the Officer’s reasonable suspicion of a traffic infraction or criminal activity. The reasonable suspicion must occur prior to or at the time of the stopping of the vehicle. For the purposes of this Chapter, “reasonable suspicion” exists when an Officer has specific and articulable facts, and rational inferences from those facts, to establish a substantial possibility that a traffic infraction or criminal activity has occurred, or criminal activity is about to occur.

(6) “Probable cause” means that a reasonably cautious person, looking at facts and circumstances, will conclude that an individual has committed or is committing a crime, or that contraband or evidence of a crime will be found in a particular place.

(7) "Reservation" means all the lands owned by Kalispel Tribe of Indians as defined in KLOC 1-2.03.

(8) "Tribe" or "Tribal Community" means the Kalispel Indian Tribal Community.

(9) "Tribal Court" or "Court" means the Kalispel Tribal Court.

(10) "Tribal Police," "Tribal Officer," or "Tribal Police Officer" means the Kalispel Tribal Police Officer or the Kalispel Tribal Police Department, or officers of other law enforcement agencies acting within the Reservation pursuant to intergovernmental or mutual aid agreements.

SECTION 2-2: EXTRADITION

2-2.01 ARREST AND/OR DETENTION

(1) A Kalispel Tribal Officer may serve and arrest an Indian based on a foreign bench warrant or foreign arrest warrant issued by any Federal, State, Municipal, or other Tribal Court.

(2) A Kalispel Tribal Officer may detain a non-Indian based on a foreign bench warrant or foreign arrest warrant issued by any Federal, State, Municipal, or other Tribal Court for a reasonable time until the appropriate authority can arrest the person for the outstanding warrant. This provision may be superseded or altered by intergovernmental agreements.

A Kalispel Tribal Officer must have probable cause to believe that a valid foreign warrant exists at the time of arrest or detention.

2-2.02 PROCEDURE FOLLOWING ARREST

The person arrested on a foreign warrant shall be transported under Kalispel Tribal authority to jail following confirmation that the foreign warrant is extraditable. If the Kalispel Tribal Officer confirms that the foreign warrant is a non-extraditable warrant, the person shall be released. If the foreign warrant is extraditable, the person shall be held in jail pending an initial hearing.

The Kalispel Tribal Judge shall be provided with a copy of the foreign warrant within forty-eight (48) hours of the person's arrest. The Kalispel Tribal Judge shall review the copy of the warrant to determine whether there is probable cause to believe that the warrant is valid. The Kalispel Tribal Judge shall order of release of the person arrested on the foreign warrant if the Judge finds that there is not probable cause to believe that there is a valid warrant.

2-2.03 SPOKANE COUNTY WARRANTS SERVED ON RESERVATION LANDS IN SPOKANE COUNTY; OPTION OF FIELD WAIVER

(1) If the foreign warrant is an extraditable warrant issued by Spokane County, and the person is being detained on the Kalispel Reservation lands in Spokane County, the person being detained may elect by written waiver to forego an extradition hearing in Tribal Court.

(2) If the person being detained so elects, the Kalispel Tribal Officer shall provide the written waiver

form. The written waiver form shall be read by or to the person being detained. The written waiver form shall be completed fully and all required signatures must be affixed to the form.

(3) Once the waiver has been completed fully and the person being detained has knowingly chosen to waive an extradition hearing in Kalispel Tribal Court, the Kalispel Tribal Officer may transport the individual directly to the Spokane County Jail.

(4) The Kalispel Tribal Judge and Tribal Court Administrator shall be provided with copies of the Spokane County warrant and the completed written waiver form within forty-eight (48) hours of the person's arrest.

2-2.04 WAIVER OF EXTRADITION

Any Indian arrested on a foreign bench warrant or foreign arrest warrant may waive all rights to a hearing on extradition and voluntarily consent to extradition. Unless the provisions of KLOC 2-2.03 apply, the following are required for a valid waiver:

(1) Prior to execution or subscription of the waiver, a Tribal Judge shall inform the person of his or herrights to a hearing on extradition pursuant to KLOC 2-2.05;

(2) The waiver must be executed or subscribed to in the presence of a Tribal Judge; and

(3) The waiver must state in writing that the person consents to return to the demanding jurisdiction.

2-2.05 HEARING ON EXTRADITION

The person arrested on a foreign warrant shall have a hearing on the next judicial day, or no later than 48 hours following arrest, excluding holidays and weekends. The person being detained on the foreign warrant may be represented by counsel and has a right to challenge the validity of the warrant, and/or that they are not the person named in the warrant, and/or that the arrest by the Kalispel Tribal Officer was illegal. If the person challenges the extradition based on any or all of the foregoing reasons, an evidentiary hearing shall be held within seven (7) days of the initial hearing, unless the person held on the foreign warrant requests additional time or the Court finds good cause exists to set a hearing beyond seven (7) days.

2-2.06 RELEASE PENDING EXTRADITION HEARING

The Court may set conditions of release, including but not limited to bail, pending the evidentiary hearing challenging extradition. The Kalispel Tribal Court may set bail in the amount no less than what is stated on the foreign warrant.

If the person arrested on the foreign warrant posts bail, the person must appear for all hearings on extradition. The Kalispel Tribal Court may forfeit bail, if posted, and issue a warrant for the person’s arrest if the person fails to appear for any hearing.

2-2.07 PROCEDURE AT EXTRADITION HEARINGS

At the evidentiary hearing challenging extradition, the Judge shall determine by a preponderance of the evidence, whether the warrant is valid, whether the person held is the person named in the warrant, and whether the arrest was legal. The rules of evidence do not apply to any of the hearings on extradition. The Kalispel Tribal Judge shall order the extradition of the person arrested on the foreign warrant if the person waives extradition or if the Judge determines, after a hearing challenging the foreign warrant, that the warrant is currently valid and the person held is the person named in the warrant and the arrest by the Kalispel Tribal Officer was legal.

2-2.08 TIME FOR REQUESTING JURISDICTION TO TAKE CUSTODY

The requesting jurisdiction of the foreign warrant shall take custody of the person being held by the Kalispel Tribe within seven (7) days of the waiver of extradition or the order of extradition being entered, unless the person is being held on bail for Kalispel Tribal charge(s). If the person has Kalispel Tribal charge(s) and a waiver of extradition or order of extradition has been entered, the requesting jurisdiction of the foreign warrant shall take custody of the person within seven (7) days of the person posting bail on the Kalispel Tribal case(s) or disposition of the Kalispel Tribal case(s), whichever occurs first. The person shall be released from Kalispel Tribal custody if the requesting jurisdiction does not timely take custody of the person as mentioned above.

SECTION 2-3: SEARCH AND SEIZURE

2-3.01 WARRANTS FOR SEARCH AND SEIZURE

(1) Authority to Issue a Search Warrant. Kalispel Tribal Court Judges have authority to issue warrants tosearch persons, or the premises or property of such persons, when such persons, premises, or properties are located on the Kalispel Reservation. A search warrant authorized under this Chapter may be issued by a Tribal Court Judge upon the request of a Tribal Police Officer or an attorney for the Tribe.

(2) State, County, or Municipal Search Warrant. State, county, or municipal search warrants do not authorize the search of persons or property on the Kalispel Reservation. State, county, or municipal agencies wishing to execute their search warrant shall present the warrant and all evidence establishing probable cause to the Tribal Court for issuance of a warrant pursuant to this Chapter. A Kalispel Tribal Court search warrant issued under these circumstances must be executed with the assistance of Kalispel Tribal Police.

(3) Property Which May be Seized With a Warrant. A warrant may be issued under this Chapter to search for and seize:

(A) evidence of the commission of a criminal offense; or

(B) contraband, the fruits of crime, or things otherwise criminally possessed; or

(C) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed.

(4) Issuance and Contents of Search Warrants. A Tribal Judge may issue a search warrant only when there is probable cause for issuing the warrant.

(A) Probable cause may be established with an affidavit or sworn testimony explaining the grounds for a search. Probable cause shall be based on evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing there is factual basis for the information furnished. If the Tribal Judge finds that probable cause for the issuance of a warrant exists, he or a person authorized by him shall issue a warrant identifying the property and naming or describing the person, place or thing to be searched.

(B) Sworn testimony may consist of an electronically recorded telephone statement to the Judge; this recording shall be part of the court record and shall be transcribed if requested by a party if there is a challenge to the validity of the warrant or if ordered by the court.

(C) The Judge shall record a summary of any additional evidence on which he relies.

(D) Before ruling on the request for a warrant, the Judge may require the Affiant and any witnesseshe may produce to appear and testify in person.

(E) The warrant shall be directed to any Tribal Police Officer. It shall command the Officer to search,within a specific period of time, not to exceed 240 hours from the hour of issuance, the person, place or thing named for the property specified. It shall designate a Judge to whom it shall be returned. The warrant may be served at any time.

(5) Expiration of Search Warrant. An unexecuted search warrant shall be invalid after a period of240 hours from the hour of issuance, unless otherwise specified on the warrant.

(6) Search Without a Warrant. No Tribal Police Officer shall conduct any search without a valid warrant except in the following circumstances:

(A) Evidence is in plain view and can be seen by a Tribal Police Officer from a place where the Officer has a right to be, and the incriminating nature of the evidence is immediately apparent, or

(B) Incident to the making of a lawful arrest and the scope of the search is limited to the arrestee's person and the area under his immediate control, or

(C) With voluntary written or oral consent of the person being searched, or

(D) With voluntary written or oral consent of the person with authority over the premises, property, or vehicle being searched, or

(E) With voluntary written or oral consent of a third party who possesses common authority over the premises or property being searched, or

(F) When the Tribal Police Officer has legitimately stopped a suspect, the Officer has a reasonable belief that the person searched is presently armed and dangerous, and the scope of the search is limited to a protective purpose, or

(G) When exigent circumstances or community caretaking justifies a warrantless search, or

(H) When the search is of a vehicle, the vehicle was lawfully stopped and:

(i) The search is incident to a lawful arrest and the arrestee would be able to reach a weaponfrom the vehicle, or

(ii) The search is incident to a lawful arrest and the arrestee would be able to reach evidence of the crime to conceal or destroy it, or

(I) When the search is part of an inventory of an arrestee's possessions and for the purpose of storing the items for safekeeping; procedures must be established for such inventory searches and must be done in good faith.

(J) When the search is an administrative regulatory search of a vehicle, bag, or other container upon entry into or when located on specific areas of the reservation where certain items, such as alcohol, are prohibited (e.g. the powwow grounds). Notice must be given that such items are prohibited and that random searches for the prohibited items will be conducted.

2-3.02 SERVICE OF WARRANT

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 Police or other designated law enforcement personnel, pursuant to an agreement with the Tribe.

2-3.03 RETURN OF WARRANT

The original warrant for search and seizure shall be returned to the Court, along with a copy of the inventory of all items seized as part of execution of the warrant, within two business days of the execution of the warrant.

2-3.04 AMENDMENT OF WARRANT

Any warrant for search and seizure issued by the Tribal Court may be amended by making a request to the judge who originally issued the warrant, and providing additional basis for the requested amendment as outlined in Section 2-3.01(3).

2-3.05 SEIZED PROPERTY

(1) Inventory of property. The Tribal 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 if it is possible to do so. A copy of such inventory shall also be left with the Tribal Court Clerk.

(2) Return of property. The owner of seized property may request from Tribal Police that the property be returned. If the request is denied, the owner may move the Court to return seized property. Upon such a motion, a hearing shall be held by the Tribal Court to determine the disposition of property seized by the Tribal Police. Upon satisfactory proof of ownership, the property shall be delivered to the owner, unless such property is needed as evidence, the property is contraband, or it is subject to forfeiture.

(3) Contraband. Property confiscated as contraband shall be destroyed, forfeited to the Tribal Police, or otherwise lawfully disposed as ordered by the Court.

(4) Unclaimed property. Seized property that the owner does not attempt to reclaim within 180 days after a) a final order is issued or b) deadline of appeal has passed, shall be considered unclaimed and abandoned property. The property shall be destroyed, sold at public auction with proceeds directed to the Tribal Police, retained for the benefit of the Tribe, or otherwise lawfully disposed of as ordered by the Court.

SECTION 2-4: ARREST AND BENCH WARRANTS

2-4.01 ARREST WARRANTS

Kalispel Tribal Court Judges shall have the authority to issue warrants to apprehend. The Tribal Court may issue an arrest warrant upon receipt of a written, sworn complaint, charging any person of a crime of which this Court has jurisdiction, causing the individual so charged to be brought before the Tribal Court for trial. An arrest warrant shall issue only where probable cause exists from the facts alleged in the signed complaint that an offense has been committed and that the person to be arrested has committed it. Such warrants shall be served on the Reservation by a member of the Tribal Police or other authorized police officer; or shall be served off the Reservation by any law enforcement agency that chooses to honor the Tribal warrant. No arrest warrant to apprehend shall be valid unless it shall bear the signature of a Judge of the Tribal Court. Any unexecuted arrest warrant may be canceled by the Tribal Court.

2-4.02 FOREIGN ARREST WARRANTS

Arrests pursuant to foreign arrest warrants must follow the extradition procedures outlined in KLOC Section 2-2 EXTRADITION.

2-4.03 BENCH WARRANTS

A Judge of the Kalispel Tribal Court shall have the inherent authority to issue a bench warrant to have a Defendant taken into custody for failure to appear at a criminal court hearing after receiving proper

notice of the hearing; or for violating the lawful order of the Court. Such bench warrants shall be served on the Reservation by a member of the Tribal Police or other authorized police officer; or shall be served off the Reservation by any law enforcement agency that chooses to honor the Tribal warrant. No bench warrant to apprehend shall be valid unless it shall bear the signature of a Judge of the Tribal Court. Any unexecuted bench warrant may be canceled by the Judge who issued it.

SECTION 2-5: ARRESTS

2-5.01 ARRESTS

Kalispel Tribal Police, and other enforcement agencies expressly authorized to arrest on the Reservation pursuant to Federal law or inter-governmental agreements, may arrest a person when:

(1) the offense occurs in the presence of the Tribal Police Officer, or

(2) the Tribal Police Officer shall have probable cause to believe the person has violated the Tribal Domestic Violence Prevention Act, Section 8-5, or

(3) the Tribal Police Officer shall have probable cause to believe the person has committed an offense under KLOC or as defined in RCW 10.31.100, as assimilated into the Kalispel Law and Order Code pursuant to KLOC Chapter 9 CRIMINAL OFFENSES, or

(4) the Tribal Police Officer shall have probable cause to believe the person is the subject described in a valid arrest or bench warrant issued by the Tribal Court or a confirmed foreign warrant.

If arrested pursuant to a warrant, a copy of the warrant shall be given to him at the time of his arrest or as soon thereafter as possible.

2-5.02 CUSTODIAL INTERROGATION

When a person is in custody and interrogated by Tribal Police about the facts of the crime arrested for, he shall be informed of his right to remain silent and that any statement he may make may be used against him, his right to retain counsel, and to be represented by any court approved spokesperson.

SECTION 2-6: CITATIONS AND COMPLAINTS

2-6.01 COMPLAINTS

Criminal prosecution for violation of the Kalispel Law and Order Code shall be by citation or complaint. No citation or complaint shall be valid unless signed by an officer of the court, i.e. Tribal Police Officer or Tribal Prosecutor.

SECTION 2-7: STATUTE OF LIMITATIONS

2-7.01 TIME OF COMPLAINT

No complaint shall be filed charging the commission of any offense defined by this Code or Assimilated Crimes Act, beyond one (1) year unless such offense was committed with the following exceptions:

(1) No complaint for any sex offense shall be filed beyond three (3) years of the incident or three (3) years of the victim turning the age of eighteen (18), whichever is later. A sex offense is any crime involving a sexual act or sexual contact as defined under Chapter 9 or 9A of this Code.

(2) No complaint for any property crime under Section 9-3 of this Code shall be filed beyond one (1) year of date of discovery of the loss of value.

2-7.02 TOLLING OF TIME FOR COMPLAINT

If the person accused of an offense as defined in this Code or adopted through the Assimilative Crimes Act absents himself from the jurisdiction of the Tribal Court, the time within which filing of the complaint is to be made, is tolled for the duration of time that the individual absents himself from the jurisdiction of the Court.

SECTION 2-8: DISMISSAL OF COMPLAINT

2-8.01 DISMISSAL OF COMPLAINTS

Criminal charges may be dropped, and the complaint or citation dismissed, at the discretion of the Court, or the motion of an officer of the Court or the complainant, if it shall be deemed to be against the best interests of justice to further prosecute.

SECTION 2-9: INITIAL APPEARANCE AND ARRAIGNMENT

2-9.01 INITIAL APPEARANCE

Any person arrested by a Tribal Police Officer within the Reservation of the Kalispel Tribe or transported to the custody of Kalispel Tribe, and held in the custody of the Kalispel Tribe shall be brought before the Kalispel Tribal Court on the next Judicial Day, no later than forty-eight (48) hours after taken into custody of the Kalispel Tribe, excluding Fridays, Saturdays, Sundays, holidays recognized by the Tribe, and traditional observances. The person arrested shall be held until the initial appearance, unless there is an order of release setting an arraignment or future court hearing. The Judge may order the release of the person held in custody prior to the initial appearance if such order is submitted to the Judge and prepared or approved by the Tribal Prosecutor.

2-9.02 PROCEEDING AT INITIAL APPEARANCE

(1) At the time of the initial appearance, the Tribal Court shall determine whether:

(A) There has been a charge filed and if there is probable cause to support the charge(s), or

(B) If there is a reasonable basis to proceed with a probation violation hearing or violation of conditions of release.

(2) If no charges are filed, the Tribal Court shall release the defendant without conditions of release and no further court hearings shall be set.

(3) If the Tribal Court finds no probable cause to support the charge, the Court shall release without any conditions of release.

(4) Following the Tribal Courts initial determination of probable cause for a new charge:

(A) The Court shall advise the defendant of the charge filed.

(B) The Court may set conditions of release, including but not limited to bail.

(C) An arraignment date shall be set and counsel shall be provisionally appointed.

(D) The Court shall set a pretrial conference and conditions of release if the defendant has already been arraigned and probable cause has been previously established.

(5) Following the Court's initial determination of Probation Violation:

(A) The Court shall set a probation hearing and conditions of release pending the probation hearing if the Court determines that there is a reasonable basis to proceed to a hearing.

(B) The Court shall release the defendant if the Court determines that there is no basis to proceed to a probation hearing, and the defendant shall remain on probation for the previous set conditions of the judgment and sentence.

(C) The initial determination at the initial hearing shall not be a determination of a probation violation, and shall not prohibit the Tribe from filing future allegations of a probation violation.

(6) Appointed counsel shall be notified of his/her appointment and of the arraignment date and place for the defendant.

2-9.03 TIME FOR ARRAIGNMENT

(1) If the Court does not proceed with arraignment in conjunction with the initial appearance hearing, the Court shall set an arraignment within fourteen (14) days of the initial appearance, unless the Court finds good cause or the Defendant requests to set the arraignment later than fourteen (14) days of the initial appearance.

(2) If the Defendant is charged by complaint or citation but not arrested and/or held on the charge, a Defendant shall be set for an arraignment within thirty (30) days of filing of complaint or citation. This period may be extended (a) if Defendant is unable to be served, exercising reasonable diligence in attempts to serve the Defendant, with a summons or served with notice of arraignment, or (b) the Defendant requests a continuance, or (c) for other good cause.

2-9.04 PROCEEDING AT ARRAIGNMENT

At the arraignment the following procedure shall be observed:

(1) The defendant shall have the complaint or citation read to him.

(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 defendant shall be advised by the Judge of his right to:

(A) remain silent;

(B) legal counsel or to any court-approved spokesperson;

(C) a jury trial, when requested in accordance with KLOC Section 1-9;

(D) to compel the attendance of witnesses;

(E) confront witnesses who testify

(F) require the Tribe to prove beyond a reasonable doubt that defendant committed the offense charged, and;

(G) appeal any judgment within ten (10) calendar days from service of the judgment on defendant.

(4) Counsel for the defendant, provisionally appointed at the time of the initial appearance, shall appear at the arraignment. After having been advised of his right to counsel, the defendant may at that time refuse appointed counsel. Defendant has no right to the appointment of counsel of his choosing.

(5) The Judge shall ask the defendant to plead not guilty or guilty. Either the defendant or counsel may enter the plea for the defendant.

(6) Should the defendant fail to enter plea, the Court shall enter a plea of not guilty for him.

SECTION 2-10: BAIL

2-10.01 BAIL

Each person charged with an offense before the Tribal Court may be admitted to bail. In no case shall the amount of bail specified in the agreement exceed twice the maximum penalty set for the violation or offense with which the accused is charged or Ten Thousand Dollars ($10,000), per charge. This shall notprevent the Tribal Judge from ordering or authorizing the release of such persons without posting bail ifthe person has satisfactorily identified himself and it appears that his further detention is not reasonably necessary to either prevent further bodily harm to himself, others, or property, or to provide further reasonable assurance of the person's appearance before the Tribal Court.

2-10.02 FORMS OF BAIL

Bail by cash, money order, or cashiers' check may be accepted. Bond may be accepted if the Tribe has authorized a person to act as a bail bondsman.

2-10.03 BAIL SCHEDULE

The Kalispel Business Committee, or its designee, may prepare and approve a schedule of bail for offenses. This schedule shall be posted and may be revised at the discretion of the Kalispel Business Committee.

2-10.04 INCREASE, DECREASE OR FORFEITURE OF BAIL

The Tribal Court, upon good cause shown, may increase or decrease the bail as originally set. In no event shall bail be set for more than $10,000.00 per charge. Where the defendant fails to appear before the Tribal Court on the date set, the Court may direct an entry of such failure to be made in the record, ordering the forfeiture of the bail and issue a warrant for the arrest of the defendant.

2-10.05 RETURN OF BAIL

The Tribal Court shall return any cash posted as bail for the defendant to the posting party upon final disposition of charges at trial level.

SECTION 2-11: PRETRIAL CONFERENCE

2-11.01 PRETRIAL CONFERENCE

The Tribal Court shall hold a pretrial conference to consider such matters as will promote a fair and expedient trial. This conference shall address issues related to discovery, pretrial motions, affirmative defenses and alibi or possible resolution of the case. Specifically:

(1) The defendant shall note any affirmative defenses or claim of alibi in writing;

(2) All parties shall note any motions the parties wish the court to consider and shall request an order setting a briefing and hearing schedule for such motions; and

(3) The parties may raise other issues of importance that should be addressed by the Court.

Failure of a party to raise defenses or objections or to make a request that must be made prior to trial, constitutes a waiver of the defense, objection, or request. The Court, for good cause shown, may grant relief from any waiver provided in this subsection.

SECTION 2-12: TRIAL

2-12.01 SPEEDY TRIAL

The Tribal Court shall have the responsibility of insuring each person, charged with a crime under this Code, receives a speedy trial.

2-12.02 TIME FOR TRIAL

The Court, at the earliest practicable time, shall, after consultation with the counsel for the defendant and

the Tribal Prosecutor, set the trial date for the case.

The Court shall set a trial date no more than sixty (60) days from the date of the arraignment, if the Defendant is being held in jail on the offense charged. The Court shall set a trial date no more than

ninety (90) days from the arraignment, if the defendant is not being held in jail on the offense charged.

Unless the defendant consents in writing to the contrary, the trial shall not commence less than thirty (30) days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se.

2-12.03 EXCUSED DELAY

The following periods of delay shall be excluded in computing the time within which the trial must commence.

Any period of delay resulting from other proceedings concerning the defendant, including but not limited to:

(1) Delay resulting from assembling a jury pool;

(2) Delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;

(3) Delay resulting from trial with respect to other charges against the defendant;

(4) Delay resulting from any interlocutory appeal;

(5) Delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;

(6) Delay resulting from consideration by the court of a proposed plea agreement to be entered into by the defendant and the Tribal Prosecutor; and

(7) Any period of delay resulting from the absence or unavailability of the defendant or an essential witness.

(8) Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial.

(9) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the Tribal Prosecutor, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

2-12.04 EFFECT OF WARRANT OR FAILURE TO APPEAR

The time for trial shall be reset if a warrant is issued or the Defendant fails to appear for a court appearance. The time for trial will be ninety (90) days from the defendant's next appearance in court if the Defendant is not being held in jail, or sixty (60) days from the defendant's next appearance in court if he is being held in jail.

SECTION 2-13: POST TRIAL PROCEDURE

2-13.01 DIRECTED VERDICT

A defendant may move for a directed verdict at the close of the evidence offered by the Tribe. If such motion is granted, the jury shall be dismissed and a verdict of acquittal entered. If such motion is denied, the defendant may continue with the trial, presenting evidence and testimony.

2-13.02 ACQUITTAL

If the court finds for the defendant or the jury returns a verdict of not guilty on all counts of the complaint or citation, a judgment of acquittal shall be announced by the Court and entered in the official records by the clerk, along with the names of the jurors in the case and the defendant shall be immediately discharged.

2-13.03 CONVICTION AND SENTENCING

Within a reasonable time after a verdict or plea of guilty and after such presentence investigation as the Court may direct, the Court shall sentence the defendant in conformity with the applicable provisions of this Code, and deliver to Tribal Police a signed copy of the judgment and sentence. The judgment and sentence shall state the charge, the plea, the verdict and the sentence. These forms shall be signed by the Court and entered in the official records by the clerk.

All criminal convictions, whether specifically mentioned in KLOC Chapter 9 CRIMINAL OFFENSES or assimilated into Chapter 9 by the Assimilative Crimes Act, shall be subject to a fine not to exceed $5,000.00 and/or jail time not to exceed one year for each conviction, unless otherwise specified in the Code.

2-13.04 MOTION FOR NEW TRIAL

A motion for a new trial to be held in the Tribal Court may be made by the defendant within ten (10) calendar days of receipt of the judgment. The Court shall grant a motion for a new trial if such trial is required in the interests of justice.

SECTION 2-14: APPEALS

2-14.01 RIGHT OF APPEAL

After imposing sentence when a defendant is convicted at trial, the Court shall advise the defendant of his right to appeal. All appeals shall be made in accordance with Section 1-13 of this Code.

2-14.02 STAY OF SENTENCE ON APPEAL

When a party has perfected his right to appeal as established in the above section or by any rule of court, a stay of execution of judgment or verdict shall be granted, and sentence by the Tribal Court shall not be executed until after final disposition of the case on appeal. The defendant may be required to post bail on bond on appeal or be continued upon his original bail.

2-15.01 INCARCERATION

Any person sentenced by the Tribal Court under the provisions of this Code to serve a period of time in jail, may work as a jail trustee or participate in work crew programs offered through the jail. Any confined person involved in such activities or labor shall receive 2 days credit on his sentence for each 1 day of labor performed. Such person shall be confined to the jail except during actual periods of labor.

2-15.02 CONVERSION OF FINES OR COURT COSTS

(1) Kalispel Tribal Court judges shall inquire as to a Defendant's ability to pay a fine and/or court costs.

(2) A Defendant who has been sentenced to pay a fine or court costs shall have the option to perform community service for the benefit of the Kalispel Tribe of Indians, and shall be entitled to a credit on such fine at the rate of $10.00 per hour for each hour of community service.

(3) Kalispel Tribal Court judges may order Defendants to participate in culturally relevant activities in addition to or in lieu of imposing a monetary fine and/or court costs.

(4) A Defendant who has been sentenced to pay a fine or court costs shall have the option to be confined in jail in lieu of paying the fine or court costs, and shall be entitled to a credit on such fine at the rate of $25.00 per day incarcerated in jail.

2-15.03 AMOUNT OF FINE OR JAIL SENTENCE

The Tribal Court shall, under no circumstances, impose a jail sentence or a fine or a combination in excess of the provisions set forth for the offense in the Code. Any jail sentence shall commence to run from the date of sentence unless the person convicted shall appeal a conviction; and in such case, the sentence shall commence to run from the time of the decision by the appellate court.

2-15.04 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.

2-15.05 INFORMATION USED IN SENTENCING

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, the effect of the offense upon the community, statements or opinions of the victims, statements or opinions of experts, and 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. It should be noted that the penalties listed in Chapter 9 of the Code are in most cases maximum penalties. 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 2-16: PROBATION

2-16.01: PROBATION

After conviction of an offense, the Court may, upon reasonable terms and conditions as it considers necessary, suspend any sentence and release the defendant on probation. In granting probation, the Court may consider the prior criminal record of the defendant, his background, character, financial conditions, family obligations and other reasonable and relevant circumstances.

2-16.02 VIOLATION OF PROBATION

Upon a motion by the Tribal Prosecutor, supported by declaration of the Tribal Probation & Parole officer or other evidence, the Court shall hold a hearing at which the defendant shall be present and advised of the ground on which a violation of the terms and conditions of probation is alleged. If incarcerated, the Defendant may be allowed bail or bond pending a probation violation hearing.

2-16.03 PENALTY FOR PROBATION VIOLATION

If after the hearing outlined in KLOC 2-16.02, the Court finds the defendant has violated the terms and conditions of his probation, the Court may require the defendant to serve a portion of the suspended sentence as a penalty before restarting probation; or the Court may revoke the defendant's probation and order him to serve out the remainder of the suspended sentence.

SECTION 2-17: PAROLE

2-17.01 PAROLE

Any person committed by the Kalispel Tribal Court who shall have, without misconduct, served one-half the sentence imposed by such court may be eligible for parole. Parole may be granted by the Court after making independent review of the facts and circumstances of the case, as outlined in KLOC 2- 15.05.

2-17.02 VIOLATION OF PAROLE

Upon a motion by the Tribal Prosecutor, supported by declaration of the Tribal Probation & Parole officer or other evidence, the Court shall hold a hearing at which the defendant shall be present and advised of the ground on which a violation of the terms and conditions of parole is alleged.

2-17.03 PENALTY FOR PAROLE VIOLATION

If, after the hearing outlined in KLOC 2-17.02, the Court finds the defendant has violated the terms and conditions of his parole, the Court may revoke the defendant's parole and order him to serve out the remainder of the original sentence.

CHAPTER 2A - CRIME VICTIM RIGHTS

SECTION 2A-1: INTENT

2A-1.01: INTENT

In recognition of the severe and detrimental impact of crime on victims, survivors of victims and witnesses of crime and the civic and moral duty of victims, survivors of victims, and witnesses of crimes to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to the Tribe and local law enforcement efforts and the general effectiveness and wellbeing of the criminal justice system of this jurisdiction, the Tribe's Business Committee declares its intent, in this chapter, to grant to the victims of crime and the survivors of such victims a fundamental role in the criminal justice system. The Tribe's Business Committee further intends to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity, and, that the rights extended in this chapter to victims, survivors of victims, and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and the court in a manner no less vigorous than the protections afforded criminal defendants.

SECTION 2A-2: DEFINITIONS

2A-2.01: DEFINITIONS

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Crime" means an action or omission that constitutes an offense that may be prosecuted within the jurisdiction of the Kalispel Tribal Community and is punishable under the Kalispel Law and Order Code.

(2) "Survivor" or "survivors" of a victim of crime means a spouse or domestic partner, child, parent, legal guardian, sibling, or grandparent. If there is more than one survivor of a victim of crime, one survivor shall be designated by the prosecutor to represent all survivors for purposes of providing the notice to survivors required by this chapter.

(3) "Victim" means a person who has suffered physical or emotional harm, property damage, or economic loss as a result of a crime as defined in 2A-1.02(1).

(4) "Victim Impact Statement" means a statement submitted to the court by the victim or a survivor, individually or with the assistance of the prosecuting attorney or crime victim advocate, if assistance is requested by the victim or survivor, which may include but is not limited to information assessing the financial, medical, social, and psychological impact of the offense upon the victim or survivors.

(5) “Witness” means a person who can give a firsthand account of something seen, heard, or experienced whether or not an action or proceeding has been commenced, and, who may be summoned to testify for the prosecution in a criminal action, or who by reason of having relevant information, may be subject to be called as a witness for the prosecution.

(6) “Crime victim/witness program” means any crime victim and witness program of a Tribe, State, Federal or local law enforcement agency or prosecutor’s office, any rape crisis center’s sexual assault, any domestic violence program’s legal and community advocate program for domestic violence victim, or any other crime victim advocacy program which provides trained advocates to assist crime victims during the investigation and prosecution of the crime.

SECTION 2A-3: RIGHTS OF VICTIMS, SURVIVORS AND WITNESSES

2A-3.01: RIGHTS OF VICTIMS, SURVIVORS AND WITNESSES

There shall be a reasonable effort made to ensure that victims, survivors of victims, and witnesses of crimes have the rights, as articulated in the following subsections of KLOC 2A-3, which apply to any criminal court proceeding within the jurisdiction of the Kalispel Tribal Community.

2A-3.02: VICTIM’S RIGHT TO NOTIFICATION

(1) The right to reasonable, accurate, and timely notice of any public court proceeding or any probationproceeding involving the crime, or any release or escape of the accused;

(2) The right not to be excluded from any such public court proceeding, unless the court, after receiving convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding;

(3) The reasonable right to confer with the prosecutor in the case;

(4) The right for victims of violent or sex crimes, to receive, at the time of reporting the crime to law enforcement officials, a written statement of the rights of crime victims as provided in this chapter. The written statement provided by the law enforcement official shall include the name, address, and telephone number of local crime victim advocate program;

(5) The right to be informed by local law enforcement agencies or the prosecutor of the final disposition of the case in which the victim, survivor, or witness is involved;

(6) The right to be notified by the party who issued the subpoena that a court proceeding to which they have been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;

(7) The right to be informed of the procedure to be followed to apply for and receive, if applicable, any witness fees to which they are entitled;

(8) The right of victims and survivors of victims, to be physically present in court during trial, or if

subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying.

2A-3.03: VICTIM'S RIGHT TO A VOICE

(1) The right to be reasonably heard at any public proceeding in the court involving release, plea, sentencing, or any probation proceeding;

(2) The right to proceedings free from unreasonable delay;

(3) The right to be treated with fairness and with respect for the victim's dignity and privacy;

(4) The right to submission of a victim impact statement or report to the court, with the assistance of the prosecuting attorney or crime victim advocate, if requested, which shall be included in all presentence reports and permanently included in the files and records accompanying the offender committed to custody of a tribal agency or institution;

(5) The right of victims and survivors of victims, to present a statement personally or by representation,at the sentencing hearing for convictions.

2A-3.04: VICTIM'S RIGHT TO SAFETY

(1) The right to be reasonably protected from the accused;

(2) The right to receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information by law enforcement and crime victim advocate as to the level of protection available;

(3) The right to be provided, whenever practical, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants.

2A-3.05: VICTIM'S RIGHT TO COMPENSATION AND RESTITUTION

(1) The right to full and timely restitution as provided in the law;

(2) The right to have any stolen or other personal property expeditiously returned by law enforcement agencies or the court when no longer needed as evidence. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property of which ownership is disputed, shall be photographed and returned to the owner within a reasonable time of being taken, but no longer than ninety (90) days;

(3) The right of victims and survivors of victims, to entry of an order of restitution if the court finds restitution is owed to the victim and/or survivors of victims, even when the offender is sentenced to confinement, unless extraordinary circumstances exist which make restitution in the court's judgment.

2A-3.06: VICTIM'S RIGHT TO SERVICES

(1) The right to be provided with appropriate employer intercession services if available through

employer and at the discretion of victim's supervisor to ensure witnesses of crime will cooperate with the criminal justice process, and in order to minimize an employee's loss of pay and other benefits resulting from court appearance(s);

(2) The right to access immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered. However, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance. Victims of domestic violence, sexual assault or stalking as defined in Tribal, State and Federal laws, shall be notified of their right to reasonable leave from employment under the law;

(3) The right of victims of violent crimes and sex crimes, to have a crime victim advocate from a crime victim program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the victim, and at any judicial proceedings related to criminal acts committed against the victim. This subsection applies if practical and, if the presences of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the crime victim.

2A-4.01 VIOLATIONS

(1) When an act or omission is made or deemed an offense under this Chapter, or by other ordinances or by resolutions of the Kalispel Business Committee, upon a Court finding of a violation, the individual is subject to a civil fine, civil penalty or other civil administrative sanction as defined in Kalispel Law and Order Code Chapter 21 – Kalispel Administrative Code;

(2) When the violator has caused the victim to incur costs, such as medical expenses, property damage or destruction, by way of example and not limitation, the Tribal Court may order financial restitutionbe paid to the victim.

(3) Any individual, including the victim(s) themselves, who willfully hinder the apprehension, prosecution, conviction or punishment of a criminal defendant under this chapter by:

(A) harboring, concealing, providing a weapon, providing transportation or other means of escape, by warning of impending discovery or apprehension;

(B) preventing or obstructing, by any means, anyone from performing an act that might aid in the discovery or apprehension of a criminal defendant(s) by concealing, altering or destroying any physical evidence that might aid in the discovery or prosecution;

(C) volunteers false information to a law enforcement officer or prosecutor;

Shall be deemed guilty of obstructing justice. (KLOC 9-7.18)

JURISDICTION

The Kalispel Tribal Court will have jurisdiction over civil actions where this Code, or a Business Committee Resolution, gives the Tribal Court jurisdiction over a specific subject matter. The Tribal Court does not have the jurisdiction to hear matters arising solely under the Constitution of the Kalispel Tribe of Indians, unless the Constitutional issues relate to a subject matter that has been given to the Tribal Court by this Code or the Business Committee has delegated such jurisdiction by Resolution.

APPLICABILITY

This Chapter provides general provisions which shall govern civil actions in the Kalispel Tribal Court. In the event of a conflict between this Chapter and another Chapter of the Kalispel Law and Order Code which provides specific procedural provisions, the specific procedural provisions shall apply to said Chapter. The term "civil action" shall include all court actions that do not have as their object the imposition of a criminal penalty.

CONSENT TO SUE TRIBE NOT GRANTED

This Chapter does not grant jurisdiction or authority to bring suit against the Kalispel Tribe. Nothing in this Section shall be deemed a waiver of the Tribal sovereign immunity from suit, which immunity is hereby held to extend to the Tribe and its officers and employees acting for the Tribe within the scope of their Tribal authority.

SECTION 3-1: COMMENCEMENT

3-1.01 COMMENCEMENT OF CIVIL ACTIONS

Civil actions in Tribal Court shall 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.

3-1.02 SIGNATURE ON COMPLAINT

Complaints filed in the Tribal Court shall bear the signature of the complainant.

3-1.03 LIMITATION ON FILING

An action must be commenced within a period of three years from the date of such events giving rise to the cause of action.

3-1.04 TOLLING THE LIMITATION

If a person entitled to bring a civil action under this Code be, at the time the action occurred, either

under the age of eighteen years, or insane, or imprisoned on a criminal charge, the time of such disability shall not be a part of the three-year limitation on the commencement of civil actions. Provided, however, that if the action is brought after the three-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 three-year limitation. The statement shall be filed with the complaint and if attacked by 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. The decision of the Traditional Peacemakers Panel in this respect shall be final, subject to the aggrieved party's right to reconsideration as set forth in Chapter 1 of the Kalispel Law and Order Code.

3-1.05 FILING FEE

The complainant shall pay a filing fee of ~~$15.00~~ $50.00 (Kalispel Resolution 2007-51) or such other fee prescribed in the rules. Such fee may be waived by the Tribal Court upon a showing of good cause. No fee shall be charged if the Tribe is the plaintiff.

SECTION 3-2: SUMMONS

3-2.01 SUMMONS

Upon the filing of a complaint, the Clerk shall cause to be issued a summons requiring the defendant to appear before the Kalispel Tribal Court at a date and time certain which will be at least five days, but no more than 30 days, after service of summons and complaint upon the other party, excluding date of service. The summons shall also contain a notice that, in case of failure to so appear, judgment will be rendered against them, according to the demand of complaint.

SECTION 3-3: SERVICE

3-3.01 SERVICE

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

3-3.02 WHO MAY SERVE SUMMONS

In all cases, except when service is made by publication, as hereinafter provided, the summons shall be served by the Tribal Police of the Reservation wherein the service is made, or by the Sheriff of the County wherein the service is made or by his deputy, or by any person 18 years of age or over, who is competent to be a witness in the action, other than the plaintiff.

SECTION 3-4: PERSONAL SERVICE

3-4.01 PERSONAL SERVICE OF SUMMONS AND COMPLAINT

A summons, with a copy of the complaint attached, shall be served upon the defendant by personal service. Such 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, the service of said summons and complaint shall be made between the hours of 7:00 a.m. and 9:00 p.m. unless service during such times is impossible.

SECTION 3-5: SERVICE BY PUBLICATION OR MAIL

3-5.01 SERVICE BY PUBLICATION OR MAIL

The Traditional Peacemaker Panel may allow service to be made upon the defendant by certified mail, return receipt requested, or by the posting of copies of the Summons and Complaint in two public places on the Reservation for three weeks and then publication of Notice of the Filing of said Summons once a week for three consecutive weeks in any newspaper of general circulation on or adjacent to the Kalispel Reservation. Such a service by publication shall be made only upon sufficient showing by the complainant or his representative to the Court by affidavit that diligent efforts were made to serve the Summons with a copy of the Complaint upon the defendant and that said service could not be made.

3-5.02 SERVICE OF SUMMONS AND COMPLAINT UPON MINORS

If the suit be against a minor under the age of 14 years, to such minor personally and also to his father, mother or guardian, or if there be none within the state then to 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.

3-5.03 SERVICE UPON GUARDIAN

If the suit be against any person for whom a guardian has been appointed, then to such guardian.

3-5.04 SERVICE UPON CORPORATION

If the suit be against any company or corporation doing business within the Kalispel Reservation, to the president or other head of the company or corporation, secretary, cashier or managing agent thereof or to the secretary, stenographer or office assistant of the president or other head of the company or corporation, secretary, cashier or managing agent.

3-5.05 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.

3-5.06 SERVICE UPON THE KALISPEL TRIBE OF INDIANS

If the suit be against the Kalispel Tribe of Indians and its governing body, the Kalispel Business Committee, by virtue of an express waiver of sovereign immunity, in full or in part, service of process shall be effectuated by serving a copy of the summons and complaint on an attorney employed within the Kalispel Tribal Legal Department AND a copy mailed to the Chairman of the Kalispel Tribal by certified mail, return receipt requested and first class mail. The attorney is hereby authorized to accept service of process on behalf of the Kalispel Tribe of Indians and its governing body, the Kalispel Business Committee. (Res. 2004-25)

SECTION 3-6: JURISDICTION WHERE SERVICE IS BY PUBLICATION

3-6.01 JURISDICTION WHERE SERVICE IS BY PUBLICATION

If jurisdiction is obtained through publication, such jurisdiction would extend only to the subject matter within the control of the Court. No personal judgment may be rendered where service is by publication and the defendant does not voluntarily appear.

SECTION 3-7: PERSONAL SERVICE OFF RESERVATION

3-7.01 PERSONAL SERVICE OFF RESERVATION

Personal service of the summons and complaint may be made upon any party outside the Reservation boundaries. If upon a resident of this Reservation or upon a person who has submitted to the Court of this Reservation, it shall have the force and effect of personal service within this Reservation; if the person so served is not a resident of this Reservation and has not submitted to this Reservation's jurisdiction, it shall have the same force and effect as service by publication. The summons served upon the party outside the Reservation, shall contain the same and be served in like manner as personal service within the Reservation, except it shall require the party to appear and answer within 60 days after such personal service off the Reservation.

SECTION 3-8: LONG-ARM JURISDICTION

3-8.01 LONG-ARM JURISDICTION

Any person, whether or not a resident of the Reservation, who in person or who, through an agent, does any of the acts enumerated in this section, hereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the Court of this Reservation as to any cause of action arising from the doing of any of said acts:

(1) The transaction of any business within this Reservation.

(2) The commission of a tortious act within this Reservation.

(3) The ownership, use, or possession of any property whether real or personal situated in this Reservation.

(4) Contracting to insure any person, property or risk located within this Reservation at the time of contracting.

SECTION 3-9: PROOF OF SERVICE

3-9.01 PROOF OF SERVICE

Where there has been personal service, an affidavit of service shall be returned to the Clerk and entered into the Court Records, constituting proof of personal service. Where service was obtained by mail, the return receipt on such delivery shall be made a part of the Records of the Court. When there has been service by publication, an affidavit, shall be obtained for the Court Records from the newspaper publishing the notice, such affidavit, when filed with the Court, will constitute proof of service through publication.

SECTION 3-10: NOTICE

3-10.01 NOTICE

When a party to an action has appeared in the same, he shall be entitled to at least 5 days notice of any trial, hearing, motion, application, sale or proceeding therein; such notice shall be in writing, specifying the time and place where the same shall be had or made, and be served upon him or his attorney; provided, however, if neither such party nor his attorney resides upon the Reservation, then service by mail may be had on such party or his attorney by mailing to either of them a copy of such notice, properly addressed with postage thereon.

SECTION 3-11: APPLICABLE LAW IN CIVIL ACTIONS

3-11.01 APPLICABLE LAW IN CIVIL ACTIONS (rev 2013-36)

The Kalispel Tribal Court, in civil cases, shall apply, in the following order of priority, the applicable laws, resolutions, ordinances, or customs of the Tribe, the laws of the United States and regulations of the Department of the Interior. As to any matters not covered by the above, the Tribal Court shall apply, in the following order of priority, state statute, state common law and international law.

3-11.02 ADVISOR IN TRIBAL CUSTOM

In the event of dispute or uncertainty regarding traditional Tribal custom, the Court may utilize advisors familiar with these customs.

SECTION 3-12: TRIAL SETTING

3-12.01 TRIAL SETTING

When the defendant has been properly served with a summons and complaint and he has appeared in the case, upon the request of a party to the action, the Court shall set a date for trial convenient to the parties and the Court. Jury trials may be requested by following the procedures outlined in Section 3-13 of this Chapter.

SECTION 3-13: JURY TRIALS

3-13.01 REQUEST FOR JURY TRIAL

In non-criminal trials a request for a jury must be submitted to the Court, in writing, no later than 10 days before the date of trial. The procedure for picking a jury is as outlined in Section 9 of Chapter 1.

SECTION 3-14: JUDGMENTS IN CIVIL ACTION

3-14.01 JUDGMENTS

In all civil cases in which the 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 directing the surrender of certain property to the injured party, or the performance or prohibition of some other act.

3-14.02 JUDGMENTS IN CASES INVOLVING INJURY

In cases involving injury to persons or property:

(1) 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.

(2) Where the injury was deliberately and maliciously 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.

(3) Where the injury was inflicted as the result of an accident where 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 with adjustment thereof for the ratio or proportion of the accident caused by his negligence or fault.

SECTION 3-15: DEFAULT JUDGMENT

3-15.01 DEFAULT JUDGMENT

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 new trial within 20 days of the default judgment, showing good cause for his failure to answer the summons. Upon failure of plaintiff to appear at the time set by the summons for hearing, the Court will dismiss the case.

SECTION 3-16: COST

3-16.01 COSTS IN CIVIL ACTIONS

Unless the Court provides otherwise, Court costs incurred by the winning party shall be included in any judgment, including filing fees, compensation of jurors and other incidental expenses.

SECTION 3-17: RECONSIDERATION

3-17.01 RECONSIDERATION

Any person who is a plaintiff or defendant in a civil proceeding and is aggrieved by a final order of the Court may move for reconsideration, as provided in Chapter 1, Section 12.

SECTION 3-18: PAYMENTS OF JUDGMENTS FROM INDIVIDUAL INDIAN MONEYS ACCOUNTS

3-18.01 PAYMENTS OF JUDGMENTS FROM INDIVIDUAL INDIAN MONEY

Whenever the Kalispel 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 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. Said 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, or his authorized representative, who 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, not to exceed the amount of judgment.

3-18.02 WHERE APPLICABLE

Provisions for the payment of judgments from individual Indian monies shall be applicable in any case

where the judgment creditor has acquiesced to the jurisdiction of the Tribal Court.

SECTION 3-19: EFFECT UPON ESTATES

3-19.01 EFFECT UPON ESTATES

A judgment by this Court shall be considered a lawful debt for purposes of probate proceedings or other actions regarding descendants' estates.

SECTION 3-20: JUDGMENT LIEN

3-20.01 JUDGMENT LIEN

An unsatisfied judgment shall be a lien against funds owing the judgment debtor by the Kalispel Tribe upon the delivery of a copy of the Judgment to the Chairman or Secretary of the Tribe. When such copy is received, the Chairman or Secretary shall pay over the amount specified in the judgment as the funds become available to the credit of the judgment debtor. If such funds be wages, 75 percent of the disposable earnings by defendant shall be exempt, such percentage to be computed as per each interval said wages are to be paid defendant.

3-20.02 JUDGMENTS - DURATION

A judgment of the Tribal Court shall be valid until satisfied in full subject to the limits established by Chapter 3, Section 22 of this Chapter, including interest upon the judgment at the rate of 8% per annum from the date of entry of the judgment.

SECTION 3-21: EXECUTION OF JUDGMENTS

3-21.01 PROCEDURE

If, after the time for appeal has run, it is made to appear to the Court that the judgment debtor has not paid the judgment amount in full or is not making payments in a manner agreed to by the parties or required by the Court, the Traditional Peacemaker Panel shall order the judgment debtor to appear before them and answer under oath regarding his personal property. The Traditional Peacemakers Panel shall then determine what property of the judgment debtor is available for execution and order the Police to seize as much of the property as reasonably appears necessary to pay the judgment. Upon the Police's seizure of the property, the judgment creditor will have a judgment lien on the property. (Kalispel Resolution 2008-39) Failure of the judgment debtor to appear may be deemed a contempt of Court and the Traditional Peacemakers Panel may proceed without his appearance.

3-21.02 SALE OF PROPERTY

Sale of the seized property shall be at public auction conducted by the Police after giving at least ten days public notice posted in at least three public places on the Reservation. Property shall be sold in a commercially reasonable manner to the highest bidder. Payment for the property and transfer of title shall take place after the redemption period has expired, as described below. If the sale results in a price higher than the debt plus expenses of sale, the debtor shall be given the surplus. The judgment shall continue in effect in the amount not recovered at the sale, plus expenses of the sale.

3-21.03 EXEMPTION FROM EXECUTION

The Traditional Peacemakers Panel shall order seizure and sale of only such property of the judgment debtor as will not impose an immediate and substantial hardship on his immediate family.

3-21.04 REDEMPTION

At any time within fourteen (14) days after the sale under 3-21.02 above, the judgment debtor may redeem the sold property by paying the judgment amount in full, plus expenses of the sale. Upon such payment, the property shall be returned to the judgment debtor and the purchaser shall be notified that the property has been redeemed.

SECTION 3-22: LIMITATION OF ENFORCEMENT OF JUDGMENT

3-22.01 LIMITATION OF ENFORCEMENT OF JUDGMENT

A judgment shall be unenforceable after a period of 5 years has elapsed from the date of entry; provided, that the judgment creditor may extend the period of enforceability for an additional three (3) years by the institution of appropriate court proceedings before the date of expiration.

SECTION 3-23: EXTENDING JUDGMENTS

3-23.01 EXTENDING JUDGMENTS

To extend the period of enforceability of a judgment, the judgment creditor shall file, with the Clerk of the Court an affidavit stating that all or part of the judgment remains unsatisfied together with a request to extend the effective time of the judgment by 3 years. This affidavit and request must be served upon the judgment debtor in accordance with provisions of Sections 4 and 5 of this Chapter 3.

3-23.02 HEARING TO EXTEND JUDGMENTS

The Court may extend the period of enforceability of a judgment upon hearing. In granting such an extension, the Court shall consider all facts, including whether the judgment creditor made a serious effort to obtain satisfaction of the judgment. The enforceability of a judgment may be extended only

once.

SECTION 3-24: SATISFACTION OF JUDGMENT

3-24.01 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 3-25: JUDGMENTS OF OTHER COURTS

3-25.01 APPLICATION

Any person may apply to the Court by written application for an order accepting a civil judgment from another Tribal Court or a state or federal court as a judgment of the Court.

3-25.02 REVIEW BY COURT

The Tribal Court shall recognize, implement and enforce the orders, judgments and decrees of other courts, unless the Tribal Court finds that the court that rendered the order, judgment or decree:

(1) lacked jurisdiction over a party or the subject matter,

(2) Denied due process, or

(3) Does not reciprocally provide for recognition and implementation of orders, judgments and decrees of the Kalispel Tribal Court.

3-25.03 PAYMENT OF JUDGMENT

Upon the entry of the order declaring the other Court's judgment to be a judgment of the Tribal Court, all provisions of this Code regarding judgments and execution shall be applicable.

SECTION 3-26: CIVIL FORFEITURE

(1) Seizures Generally. The Tribal Police shall have the authority to seize the following real or personal property located within the jurisdiction of the Kalispel Tribe. This authority does not extend to property held in trust by the United States. No property right shall exist in any property described below:

(A) All controlled substances which have been manufactured, distributed, dispensed, possessed or acquired in violation of the Kalispel Law and Order Code ("KLOC").

(B) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance or listed chemical in violation of the KLOC. This includes all listed equipment, illicit chemicals, capsules, and all machinery used in the creation, production, and encapsulation of drugs, which have been imported, exported, transported, possessed, manufactured, dispensed,

distributed, acquired or intended to be imported, exported, transported, possessed, manufactured, dispensed, or distributed in violation of Kalispel Tribal law.

(C) All property which is used, or intended for use, as a container, vessel, or other storage receptacle or device, for property that violates the KLOC.

(D) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, facilitate, or aid the transportation, sale, possession, concealment, or receipt of property, that would otherwise constitute a violation of the KLOC.

(E) All books, records, and research, including, but not limited to, formulas, microfilm, tapes, and data which are used, or intended for use, in violation of the KLOC.

(F) All monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a violation of the KLOC. All proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used or intended to be used to facilitate any violation of the KLOC.

(G) All real property, excluding property held in trust by the Federal Government, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of an offense involving the manufacture, cultivation, delivery, or possession with intent to manufacture, deliver, or otherwise utilized in any violation of the KLOC.

(H) All drug paraphernalia as defined by the Controlled Substances Act or the KLOC.

(I) Any firearm, projectile, or weapon used or intended to be used to facilitate the movement, exchange, possession, sale, receipt or concealment of property described in this section, and any monies or funds traceable to such property, or otherwise used in violation of the KLOC.

(J) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, facilitate, or aid in the transportation of persons involved in, the offering or promotion of, the concealment of, or in the course of activities of prostitution and/or human trafficking as defined by Tribal, state or Federal law.

(K) All books, records, and research, including, but not limited to, digital recordings, microfilm, tapes, and data which are used, or intended for use, in prostitution and/or human trafficking as defined by Tribal, state or Federal law.

(L) All monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in an exchange in transactions related to prostitution and/or human trafficking as defined by Tribal, state or Federal law. All proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used or intended to be used to

facilitate any violation of the KLOC.

(M) Any firearm, projectile, or weapon, which are used, or are intended for use, to facilitate, or aid in the transportation of persons involved in, the offering or promotion of, the concealment of, or in the course of activities related to prostitution and/or human trafficking as defined by Tribal, state or Federal law.

(2) Seizures Related to All Other Property. Any property that is within the jurisdiction of the Kalispel Tribe, real or personal, excluding property held in trust by the Federal Government, is subject to forfeiture under Kalispel Tribal Law.

(3) Seizure Procedures. Any property subject to forfeiture under subsection 1 may be seized under a search warrant. Property may be seized without a warrant if:

(A) The property is seized as incident to an arrest or search warrant for a different cause or purpose;

(B) The property is being seized due to a prior judgment against the property in favor of the Kalispel Tribe in a formal legal proceeding pursuant to the KLOC;

(C) The Kalispel Tribal Police has determined that there is probable cause that the property to be seized poses a threat to public safety or health;

(D) The Kalispel Tribal Police has reason to believe that the property is or was intended to be used in a violation of Kalispel Tribal law. Precautions should be taken to ensure that, if the property being seized is subject to a forfeiture hearing, all efforts are made to document the necessity of the seizure, the severity of the violation committed or intended to be committed, and the circumstances that gave rise to the seizure.

(4) Inventory and Custody of Seized Goods. The Tribal Police shall make an inventory of all property seized and copies of such inventory shall be left with the person for whom the property was taken from if it is possible to do so. A copy of such inventory shall also be filed with the Court Clerk. This property shall not be recoverable. The property will be deemed property of the Kalispel Tribe, subject only to a court order from a Court or Tribal Police.

(5) Summary Forfeiture. Property seized pursuant to subsections (1) A, B, C, H, is subject to summary forfeiture, subject to possible discovery and use by a defendant in their defense. Property confiscated as contraband shall be subject to summary forfeiture.

(6) Non-summary Forfeiture Procedure. Property seized pursuant to subsections (1) D, E, F, G, I, J, K, L, M and (2) is subject to the following procedures:

(A) Within forty-five (45) calendar days of the seizure, a petition shall be filed to institute forfeiture proceedings with the Court. The petitioner shall issue a summons, and the petitioner shall serve the petition and summons upon all owners or claimants of the property as provided by Chapter 3 of the Kalispel Law and Order Code. An affidavit of service shall also be filed with the Court.

(B) Within thirty (30) calendar days after the service of the petition and summons, the owner or claimant of the seized property shall file an answer to the allegations described in the petition to institute forfeiture proceedings. Extensions will not be granted, with exception of extraordinary circumstances.

i. If an answer is not filed within thirty (30) calendar days after the service of the petition and summons, the Court upon motion shall order the property forfeited to the Kalispel Tribe.

ii. If an answer is filed within thirty (30) calendar days, the forfeiture proceeding must be set for hearing without a jury no later than sixty (60) calendar days after the answer is filed. Notice of such hearing must be given pursuant to Chapter 3.

(C) Any claimant for a security interest who files an answer to a petition for seizure of property must prove:

i. that the security interest is bona fide and

ii. was created after a reasonable investigation by the claimant into the moral character and reputation of the purchaser and believed that the security interest was legitimate and

iii. without knowledge that the property was in use or was to be used for the purpose charged.

This section shall not apply to claimants who have a lien dependent upon possession for legally entitled compensation, or companies that regularly engage in the business of selling the property or of purchasing conditional sales contracts for property.

(7) Forfeiture Hearing. The petitioner must prove the allegations in the petition by a preponderance of evidence.

(A) If the Judge finds that the property was not used for the purpose charged or that the property was used without the knowledge or consent of the owner, then it shall order the property released to the owner of record as of the date of seizure.

(B) If the Judge finds that the property was used for the purpose charged and that it was used with the knowledge or consent of the owner, then the property shall be forfeited to the Kalispel Tribe.

(C) The Judge may determine that the seizure is grossly disproportional in relation to the fine that could be assessed in the proceeding, in which case the property shall be returned to the owner.

(D) In determining whether a seizure is grossly disproportional, the Judge will weigh the following factors: (1) the severity of the alleged conduct of the owner, (2) the potential penalties and fines associated with the alleged conduct, (3) the assets of the owner, (4) whether the property that was

seized was directly involved in the alleged criminal conduct, (5) the harm caused to the owner if the property remains seized, (6) the potential harm caused by returning the seized property to the owner, (7) and any other factors that are presented to the Judge in the forfeiture hearing.

(E) The Judge may order production of any relevant documentation in order to establish a finding that the seizure was grossly disproportional to the fine that could be assessed.

(8) Disposition of Forfeited Property. Whenever property is forfeited under this Chapter, the Kalispel Tribe may:

(A) Retain the property for official use;

(B) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public;

i. Any funds generated through subsection (8) (B) shall be used to pay any and all expenses of the forfeiture proceedings and sale expenses of the property, and retained for the benefit of the Tribe.

(C) Take custody of the property and destroy or dispose it in accordance with Tribal and Federal laws;

(D) Transfer of the forfeited property to any other jurisdiction which participated directly or indirectly in the seizure or forfeiture of the property, provided that the transfer is authorized and allowed by the Kalispel Tribe, or is authorized in an agreement with the Kalispel Tribe and the other jurisdiction.

(9) Forfeiture and Destruction of Controlled Substances. The Kalispel Tribe and Tribal Police shall have the right to seize any and all controlled substances as defined by Chapter 9 of the KLOC, the Controlled Substances Act, and this Chapter. Such property shall be deemed contraband, and shall be summarily forfeited to the Kalispel Tribe.

(A) Any dangerous substances, materials, paraphernalia or containers, even property which has no identifiable owner which cannot be safely separated from their containers shall also be deemed contraband and summarily forfeited to the Kalispel Tribe.

(B) The Kalispel Tribe may direct the destruction of all property described in this subsection as they deem necessary.

(10) Plants. The Kalispel Tribe and Tribal Police shall have the right to seize any and all species of plants from which controlled substances may be derived as defined by Chapter 9 of the KLOC, the Controlled Substances Act, and this chapter.

(A) Plants which have been planted or cultivated in violation of:

i. Kalispel Tribal law, or

ii. which the owners or cultivators are unknown, or

iii. which are wild growths, may be seized and summarily forfeited to the Kalispel Tribe.

(B) The Kalispel Tribe, or its duly authorized agent, shall have authority to enter upon any lands, or into any dwelling pursuant to a search warrant, to cut, harvest, carry off, or destroy such plants.

(11) Criminal Offenses. The Kalispel Tribe and Tribal Police shall have the right to seize any and all property, real or personal, excluding property held in trust by the Federal Government, which is used or intended to be used in any manner to commit, or to facilitate the commission of, a criminal offense under Tribal, State or Federal laws.

(12) Return of Seized Noncontraband Property. Noncontraband property may be returned to the owner prior to forfeiture at the discretion of the Tribal Police Chief or his designee. A hearing may be requested before the Judge within thirty (30) days of any seizure to determine the disposition of all property seized by law enforcement officers.

(A) Upon satisfactory proof of ownership, the property shall be delivered to the owner, unless such property is to be used as evidence in a pending case, or is subject to forfeiture. Noncontraband property taken as evidence shall be returned to the owner after final judgment has been rendered and time for appeal has expired. Noncontraband property may be returned to the owner prior to final judgment upon application to and at the discretion of the Judge.

(B) Property in the possession of the Tribal Police and of unknown ownership shall become the property of the Kalispel Tribe and may be disposed of according to the procedures for handling unclaimed property.

(13) Vesting of Title in the Kalispel Tribe. All right, title and interest in property described in Section 1 of this section shall vest in the Kalispel Tribe upon the act giving rise to forfeiture under this section, subject to possible discovery and use by defendants in their defense.

(14) Stay of Civil Forfeiture Proceedings.

(A) Upon the motion of the Kalispel Tribe, the Judge shall stay the civil forfeiture proceeding if the Court determines that civil discovery will adversely affect the ability of the Kalispel Tribe to conduct a related criminal investigation or the prosecution of a related criminal case.

i. In requesting a stay, the Kalispel Tribe may, in appropriate and reasonable instances, submit evidence *ex parte* and *in camera* in order to prevent disclosing any matter or case which may adversely affect an ongoing criminal investigation or trial. The Judge may take appropriate action to accommodate such a request.

(B) Upon the motion of a claimant, the Judge shall stay the civil forfeiture proceeding if the Judge determines:

i. the claimant is the subject of a related criminal investigation or case;

ii. claimant has standing to assert a claim in the civil forfeiture proceeding; or

iii. continuation of the proceeding would burden the right of the claimant against self-incrimination in the related case or investigation.

iv. The Judge finding that a claimant has standing to assert a claim in the civil forfeiture proceeding does not in any way preclude the Kalispel Tribe raising lack of standing in a dispositive motion at trial.

(C) The Judge may determine that a stay is unnecessary if a protective order limiting discovery would protect the interest of one party without unfairly limiting the ability of the other party to pursue the civil case. If such a protective order would in any way be unfairly limiting for one party over the other, then that protective order shall not be used as an alternative to a stay.

CHAPTER 3A - CIVIL ANTIHARASSMENT PURPOSE

The purpose of this Chapter is to provide members of the Kalispel Tribal Community with the means to receive protection from unwanted contact or behavior which falls under the definitions provided in this Chapter, and to authorize the Kalispel Tribal Court to hear petitions for such protection, and issue appropriate orders to protect the health, safety and welfare of residents of the Kalispel Indian Reservation.

CHAPTER 3 APPLICABILITY

The provisions of Chapter 3 of this Code, governing Civil Actions, as now or hereafter amended, shall be applicable to actions filed under this Chapter, except where inconsistent with either the Purpose or provisions of this Chapter.

SECTION 3A-1: DEFINITIONS

3A-1.01 UNLAWFUL HARASSMENT

"Unlawful harassment" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or when the course of conduct would cause a reasonable parent to fear for the well-being of his or her child.

3A-1.02 COURSE OF CONDUCT

"Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication, including but not limited to email, Instant Messages, and “texting.” Constitutionally protected activity is not included within the meaning of "course of conduct."

SECTION 3A-2: COMMENCEMENT

3A-2.01 EX PARTE PROTECTION ORDERS

Upon filing a petition for a civil antiharassment protection order under this chapter, the petitioner may obtain an ex parte temporary antiharassment protection order. An ex parte temporary antiharassment protection order may be granted with or without notice upon the filing of an affidavit which, to the satisfaction of the court, shows reasonable proof of unlawful harassment of the petitioner by the

respondent and that great or irreparable harm will result to the petitioner if the temporary antiharassment protection order is not granted.

3A-2.02 TOLLING THE LIMITATION

The tolling of a limitation on bringing an action under this Chapter, as set forth in 3-1.04, shall be extended to circumstances surrounding the named respondent(s).

SECTION 3A-3: EX PARTE ORDERS

3A-3.01 NOTICE OF HEARING ON EX PARTE PROTECTION ORDERS

An ex parte temporary antiharassment protection order shall be effective for a fixed period not to exceed fourteen (14) days or twenty-four (24) days if the court has permitted service by publication under 3-5.01. The ex parte order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen (14) days from the issuance of the temporary order or not later than twenty-four (24) days if service by publication is permitted. Except where the court has permitted service by publication, the respondent shall be personally served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing. The ex parte order and notice of hearing shall include at a minimum the date and time of the hearing set by the court to determine if the temporary order should be made effective for one (1) year or more, and notice that if the respondent should fail to appear or otherwise not respond, an order for protection will be issued against the respondent pursuant to the provisions of this chapter, for a minimum of one (1) year from the date of the hearing. The notice shall also include a brief statement of the provisions of the ex parte order and notify the respondent that a copy of the ex parte order and notice of hearing has been filed with the clerk of the court.

SECTION 3A-4: EX PARTE TEMPORARY ANTIHARASSMENT PROTECTION ORDER OR CIVIL ANTIHARASSMENT PROTECTION ORDER

3A-4.01 STANDARD OF PROOF FOR CIVIL ANTIHARASSMENT PROTECTION

At the hearing, if the court finds by a preponderance of the evidence that unlawful harassment exists, a civil antiharassment protection order shall issue prohibiting such unlawful harassment.

3A-4.02 DURATION OF ORDER

An order issued under this chapter shall be effective for not more than one (1) year unless the court finds that the respondent is likely to resume unlawful harassment of the petitioner when the order expires. If so, the court may enter an order for a fixed time exceeding one (1) year or may enter a permanent antiharassment protection order. The court shall not enter an order that is effective for more than one (1)

year if the order restrains the respondent from contacting the respondent's minor children. This limitation is not applicable to civil antiharassment protection orders issued pursuant to dissolution or legal separation actions, nonparental (third-party) child custody actions, or under the authority of any Uniform Parentage Act. If the petitioner seeks relief for a period longer than one (1) year on behalf of the respondent's minor children, the court shall advise the petitioner that the petitioner may apply for renewal of the order as provided in this chapter or if appropriate may seek relief pursuant to a dissolution or legal separation action, the Tribal Domestic Violence Code, or a nonparental (third-party) child custody action.

3A-4.03 RENEWAL OF ORDER

At any time within the three (3) months before the expiration of the order, the petitioner may apply for a renewal of the order by filing a petition for renewal. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal, the court shall order a hearing which shall be not later than fourteen (14) days from the date of the order. Except as provided in Sections 3-5 or 3-6, personal service shall be made upon the respondent not less than five (5) days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by 3-5.01. If the court permits service by publication, the court shall set the new hearing date not later than twenty-four (24) days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in this section. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume harassment of the petitioner when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in 3A-4.02, above.

3A-4.04 RELIEF AVAILABLE IN AN EX PARTE TEMPORARY ANTIHARASSMENT PROTECTION ORDER OR A CIVIL ANTIHARASSMENT PROTECTION ORDER

The court, in granting an ex parte temporary antiharassment protection order or a civil antiharassment protection order, shall have broad discretion to grant such relief as the court deems proper, including an order:

(1) Restraining the respondent from making any attempts to contact the petitioner;

(2) Restraining the respondent from making any attempts to keep the petitioner under surveillance;

(3) Requiring the respondent to stay a stated distance from the petitioner's residence and workplace; and

(4) Considering restriction(s) on the possession or use of any weapon(s).

3A-4.05 EX PARTE TEMPORARY ANTIHARASSMENT PROTECTION ORDER UNAVAILABLE

A petitioner may not obtain an ex parte temporary antiharassment protection order against a respondent if the petitioner has previously obtained two (2) such ex parte orders against the same respondent but has failed to obtain the issuance of a civil antiharassment protection order unless good cause for such failure can be shown.

3A-4.06 ORDERS TO CONTAIN EXPIRATION DATE AND METHOD OF SERVICE

The court order shall specify the date an order issued pursuant to subsections 3A-4.02 and 3A-4.03 of this section expires if any. The court order shall also state whether the court issued the protection order following personal service or service by publication and whether the court has approved service by publication of an order issued under this section.

3A-4.07 VIOLATION OF ORDERS

(1) Any person who violates the restraint provisions of an ex parte temporary antiharassment protection order or a civil antiharassment protection order, knowing that the order has been issued against him or her, is guilty of an offense and shall be sentenced to a fine and/or jail time in accordance with 9-7.25 Punishment for Violations, as now or hereafter amended.

(2) A respondent's violation of the terms of an order issued by the court under this Chapter shall also constitute contempt of court and may result in a criminal charge under 9-7.07 Disobedience of Lawful Orders of Court, for each violation, in addition to a finding of civil contempt.

(3) A person found to have violated a provision of an order issued under this Chapter may be required to pay for the costs of detention or incarceration, and transportation by law enforcement, incurred as a result of the violation.

(4) Violation of an ex parte temporary antiharassment protection order or a civil antiharassment protection order by a non-tribal member shall be grounds for, and may result in, exclusion from the jurisdiction of the Kalispel Tribe of Indians, and penalties for Contempt as set forth in Chapter 1-15.

SECTION 3A-5: RETROACTIVE APPLICATION

3A-5.01 RETROACTIVE APPLICATION ALLOWED

For the purpose of establishing whether or not an individual has either engaged in unlawful harassment or a course of conduct, as defined in this Chapter, the court may consider any acts, communication, contact or conduct which occurred prior to the date of enactment of this Chapter.

SECTION 3A-6: SEVERABILITY CLAUSE

3A-6.01 SEVERABILITY

Should any word, section, clause, paragraph, sentence, or provision of this code be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of any part of this Code which can be given effect without the invalid part or parts.

CHAPTER 4 - TRAFFIC INFRACTIONS

SECTION 4-1: JURISDICTION AND INTENT

4-1.01: LEGISLATIVE INTENT

It is the legislative intent in the adoption of this chapter in decriminalizing certain traffic offenses to promote the public safety and welfare on public highways within the exterior boundaries of the Kalispel Indian Reservation and to facilitate the implementation of a uniform and expeditious system for the disposition of traffic infractions.

4-1.02: JURISDICTION

The Kalispel Tribal Court shall have concurrent jurisdiction with the State of Washington for all violations of the provisions of this chapter.

4-1.03: ASSIMILATIVE CRIMES ACT

Whoever within or upon any of the places now existing or hereinafter reserved or acquired which are subject to Chapter 1 of the Kalispel Tribal Code, is guilty of any act or omission which, although not made punishable by any enactment of the Kalispel Business Committee, would be punishable if committed or omitted within the jurisdiction of the State of Washington by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment or such punishment which the Tribal Court finds is appropriate subject to the limitations that the punishment is not more than a fine of $5000.00 and/or jail time for a period greater than one year.

SECTION 4-2: ADOPTION OF STATE MOTOR VEHICLE TITLE

4-2.01: ADOPTION OF STATE MOTOR VEHICLE TITLE

The Kalispel Tribe adopts, by reference, Title 46 of the State of Washington Revised Code excluding those violations excepted in RCW 46.63.020 and Chapters 46.68 - 46.98. Any references therein to the State of Washington or any of its agents or agencies shall be read as if they contain reference to the Kalispel Tribe and its agents or agencies.

SECTION 4-3: VIOLATIONS

4-3.01: VIOLATIONS

Any person who shall violate the adopted portions of the Washington Motor Vehicle Code shall be deemed guilty of a traffic infraction and upon conviction thereof shall be ordered to pay a fine for each offense, plus court costs if the person requests a hearing.

SECTION 4-4: TRAFFIC INFRACTIONS APPEAL

4-4.01: APPEALS

Any person who is convicted of a traffic infraction under Chapter 4 or 4A may appeal the decision through the Traffic Infraction Appeal process found in 4-4.01 through 4-4.09.

4-4.02: TRAFFIC INFRACTION APPEAL COURT

One judge shall sit on the Appellate Court to hear appeals of Traffic Infractions under Chapter 4 or 4A of the Kalispel Tribal Law and Order Code.

4-4.03: APPELLATE COURT QUALIFICATIONS

The Appellate Court provided for herein shall include the Chief Judge unless he is disqualified from sitting. If Kalispel Tribal Court judges are disqualified the Kalispel Business Committee shall appoint a Judge Pro-Tem in accordance with the standards and procedures of this Code. The judge who originally tried the case shall not sit on the Appellate Court.

4-4.04: NOTICE OF APPEAL

Within ten (10) days from the entry of judgment the aggrieved party may file with the Tribal Court written notice of appeal, and upon giving proper assurance to the Court, through the posting of a bond, shall have the right to appeal.

4-4.05: NOTICE OF APPEAL; CONTENTS

A Notice of Appeal must:

(1) Be titled a Notice of Appeal;

(2) Specify the party or parties seeking the review;

(3) Designate the decision or part of the decision which the party wants reviewed, and/or be accompanied by a motion and affidavit which shall state with particularity:

(A) The grounds therefore pursuant to Section 4-4.06

(B) The relief or order sought; and

(C) The governing rule and/or laws of the Kalispel Tribe.

4-4.06: GROUNDS FOR APPEAL

Grounds for requesting an appeal on issues of law and/or fact shall be limited to one or more of any of the following:

(1) Receipt by the trial judge of any evidence, paper, document or book not allowed by the Court;

(2) Misconduct of the prosecution or judge;

(3) Newly discovered evidence material for the defendant, which he could not have discovered with reasonable diligence and produced at the trial;

(4) Accident or surprise;

(5) Irregularity in the proceedings of the Court, or prosecution, or any order of the Court, or abuse of discretion by which the defendant was prevented from having a fair trial;

(6) Error of law occurring at the trial and excepted at the time by the defendant;

(7) That the verdict or decision is contrary to law and the evidence;

(8) That substantial justice has not been done. When the motion is based on matters outside the record, the facts shall be shown by affidavit.

4-4.07: STAY OF EXECUTION

In any case where a party has perfected his Right of Appeal as established by this Code or by Rules of Court, a Stay of Execution of judgment shall be granted and the sentence shall not be carried out unless affirmed by the Appellate Court.

4-4.08: APPELLATE COURT TRIAL

Within 20 days from the date of Written Notice of Appeal, a new trial shall be held at such time as is scheduled by the Appellate Court, unless delay is warranted by good cause, and the Court procedures shall be the same as in cases before the Tribal Court. The trial shall be de novo.

4-4.09: FINAL DECISION

The decision of the Traffic Infraction Appellate Court shall be final.

SECTION 4-5: LICENSE AND REGISTRATION

4-5.01: EXCLUSIVE LICENSE AND REGISTRATION

Notwithstanding any other section of this Code, all motor vehicles of any sort, type, or kind, or any trailer, wagon, or motor drawn vehicle owned, rented or leased by the Government of the Kalispel Tribe of Indians and operated exclusively in the service of the Kalispel Indian Tribe or any governmentally operated endeavor of the Kalispel Tribal Government, shall be licensed and registered exclusively by the Kalispel Tribe of Indians, pursuant to this section.

4-5.02: LICENSE AND REGISTRATION REQUIRED

All vehicles described in the preceding section of the Kalispel Tribal Code shall display at all times proper Kalispel Tribal numbered license plates and shall carry within the vehicle a proper Kalispel Tribe of Indians Tribal registration certificate.

4-5.03: INFORMATION REQUIRED

The Kalispel Tribal Government vehicle registration certificate shall contain the following information:

(1) Name and address of the owner, and if applicable, renter or lessee, of the vehicle; and a statement of the nature and character of the ownership of the vehicles including any encumbrances or liens against the vehicle;

(2) Trade name of the vehicle, model, year, type of body, the motor number or identification number thereof if the vehicle is a motor vehicle, or the serial number thereof, if such vehicle is a trailer or other vehicle;

(3) The power to be used, whether electric, steam, gas or other power;

(4) The weight of such vehicle which shall be the shipping weight as given by the manufacturer, except that when said vehicle has been substantially modified in size and bulk, a weight slip shall be obtained from a certified weighmaster showing the modified weight and that modified weight shall be reported on the registration certificate;

(5) Any other information that the Kalispel Tribe of Indians may deem necessary.

4-5.04: RECORDS MAINTAINED

Records on all vehicles licensed pursuant to this section shall be maintained as public record at the Kalispel Tribe of Indians' Tribal Office, located on the Kalispel Indian Reservation, Usk, Washington. The Kalispel Tribe shall forward to the Washington State Department of Licensing official copies of all tribal vehicle registration and license plate numbers.

4-5.05: 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, which grants to the vehicles owned and operated by the Kalispel Tribal Government, and registered and licensed pursuant to this section, the rights and privileges normally accorded to publicly owned and operated motor vehicles or non-resident motor vehicles by the laws of that nation, Indian tribe or nation, state, foreign country, territory, or federal district, shall be recognized as having the same rights and privileges as having a Kalispel Tribal license and registration.

4-5.06: TEMPORARY PLATES

Temporary tribal motor vehicle license plates may be initially issued for periods of not longer than is necessary for the permanent license plates to be delivered. Any applicable fees for temporary license plates may be determined by the Business Council. Temporary plates must be displayed in a manner which is clearly visible to tribal law enforcement officers. Failure to do so will be a traffic infraction and may result in a fine not to exceed one hundred dollars (100).

4-5.07: TRANSFER OF LICENSE PLATE PROHIBITED

Transfer of license plates between two or more vehicles is a traffic infraction subject to a fine not to exceed five hundred dollars. Any plates that have been transferred between vehicles may be confiscated. Transfer is prohibited unless it is first approved by the Kalispel Tribe. Upon approval to transfer a license plate, a new vehicle registration shall be issued and all updated licensing information shall be

forwarded to appropriate agencies. Any person who has had confiscated plates must reapply for a license plate.

CHAPTER 4A - CRIMINAL TRAFFIC VIOLATIONS

SECTION 4A-1: JURISDICTION

4A-1.01: JURISDICTION

The Kalispel Tribal Court shall have concurrent jurisdiction with the State of Washington for all violations of the provisions of this chapter, and may impose punishment provided therefor.

SECTION 4A-2: ADOPTION OF STATE MOTOR VEHICLE TITLE

4A-2.01: ADOPTION OF STATE MOTOR VEHICLE TITLE

The Kalispel Tribe adopts, by reference the following sections of Title 46 of the State of Washington Revised Code:

(1) RCW 46.01.120(2) relating to the operation of nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

(3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(4) RCW 46.10.130 relating to the operation of snowmobiles;

(5) Chapter 46.12 RCW relating to certificates of ownership and registration;

(6) RCW 46.16.160 relating to vehicle trip permits;

(7) RCW 46.20.021 relating to driving without a valid drivers license;

(8) RCW 46.20.336 relating to the unlawful possession and use of a driver's license;

(9) RCW 46.20.342 relating to driving with a suspended or revoked license;

(10) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;

(11) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;

(12) Chapter 46.29 RCW relating to financial responsibility;

(13) RCW 46.44.180 relating to operation of mobile home pilot vehicles;

(14) RCW 46.48.175 relating to the transportation of dangerous articles;

(15) RCW 46.52.010 relating to duty on striking an unattended car or other property;

(16) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(17) RCW 46.52.090 relating to reports by repairmen, storage men, and appraisers;

(18) RCW 46.52.100 relating to driving under the influence of liquor or drugs;

(19) RCW 46.52.108 relating to disposal of abandoned vehicles or hulks;

(20) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company and an employer;
(21) RCW 46.52.210 relating to abandoned vehicles or hulks;
(22) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;
(23) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;
(24) RCW 46.61.022 relating to failure to stop and give identification to an officer;
(25) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;
(26) RCW 46.61.500 relating to reckless driving;
(27) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;
(28) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
(29) RCW 46.61.522 relating to vehicular assault;
(30) RCW 46.61.525 relating to negligent driving;
(31) RCW 46.61.530 relating to racing of vehicles on highways;
(32) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;
(33) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;
(34) RCW 46.64.020 relating to nonappearance after a written promise;
(35) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;
(36) Chapter 46.65 RCW relating to habitual traffic offenders.

SECTION 4A-3: VIOLATIONS

4A-3.01 VIOLATIONS

Any person who shall, violate the adopted portions of the Washington Motor Vehicle Code shall be deemed guilty of a criminal offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed six months or ordered to pay a fine not to exceed $500.00, or both, with costs.

SECTION 5-1: EXCLUSION FROM RESERVATION

5-1.01 EXCLUSION FROM RESERVATION

Any person, except a member of the Kalispel Tribe entitled to reside thereon, may be excluded from the Kalispel Reservation upon the following grounds:

(1) Commission of a crime as defined by Tribal, State or Federal law.

(2) Conduct of such a nature as to be offensive to the morals of the people of the Kalispel Reservation.

(3) Unauthorized prospecting.

(4) Unauthorized mining, timber cutting, or other activity causing physical loss or damage to any Tribalnatural resource.

(5) Forcing entry into any Kalispel member's home without the consent of the occupant or occupants.

(6) Unauthorized trading or peddling within the boundaries of the Reservation.

(7) Committing fraud, confidence games or usury as against the people of the Kalispel Reservation, or inducing them to enter into grossly unfavorable agreements of any nature.

(8) Defrauding any enrolled member of just compensation for his labors or services, of any nature, done at the request of the nonmember.

(9) Breach of peace or repeated public drunkenness.

(10) Contagious disease.

(11) Repeated violation of traffic regulations.

(12) Entering upon any area of the Kalispel Reservation designated closed by the KalispelTribal Business Committee or the Federal Government for whatever purpose.

(13) Removing or attempting to remove any minor member of the Kalispel Tribe from the KalispelReservation without proper authority.

SECTION 5-2: PROCEDURE FOR EXCLUSION

5-2.01 PROCEDURE FOR EXCLUSION

The Kalispel Tribal Business Council has the authority to exclude persons not entitled to reside within the boundaries of the Reservation. The procedure for such exclusion will be as follows:

(1) Where there appears to be reasonable grounds to believe that cause exists to exclude a person or persons from the Kalispel Indian Reservation the Tribal Business Committee shall pass a resolutionstating the name(s) of the person or persons to be excluded and the reasons for the exclusion.

(2) The resolution shall direct a Business Committee member to petition the Kalispel Tribal Court for an order of exclusion.

(3) Upon the filing of said petition the Tribal judge shall issue a notice to the person or persons named in the petition 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. Said notice shall state the reason for the proposed exclusion.

(4) Notice shall be served personally upon the person or persons to be excluded in the same manner as personal service is obtained in civil cases.

(5) A hearing will be held not less than three days nor more than 10 days after service of the notice.

(6) The hearing may be held in less than three days if the Court has reasonable cause to believe that an emergency exists. In such cases a hearing may be held after 24 hours from the time of service, provided the notice to the person gives the time and date of such hearing.

5-2.02 HEARING

The hearing shall take place at the designated time and place after notice to the person desired to be excluded. The person to be excluded shall be given an opportunity to present his defense and may be represented by counsel. After the hearing, or after the time set for the hearing, if after notice the person to be excluded does not appear within 10 days the Kalispel Tribal Court may order him excluded from the Kalispel Reservation. Any orders of exclusion shall be permanent in effect unless the order provides otherwise.

5-2.03 APPEAL

Any person aggrieved by the decision of the Tribal Court shall have the right to appeal such decisions as is provided in the criminal sections of this Code.

SECTION 5-3: ENFORCEMENT

5-3.01 ENFORCEMENT

Any person excluded from the Kalispel Reservation by an order of the Kalispel Tribal Court, who does not promptly obey the order may be charged with a civil violation, Contempt of a Lawful Order of the Court.

No person shall be convicted for such contempt until an opportunity shall have been given to him to be heard in his defense.

A person found in contempt of a Court Order of Exclusion shall be fined not more than $300.00.

5-3.02 FEDERAL ENFORCEMENT

The Kalispel Tribal Court, at its discretion, may refer this case to the Superintendent of the Spokane Indian Agency or to the United States Attorney for appropriate action.

SECTION 5-4: PHYSICAL REMOVAL OF TRESPASSERS

5-4.01 PHYSICAL REMOVAL OF TRESPASSERS

In cases involving immediate danger to life, health, morals or property of the Tribe, or any of their members, and where delay would result in irreparable damage, a Kalispel Tribal law enforcement officer, may bodily remove a person not entitled to be on such property, either before or after the person has been ordered excluded by the Tribal Council or the Tribal Court as provided in the above paragraphs. Only so much force as is necessary to effect removal shall be used by said officers. If service of the notice provided for in the above sections has not already been made on the party, the officer may serve the notice upon the party at the time of removal, or he shall cause notice to be served as soon after removal as possible.

SECTION 5-5: RE-ENTRY FOR HEARING

5-5.01 RE-ENTRY FOR HEARING

In cases where the party has not already been ordered excluded by an order of the Tribal Court, the Judge will notify the party of a place on the Reservation boundary where he may re-enter in the company of a Tribal Law Enforcement Officer for the purpose of attending the hearing before the Tribal Court. The Judge shall order an officer to accompany the person while he is on the Reservation coming and leaving his hearing.

CHAPTER 6 - PROBATE

SECTION 6-1: JURISDICTION

6-1.01 JURISDICTION

The Kalispel Tribal Court may regulate the distribution of a decedent's estate provided that such estate consists solely of non-trust personal property including fixtures attached to Indian trust lands belonging to the decedent (not included in the probate covering said trust lands); that such property is located within the boundaries of the Kalispel Reservation; and, that such decedent would have been subject to the jurisdiction of the Tribal Court prior to his death.

6-1.02 EXTENT OF JURISDICTION

Jurisdiction to administer decedent's estates consisting of real and personal property, held in trust by the United States, shall be with the Secretary of the Interior.

SECTION 6-2: LAWS GOVERNING WILLS

6-2.01 WILLS; APPLICABLE LAW GOVERNING

The requirements governing the validity of wills shall be in accordance with the applicable laws of the State of Washington. Said laws shall also govern the revocation of such wills.

SECTION 6-3: CONFLICT IN PROBATE

6-3.01 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 nontrust assets involving the same will, claims or identical issues of law or fact, the decisions and orders of the Examiner of Inheritance of the Department of the Interior shall take precedence over and be binding upon the personal representative and the Tribal Court in the probate of nontrust assets.

SECTION 6-4: PERSONAL REPRESENTATIVE

6-4.01 PETITION FOR APPOINTMENT OF PERSONAL REPRESENTATIVE

Any person having a 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. If two or more persons petition the Tribal Court for appointment within sixty days of the death of the decedent, the Tribal Judge shall appoint in accordance with the following priority: Surviving spouse or his designate, lineal descendant, parent, collateral heir, creditors, others. No petition for appointment by a person other than the surviving spouse of decedent shall be acted upon within sixty days of the date of death unless notice of such petition is first served

upon the surviving spouse and more than ten days have elapsed from the date of service and the surviving spouse or his designate has failed to petition for appointment.

6-4.02 APPOINTMENT OF PERSONAL REPRESENTATIVE

After receipt of the petition for appointment of a personal representative, 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. The term "personal representative" shall be inclusive of the terms "executor" and "administrator" as used in this code.

SECTION 6-5: CUSTODIAN OF WILL

6-5.01 DUTY AND LIABILITY OF WILL CUSTODIAN

Every custodian of a will must deliver the will to the Tribal Court or to the personal representative named in said will within thirty days after receipt of information that the maker thereof is deceased. Any such custodian who fails and neglects to do so may be liable for damages sustained by a person injured thereby.

SECTION 6-6: APPLICATION TO ADMIT WILL

6-6.01 APPLICATION FOR PROBATE HEARING ORDER ADMITTING WILL TO PROBATE

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. An order shall be entered by the Court admitting or rejecting such will to probate. This order shall be final for all purposes unless a contest is begun pursuant to the procedure set out in the provisions of Section 6-14 of this chapter. 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 6-7: INVENTORY

6-7.01 INVENTORY

Every personal representative shall, within sixty 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 encumbrance against the said property. The Court shall have the discretion to grant a longer period of time upon a proper showing of necessity by the personal representative.

SECTION 6-8 APPRAISER

6-8.01 APPOINTMENT OF APPRAISER

Upon the appointment of the personal representative of the estate, the Court may authorize one or more persons of discretion (not related to the decedent or interested in the administration of the estate) to

appraise the goods and chattels of the decedent that comes to their knowledge and is within the jurisdiction of the Court. On the death or the refusal or neglect to act as an appraiser, another may be appointed to act in his place.

6-8.02 COMPENSATION OF APPRAISERS

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 $10.00 nor more than $50.00. Such sum shall constitute a claim against the estate.

6-8.03 RETURN OF APPRAISAL

The appraisers shall list each article with its value in dollars and cents. 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. 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 thirty days of their discovery. The Clerk shall record all appraisals filed with him.

SECTION 6-9: CREDITOR CLAIMS

6-9.01 NOTICE TO CREDITORS

Immediately after his appointment, the personal representative shall cause to be posted, in two 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 Kalispel Reservation, a notice that he has been appointed personal representative in the named probate proceedings. Such notice shall require all creditors of the deceased and all person having claims against the deceased to serve such claims upon the personal representative and file them with the Clerk of the Court, within two months from the date of the first publishing of the notice. The notice is to be posted for a period of three weeks and published once in the Tribal newspaper or once a week in a non-Tribal newspaper for three consecutive weeks, such posting and publishing to be concurrent.

6-9.02 EXCEPTION TO NOTICE REQUIREMENT

Where all of the property is awarded to the surviving spouse or children as provided in Section 6-16 of this chapter, the notice to creditors herein provided for may be omitted.

6-9.03 ORDER OF CLAIM PREFERENCE

All claims shall be preferred in the following order:

(1) Expenses of Administration;

(2) Expenses of last illness and burial;

(3) Any amount due the Kalispel Tribe; and

(4) All other claims.

6-9.04 NOTIFICATION OF ACCEPTANCE OR REJECTION OF CLAIM

Upon the expiration of the two month period provided in this section for the filing of claims against the decedent, the personal representative shall examine each claim filed and within thirty days thereafter he shall notify the claimant in writing, whether he will recommend its acceptance or rejection and file a copy of such notice. If he rejects the claim or does not approve it within thirty days after filing the claimant may begin legal action to establish his claim. Such action must be commenced within thirty days of notification of rejection or within sixty days after filing.

SECTION 6-10: SALE OF ESTATE

6-10.01 SALE OF ESTATE BY PERSONAL REPRESENTATIVE

A personal representative may, by petitioning the Court in writing and obtaining an authorizing order therefrom, sell, mortgage or pledge all or part of the estate of the decedent when necessary for the proper administration of said estate.

SECTION 6-11: DETERMINATION OF HEIRS

6-11.01 PETITION FOR DETERMINATION OF HEIRS AND DISTRIBUTION OF ESTATE

The personal representative shall, within four months after his appointment, file with the Clerk of the Court a petition for the determination of heirs and distribution of the estate. This petition shall include the names of all claimants entitled to payment, a statement of heirs and devisees entitled to receive the proceeds of the estate, in accordance with the laws of the State of Washington after the payment of all claims in the inventory of the assets available for distribution and such other information as may be necessary to assist the Court in the distribution of the estate.

6-11.02 COURT HEARING ON PETITION FOR DETERMINATION OF HEIRS AND DISTRIBUTION OF ESTATE

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 shall be given all interested parties of said hearing. Such notice shall be posted no later than ten days before the date of said hearing in two public places on the Reservation with written notice being given via United States mail to all claimants, heirs and divisees and all persons claiming an interest in said estate. A copy of said notice shall also be forwarded to the Superintendent.

6-11.03 HEARING PROCEEDINGS

At the time set for hearing the petition for determination 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 6-12: DISCHARGE OF PERSONAL REPRESENTATIVE

6-12.01 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. 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. Within thirty 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. 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 6-13: PERSONAL REPRESENTATIVE

6-13.01 QUALIFICATIONS 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, or is not a resident of the State of Washington.

6-13.02 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.

6-13.03 BOND OF PERSONAL REPRESENTATIVE

Every person appointed by the Court as a personal representative in any probate proceeding shall, before such appointment becomes effective, execute a bond to the Kalispel Tribal Court in a sum equal to the appraised value of the estate. Such bond shall be through a surety company or two reliable members of the community, resident within the boundaries of the Kalispel Reservation, who shall execute an agreement in compliance with the form provided therefor by the Kalispel Tribal Court.

6-13.04 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 $1,000.00, and that the rights of heirs and creditor

will not be jeopardized by so doing, the Court may waive the bond requirement.

6-13.05 LIABILITY FOR MISMANAGEMENT

A personal representative and the surety on his bond may be liable to any person aggrieved thereby for any mismanagement of the estate.

6-13.06 LIMITATIONS OF ACTION

Any action against a personal representative or his surety for mismanagement of an estate shall be commenced within two years from the date of the order of the final distribution of the estate.

SECTION 6-14: WILL CONTEST

6-14.01 WILL CONTESTS

Within two months after the admission to probate of a will, any interested person may file a petition to contest the validity of the will. 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. Upon the filing of the petition, process shall be issued, served and proof of service given as prescribed in other civil cases.

6-14.02 GROUNDS OF WILL CONTEST

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. 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) The execution and attestation of the will by the decedent or subscribing witnesses and whether the will is in legal form and was properly executed.
(4) Any other questions substantially affecting the validity of the will under applicable laws of the State of Washington.

6-14.03 HEARING UPON WILL CONTEST

A hearing shall be held to determine the issues raised by the contest. 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 revoked, and thereafter any powers of the personal representative shall cease. Provided, however, such personal representative shall not be liable for any act done in good faith previous to such voiding.

6-14.04 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 6-15: GUARDIAN AD LITEM

6-15.01 POWER TO APPOINT GUARDIAN AD LITEM

Upon the filing of a verified petition by an interested person, by a member of the Kalispel Tribe or on its own motion, the Tribal Court may appoint a guardian ad litem for a minor, incompetent, or person not in being, wherever it appears necessary or convenient.

6-15.02 DUTIES OF A 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.

6-15.03 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 taxed as costs in the proceedings and paid in the due course of the administration of the estate.

SECTION 6-16: AWARDS AND EXEMPTIONS

6-16.01 SURVIVING SPOUSE AND CHILD'S AWARD

The surviving spouse of a decedent, whose estate is being administered by the Kalispel 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 proper support of the surviving spouse for a period of six months after the death of the decedent. The Court may award such additional sums of money as it deems reasonable for the proper support, during such period, of minor and adult dependent children of the decedent who resided with the surviving spouse at the time of decedent's death. The award shall in no case be more than the appraised value of the estate. The award shall be paid to the surviving spouse at such time or times, not exceeding six installments, as the Court directs.

6-16.02 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 ten 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, passing title thereto, provided, that this exemption shall not preclude the claims of secured creditors who

have perfected liens prior to death of decedent.

SECTION 6-17: MISCELLANEOUS

6-17.01 NOTICE

Except where specifically provided for in this chapter, no notice to interested persons need be given. Sufficiency of notice where required, shall be in accordance with the provisions of Chapter 3.

6-17.02 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. 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. 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.

6-17.03 ESCHEAT TO TRIBE FOR WANT OF HEIRS

Whenever any person shall die leaving property which would be subject to the jurisdiction of the Kalispel Tribal Court as provided in Section 1.01, of this chapter without being survived by any person entitled to said property under the provisions of Section 17.03, of this chapter, such property shall be designated as escheat property and title to such property shall vest in the Kalispel Indian Tribe.

6-17.04 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.

CHAPTER 7 - KALISPEL YOUTH CODE

PART 1
GENERAL PROVISIONS

SECTION 7-1: PURPOSE

7-1.01 PURPOSE

This Kalispel Youth Code serves to recognize the special rights of Indian parents with regard to their youth. In addition, it recognizes the Tribe's interest in the well-being of its youth, which is equal to, but distinct from the interest of parents. This chapter further provides a process for the Kalispel Tribe of Indians to protect and assist children and families. While the Tribe has always served this function, the purpose of this Code is to provide a framework for individuals and agencies outside the Tribe to understand how to work with the Tribe to protect and assist their most precious resource, their children. An additional goal is to better coordinate tribal services offered to children and families.

SECTION 7-2: JURISDICTION

7-2.01 JURISDICTION OF THE TRIBAL COURT

The Kalispel Tribal Court shall have jurisdiction over cases arising under this Code, cases arising under other laws of the Kalispel Tribe of Indians providing for disposition by the Tribal Court, and any actions arising under the customs and traditions of the Kalispel Tribe of Indians affecting family and child welfare. The jurisdiction of the Family Court over persons and territory is limited only by the Constitution of the Kalispel Tribe of Indians.

7-2.02 JURISDICTIONAL QUESTIONS.

The Tribal Court shall have the power to decide questions of jurisdiction which may be raised under this chapter. The Kalispel Tribe of Indians intends to vest the Tribal Court with the fullest jurisdiction possible, in order to protect the children and families of the Kalispel Tribal Community.

7-2.03 EMERGENCY JURISDICTION

The Tribal Court shall have emergency jurisdiction over any Indian youth who is physically present on the Kalispel Reservation if the youth has been abandoned, or if it is necessary to protect the youth because of real or threatened abuse or if the youth is otherwise deprived.

SECTION 7-3: TRANSFERS OF JURISDICTION

7-3.01 TRANSFER OF JURISDICTION - AUTHORITY OF COURT

The Tribal Court may accept any transfer of jurisdiction over a matter from another court or government for proceedings under this Code. The Tribal Court shall only transfer a case under this title to another court or government under the following circumstances: if the Tribal Court has no jurisdiction over the

case or if compelling reasons exist for transferring the case.

7-3.02 TRANSFERS OF JURISDICTION - HEARINGS

In cases where more than one Indian tribe has an interest in the proceeding, the Tribal Court shall be guided by the following considerations in deciding whether to transfer jurisdiction:

(1) The wishes of the parent(s), custodian, or guardian;

(2) The wishes of the youth, if it appears to the Tribal Court that the youth is able to understand the consequences of the transfer;

(3) The wishes of the extended family members;

(4) The recommendation of tribal law enforcement and of tribal health and social services staff;

(5) The tribal affiliation of each party;

(6) The residence of each party;

(7) The type and duration of contacts the youth and the youth's family members have with each community involved;

(8) Whether the other tribe has responded to the Tribal Court's notice of the proceedings.

7-3.03 INTERIM ORDERS TO PROTECT A YOUTH PENDING TRANSFER

The Tribal Court may make such orders as are necessary to protect the youth and to retain jurisdiction over the youth, pending the outcome of any transfer proceedings.

7-3.04 NOTICE TO OTHER TRIBES

If the Tribal Court or any party, in a proceeding involving a youth in need of care, has reason to believe a youth may be enrolled or eligible for membership in another Indian tribe or tribes, the Court Clerk shall be directed to give written notice of the proceeding to the other tribe(s). The notice shall include a request to the other Tribe to advise the Tribal Court, within fifteen (15) days whether it intends to act in the matter.

SECTION 7-4: DEFINITIONS

7-4.01 DEFINITIONS

(1) ADULT: Any person who is either eighteen (18) years of age or older, married or otherwise emancipated.

(2) CHILD PROTECTIVE SERVICES/C.P.S.: Any person or agency, whether federal, state, or tribal, providing child protective services to the Kalispel Tribe of Indians.

(3) COMMON LAW SPOUSE: Parties to a marriage recognized under tribal custom or parties to a relationship wherein the couple reside together and intend to reside together as a family.

(4) COURT OR TRIBAL COURT: The Kalispel Tribal Court when exercising jurisdiction under this

Code.

(5) CUSTODIAN: Any person who has been entrusted with the custodial, personal and/or financial careof a youth under tribal law or custom or under state law, or to whom temporary physical care, custody, and control has been given by the parent(s) of such youth.

(6) DELINQUENTACT: An act committed by a youth which if committed by an adult, would be designated a crime or for which a penalty is provided under Kalispel Tribal law.

(7) DOMICILE/RESIDENCE: The determination of domicile and residence shall be in accordance with tribal law and custom. In the absence of other factors clearly demonstrating an intent to establish a permanent home outside the jurisdiction of the Kalispel Tribe of Indians, a youth's domicile/residence shall be deemed to be within the jurisdiction of the Kalispel Tribe of Indians.

(8) EXTENDED FAMILY MEMBER: A person who has reached the age of eighteen years of age, or who is of sufficient maturity to care for a youth, and who is the Indian youth's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step-parent and any other person who is considered a family member under tribal law or custom; a non-Indian relative who is an accepted member of the Kalispel Indian Community and would be considered a family member by tribal custom shall also be considered part of the youth's extended family for purposes of this definition.

(9) GUARDIAN: A person, usually other than the youth's biological or adoptive parent, to whom the Court has given certain rights and responsibilities to care for another person and/or the person's real and/or personal property.

(10) GUARDIAN AD LITEM: An adult appointed by the Court to represent the best interests of a youth in any legal proceeding to which he or she may be a party.

(11) INDIAN TRIBE: Any Indian Tribe, band, nation, or other organizational group, or community of Indians recognized as eligible for services provided to Indians by the Secretary of the Interior based on their status as Indians, including any Alaskan Native village defined in ' 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended; any treaty tribe, metis community or non status Indian community from Canada; and any tribe recognized as an Indian tribe by the Kalispel Tribe of Indians, regardless of whether it has federal recognition.

(12) INDIAN YOUTH: An unmarried youth who is under the age of eighteen years, including an unborn child, and who is either a member of an Indian tribe or is eligible for membership in an Indian tribe or is the child of a person who is a member of an Indian tribe or is eligible for membership in an Indian tribe or is recognized by the Kalispel Tribal Community as being an Indian youth. Indian tribe is defined in 7-4.01(11) of this Code.

(13) KALISPEL TRIBAL COMMUNITY: Includes enrolled members of the Kalispel Tribe of Indians, members of their households, residents of land held in trust for the Kalispel Tribe of Indians, persons with significant ties to the Kalispel Tribe of Indians, and persons consenting to the jurisdiction of the Kalispel Tribe of Indians.

(14) KALISPEL TRIBAL MEMBERSHIP: The Kalispel Tribe's determination that a youth is a member of the tribe, or is eligible for membership in the tribe, or that the biological parent is a member of the Tribe or that the youth is recognized by the Kalispel Tribal Community as being an Indian youth is conclusive.

(15) LAW ENFORCEMENT: The Kalispel Tribe of Indians may employ its own law enforcement who are authorized to carry out duties under this Code. The Tribe hereby authorizes state, county, and federal (including Bureau of Indian Affairs and Bureau of Investigation) law enforcement officers to enforce orders and execute warrants issued by the Tribal Court and to carry out the duties set forth under this Code for "law enforcement".

(16) OUT-OF-HOME PLACEMENT: Emergency and/or temporary placement of a youth in need, but not with the youth's parent(s).

(17) PARENT: Includes the biological or adoptive parent(s) but does not include persons whose parental rights have been terminated, nor does it include an unwed father whose paternity has not been acknowledged or established.

(18) PROBABLE CAUSE/REASON TO BELIEVE: Facts which support a reasonable belief of the existence of a particular conclusion.

(19) TRIBAL STATUS: The potential Indian tribe or tribes, in which a youth is eligible to be enrolled or to be a member, or is enrolled or is a member.

(20) YOUTH:

(A) A person under the age of eighteen (18) years.

(B) A person eighteen (18) years of age or older who is involved in proceedings which were commenced in Tribal Court prior to his or her eighteenth (18th) birthday.

(C) Any person eighteen (18) years of age through twenty (20) years of age under the continuing jurisdiction of the Tribal Court.

SECTION 7-6: SOCIAL SERVICES STAFF

7-6.01 SOCIAL SERVICES STAFF - DEFINED

"Social Services Staff" means those persons employed or appointed by the Kalispel Tribe of Indians who are trained to deliver services in specific social services such as, but not limited to the following: mental health; substance abuse; community health; education; foster home licensing and care; and Indian child

welfare.

7-6.02 DUTIES

The Social Services Staff shall assist the Indian Child Welfare Worker to:

(1) Recommend to the Tribal Council any changes that should be made in the Youth Code;

(2) Make recommendations to the Tribal Council and to the Department of Social and Health Services governing the licensing and operation of foster care and other youth placement facilities;

(3) Make arrangements with outside agencies for family services and placement of youths. Such arrangements shall not affect the jurisdiction of the Tribal Court over youths and families; and

(4) Perform additional duties as requested by the Indian Child Welfare Worker, Presenting Officer, or the Tribal Council.

SECTION 7-7: INDIAN CHILD WELFARE WORKER

7-7.01 APPOINTMENT

The Tribal Council shall employ or appoint an Indian child Welfare Worker to carry out the duties and responsibilities set forth in this Code.

7-7.02 QUALIFICATIONS

The Indian Child Welfare Worker shall have an educational background and/or prior experience in the field of delivering social services to Indian youths and families.

7-7.03 RESOURCE DEVELOPMENT

The Indian Child Welfare Worker shall develop and identify resources within the tribal community designed to promote the well-being of tribal youth and families.

7-7.04 DUTIES NOT PERFORMED

The Indian Child Welfare Worker shall not be employed as, nor shall be required to perform the duties of, prosecutor or presenting officer. An exception to this section may be made by the Indian Child Welfare Worker as a last resort, on a temporary, emergency basis.

7-7.05 DUTIES

The Indian Child Welfare Worker shall:

(1) Conduct investigations as provided in this Code or as directed by the Court;

(2) Issue reports as provided in this Code or as directed by the Court;

(3) Place a youth out of home as provided in this Code;

(4) Perform casework and such other duties in connection with care, custody, or transportation of youths as the Court and this Code require; and

(5) Make recommendations to the Presenting Officer on actions to take in Family Court, including

transfer requests under Chapter 7-3.

(6) Perform additional duties as the Tribal Council, Presenting Officer, or Tribal Court request.

SECTION 7-8: INDIAN CHILD WELFARE COMMITTEE

7-8.01 INDIAN CHILD WELFARE ADVISORY COMMITTEE - PURPOSE

The purpose of the Indian Child Welfare Advisory Committee is to facilitate and implement the best solutions for family problems, in keeping with the customs and values of the Kalispel Tribe of Indians. The Indian Child Welfare Committee shall give recommendations to the Indian Child Welfare Worker, Presenting Officer, and Tribal Court on measures to be taken to protect tribal families including family support services, emergency placements, and longer term placements.

7-8.02 INDIAN CHILD WELFARE ADVISORY COMMITTEE - APPOINTMENT AND DUTIES

Members of the Indian Child Welfare Advisory Committee shall be appointed by the Tribal Council. The Committee shall have those powers and duties specified under this Code and any other powers and duties delegated by the Tribal Council. If the Tribal Council does not appoint a Committee or if a quorum of Committee members is unavailable in a particular situation, proceedings under this Code may continue without consulting with the Committee.

SECTION 7-9: PRESENTING OFFICER

7-9.01 APPOINTMENT

The Tribal Council shall appoint a Presenting Officer to carry out the duties and responsibilities set forth in this Code.

7-9.02 DUTIES

The Presenting Officer shall:

(1) File petitions with the Court as provided in this Code;

(2) Represent the Tribe in all proceedings under this Code; and

(3) Perform such other duties as the Court or this Code may require.

SECTION 7-10: GUARDIAN AD LITEM

7-10.01 APPOINTMENT

The Court, under any proceedings authorized by this Code, may appoint for the purpose of that proceeding, a guardian ad litem for a youth where it finds that the youth does not have a natural or adoptive parent, guardian, or custodian willing and able to exercise sound judgment as to the best interests of the youth, or upon the request of the Indian Child Welfare Worker, [Presenting Officer,] or upon the Court's own motion.

7-10.02 QUALIFICATIONS

The guardian ad litem must be familiar with the rights of and privileges of tribal youth and the provisions of this Code.

7-10.03 DUTIES

A guardian ad litem shall:

(1) Represent the youth's best interest in any particular proceeding as required by the Court; and

(2) Make independent recommendations to the Court on disposition.

SECTION 7-11: CONFIDENTIALITY

7-11.01 HEARINGS AND CONFERENCES

All hearings under this Code shall be closed to the public. Only the Presenting Officer, the Judges, the Indian Child Welfare Worker, and the parties to the proceeding shall be permitted at the hearings and conferences; provided that the Court and the parties may agree to allow the presence of other persons. Any person asked to testify or speak shall be permitted at the hearings and conferences but, only for the limited purpose of giving testimony or presenting evidence.

7-11.02 RECORDS

Court records under this Code shall be confidential but shall be open to inspection to the following individuals, unless ordered otherwise by the Court in the youth's best interest:

(1) The youth;

(2) The parent(s), guardian, or custodian;

(3) The Indian Child Welfare Worker;

(4) The Presenting Officer; and

(5) The spokesman, attorney, or guardian ad litem for any party.

Law enforcement records and files under this Code concerning a youth shall be kept separate from the records and files of adults. The Court may issue and/or publish a written opinion in a case. The identity of the parties shall be protected in such opinion.

7-11.04 OPEN COMMUNICATION POLICY

The policy of the Kalispel Tribe of Indians toward investigation and resolution of child abuse and neglect is one of open communication between agencies and departments for the protection of children while respecting the confidentiality of statements by victims, their families, and reporters of abuse/neglect. Where there is a conflict, between confidentiality and the need for communication, protection of the child shall be the overriding consideration.

SECTION 7-12: AGREEMENTS IN LIEU OF COURT PROCEEDINGS

7-12.01 AGREED ORDERS

The parties to any proceeding under this Code may agree to a proposed order which resolves some or all of the issues of the case. Before deciding whether to approve the Agreed Order, the presiding Judges shall hold an in-chambers, ex parte discussion with the parent(s), guardian, or custodian (or other relevant party, depending upon the type of proceeding) to:

(1) Explain in detail the provisions of the proposed agreed order, and the consequences of the person's failure to comply with the agreed terms;

(2) Assure that the person's consent to the proposed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any other party to the case;

(3) Explain the person's right to a spokesperson/counsel in accordance with Section 1-12 of this Code.

(4) Where applicable, explain that the Tribe has the burden of proving the allegations of the Petition, and that the person does not have to consent to the proposed order; and

(5) Explain that once the person agrees to the proposed order and it is signed and entered by the Court, it will be too late for the person to change his or her mind, unless the person can show that his or her consent was the result of fraud or duress.

The in-chambers conversation may be recorded but, need not be recorded.

If the parent(s), guardian or custodian requests a friend, family member, or other person to be present at the in-chambers discussion with the Judge, the Judge shall allow it, after first speaking alone with the parent, guardian or custodian.

Upon finding by the Court that any such consent was the result of fraud or duress, the agreed order shall be vacated.

SECTION 7-13: SERVICE

7-13.01 SERVICE

Except as otherwise expressly provided in this Code, every pleading, motion, notice and similar document which is required or permitted to be served upon a person shall be given in the following manner:

(1) By personally delivering a copy to the individual's legal counsel or to the individual; or by leaving it at the individual's office with the individual's secretary or other person; or if the individual to be served has no office, leaving it at the individual's dwelling place or primary place of residence with some person of suitable age and discretion who resides at such residence; or

(2) If personal service cannot be made, then by certified mail, return receipt requested, postage prepaid, and properly addressed to the last known residential address of the individual to be served; or

(3) Any method approved by the Court as reasonable if the above methods are unsuccessful; and

(4) Personal service of documents on behalf of the Tribe may be made by tribal law enforcement.

SECTION 7-14: CONTINUANCES

7-14.01 WHEN TO ORDER

Except as otherwise expressly provided, the Court may continue any proceeding:

(1) Upon the motion of a party if there is a finding that good reason exists for the continuance, such as allowing time to give adequate notice, or to produce material evidence or witnesses currently unavailable; or

(2) Upon the Court's own motion if it considers it to be in the best interest of the youth.

7-14.02 EFFECT

A continuance suspends the time limits for the holding of hearings and the filing of documents.

SECTION 7-15: CONTEMPT

7-15.01 CONTEMPT - DEFINED

The following acts or omissions constitute contempt of court:

(1) Disorderly, contemptuous, or insolent behavior toward the judges while holding court, tending toimpair his or her authority, interrupting the due course of a hearing or other judicial proceeding, and/or appearing in court in an intoxicated state;

(2) Disobedience of any lawful judgment, decree, order, subpoena, or other process of the Court;

(3) A breach of the peace, boisterous conduct or violent disturbance tending to interrupt the due course of a hearing or other judicial proceeding; or

(4) Any other unlawful interference with the process or proceedings of the Court.

7-15.02 CONTEMPT - SUMMARY PUNISHMENT

When a contempt is committed in the presence of the Court, it may be punished at that time. An order shall be prepared setting forth: the contemptuous acts which occurred, a finding that the person is guilty of contempt of court, and the punishment.

7-15.03 CONTEMPT - PROCEDURE IN OTHER CASES

In cases other than summary proceedings, the facts constituting contempt must be presented to the Court by motion. The Court may then order the alleged contempt nor to appear before the Court to show cause why he or she should not be held in contempt of court and punished accordingly.

7-15.04 CONTEMPT - CIVIL AND/OR CRIMINAL PENALTIES

Any person found guilty of contempt of court shall be sentenced to:

(1) A fine, not to exceed $5,000.00; or

(2) Jail time, not to exceed one year; or both, and

(3) Restitution, to reimburse any party, including the Tribe for loss or injury caused by the contemptuous act or omission.

7-15.05 CONTEMPT - IMPRISONMENT UNTIL ACT IS PERFORMED

When the contempt consists of the omission or refusal to perform an act which is yet in the power of the individual to perform, the individual may be imprisoned until the individual initiates or performs such act. In such a case, the required act must be specified in the warrant [order] of commitment.

7-15.06 BENCH WARRANT

A tribal court judge or judicial officer may issue a warrant for an individual's arrest for contempt upon failure to appear at any ordered conference or hearing, either in person or by legal representative.

SECTION 7-16: RIGHTS OF PARTIES

7-16.01 RIGHTS

All parties are entitled to the following rights in all proceedings under this Code:

(1) A statement by the Court to the youth and his or her parent(s), guardian or custodian that the youth has the right to have a legal representative's advise and representation, at his or her expense. A party may request a continuance of a proceeding in order to seek legal representation;

(2) The opportunity to subpoena witnesses;

(3) The opportunity to introduce, examine and cross-examine witnesses;

(4) The opportunity to discover, offer and inspect evidence; and

(5) The opportunity to present arguments and statements.

7-16.02 JURY TRIAL

There is no right to a jury trial for any proceeding under this Code.

SECTION 7-17: SOVEREIGN IMMUNITY

7-17.01 SOVEREIGN IMMUNITY

The sovereign immunity of the Kalispel Tribe of Indians shall in no manner be waived by this Code. The employees, appointees, and volunteers of Kalispel Social Services (including, but not limited to, the Community Health Representative, Indian Child Welfare Worker, Presenting Officer, Guardian ad Litem, substance abuse program, foster care program, and tribal court personnel) and law enforcement (including tribal, county, state, and federal officers while acting on behalf of the Kalispel Tribe of Indians) are cloaked with the sovereign immunity of the Kalispel Tribe of Indians. Such employees, appointees, volunteers and law enforcement staff and officers shall not be held liable for the inability or failure to provide services to any person while acting on behalf of the Kalispel Tribe of Indians.

SECTION 7-18: RECOGNITION OF OTHER COURTS' ORDERS

7-18.01 RECOGNITION OF OTHER COURTS' ORDERS

The Court may give recognition to state and other Indian tribes' court orders as a matter of comity if the court granting the order had jurisdiction over the case and the order does not violate the public policy of the Kalispel Tribe of Indians.

SECTION 7-19: SEVERABILITY

7-19.01 SEVERABILITY

Should any word, section, clause, paragraph, sentence, or provision of this Code be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of any part of this Code which can be given effect without the invalid part or parts.

PART 2
YOUTH IN NEED OF CARE

SECTION 7-20: STARTING A YOUTH IN NEED OF CARE ACTION

7-20.01 POLICY OF THE KALISPEL TRIBE OF INDIANS

It is the policy of the Kalispel Tribe of Indians to protect its youth.

7-20.02 YOUTH IN NEED OF CARE - DEFINED

"Youth in Need of Care" means any youth who:

(1) Has no parent(s), guardian or custodian willing, available or able to provide adequate care for him or her;

(2) Has been emotionally, physically or sexually abused;

(3) Has not been provided with adequate food, clothing, shelter, medical, dental or mental health care, education, and/or supervision by his or her parent(s), guardian or custodian, and the deprivation is not due primarily to the lack of financial means of the parent(s), guardian or custodian. "Education" includes the parents' responsibility to send the youth to school regularly;

(4) Has been physically or emotionally neglected;

(5) Has repeatedly run away from home;

(6) Has committed delinquent acts as a result of parental or custodial neglect, pressure, guidance or approval;

(7) Is in serious conflict with his or her parent(s), guardian or custodian to the point where assistance outside the immediate family is needed or requested by the parent(s), guardian, or other custodian;

(8) Has been placed for care or adoption in violation of the Indian Child Welfare Act of 1978 (as amended) or in violation of the law and policy of the Kalispel Tribe; or

(9) Has been habitually disobedient of the reasonable and lawful command of his or her parent(s), guardian or custodian and is uncontrollable.

Kalispel tribal custom recognizes that a parent may place a child with another caregiver for either short term or long term. This is not in itself grounds for a youth in need of care action. However, a parent who has placed a child with another person because he or she is unable to adequately care for a child, is expected by the Kalispel Tribal Community, to work toward becoming an adequate parent.

7-20.03 REPORTING ABUSE/NEGLECT - FILING

Any person who has personal knowledge that a youth is in need of care as defined by this Code shall file a complaint with one or more of the following:

(1) The Indian Child Welfare Worker;

(2) State child protective services; and/or

(3) Law enforcement.

7-20.04 MANDATORY REPORTERS

The Care of children is both a family and tribal responsibility. Any member of the Kalispel Tribe of Indians, persons residing within the jurisdiction of the Tribe, and tribal employees and contractors, who have reason to believe that a youth has been abused or neglected (as provided in 7-20.02) is required to promptly file a report with any one of the individuals designated in 7-20.03 of this Code.

7-20.04A MANDATORY REPORTING FOR MEDICAL PROVIDERS

(1) It shall be the responsibility for the medical providers to report to the proper authorities on any person under the age of 14 years who has experienced sexual acts. Medical providers are required to report on persons between the ages of 14 years old and 16 years old when;

(A) The provider learns that the "offender" is at least 24 months older than the patient;

(B) There has been abuse such as non-consensual sex or trauma; or

(C) The provider learns that the offender is a known relative of the victim.

(2) Nothing in this amendment is to be interpreted contrary to mandatory reporting requirements under applicable Tribal, Federal, and State laws.

7-20.05 IMMUNITY

All persons who report child abuse or neglect, in good faith, shall be immune from civil liability and criminal prosecution.

7-20.06 SANCTIONS FOR FAILURE TO REPORT

The Tribal Court shall order any person who knowingly fails to report abuse or neglect as required under 7-20.03 to pay restitution to any person who may have been harmed by the failure to report. Restitution under this section may include actual damages as well as compensation for emotional harm.

7-20.07 CONTENTS OF REPORT

The Report shall include:

(1) The name, age and address of the Youth who is the subject of the complaint, if known; and

(2) A plain and concise statement of the facts upon which the complaint is based, including the date,time and location at which the alleged facts occurred; and

(3) The name of the complainant shall not be disclosed to anyone except the Indian Child Welfare Worker, the presenting officer, tribal law enforcement and the judge or judicial officer unless otherwise ordered by the Court. The Indian Child Welfare Worker may disclose the name of the complainant to the Social Services Staff and the Indian Child Welfare Committee if he or she deemsit necessary.

7-20.08 CHILD PROTECTIVE SERVICES

The Indian Child Welfare Worker may work in cooperation with a person or agency to provide child protective services (C.P.S.) to the Kalispel Tribe of Indians for services such as emergency removal of a child for out-of-home placement and investigation of child abuse and neglect. The duties and authority of the cooperating person or agency shall be set forth by agreement with the Kalispel Tribe of Indians.

7-20.09 RECEIPT OF REPORT BY INDIAN CHILD WELFARE WORKER

Upon receipt of a report under this chapter or receipt of notice from any source that a youth is in need of care, the Indian Child Welfare Worker shall investigate the report and determine if further action is necessary. The Indian Child Welfare Worker may request C.P.S. and law enforcement to conduct or assist in conducting the investigation. If the Indian Child Welfare Worker reasonably believes that a youth is in an emergency situation and requires out-of-home placement, he or she shall:

(1) Request an emergency custody order, if time permits and a judge or judicial officer is available; or

(2) Immediately place the youth in an out-of-home placement. This decision shall be made with the assistance of the Indian Child Welfare Advisory Committee if there is time and the Committee members are available. The Indian Child Welfare Worker may request assistance of C.P.S. and law enforcement in making such placement.

(3) If the youth's parent, guardian or custodian has not been notified, the Indian Child Welfare Worker shall inform him or her at the earliest possible time and return the youth to him or her if such action is appropriate.

(4) If a youth is taken into custody and it is unlikely that he or she will be released to his or her parent, guardian or custodian within two (2) working days, the Indian Child Welfare Worker or other authorized person shall immediately file a Youth in Need of Care Petition.

7-20.10 RECEIPT OF REPORT BY LAW ENFORCEMENT

Upon receipt of a report that a youth is in need of care, law enforcement shall take the following action:

(1) Law enforcement shall immediately investigate the report. Law enforcement shall notify the Indian Child Welfare Worker of all reports received. If the Indian Child Welfare Worker is not available, C.P.S. shall be notified. Based on the investigation, a detailed written report shall be completed by law enforcement. A copy of such report shall be delivered to the Indian Child Welfare Worker and C.P.S. within three (3) working days of the date the report was received.

(2) If law enforcement reasonably believes the youth is in immediate and serious danger from his or her surroundings and removal is necessary for the youth's safety or well-being, the officer may take the youth into custody; provided, that if there is sufficient time and a judge or judicial officer is available, law enforcement shall first request an emergency custody order.

(3) If law enforcement takes a youth into custody without first obtaining an emergency custody order, he or she shall:

(A) Release the youth to the youth's parent(s), guardian or custodian and issue verbal counsel or warning as may be appropriate; or

(B) Immediately notify the Indian Child Welfare Worker and the Indian Child Welfare Advisory Committee and request direction as to whether the youth should be placed out-of-home and if so where; or

(C) If the Indian Child Welfare Worker and the Indian Child Welfare Advisory Committee cannot be reached, the officer may place the youth out-of-home, but shall continue attempts to notify the Indian Child Welfare Worker. Placement of the youth shall be in a facility approved by a member of the Social Services Staff or the Indian Child Welfare Advisory Committee for emergency out-of-home placement in that particular case. A list of persons to contact in emergency placements may be set by the Social Services Staff and the Indian Child Welfare Advisory Committee and provided to law enforcement.

(D) If the youth if not released, immediate and continuing efforts shall be made by both law enforcement and the Indian Child Welfare Worker to notify the youth's parent(s), guardian or custodian as to the circumstances surrounding the youth's custody.

7-20.11 EMERGENCY CUSTODY ORDERS- GROUNDS

A tribal court judge or judicial officer may issue an emergency custody order upon a sworn oral or written statement of facts showing probable cause to believe the youth is in need of care and that his or her health, safety and/or welfare will be seriously endangered if not taken into custody.

7-20.12 EMERGENCY CUSTODY ORDERS - CONTENT

The emergency custody order shall specifically name the youth to be taken into custody, be signed by the judge or judicial officer, state the date and time issued, the place where the youth is to be taken, unless such information must be withheld for the protection of the youth, and name the person or persons authorized to take the youth into custody. An emergency custody order may be transmitted by the judge or judicial officer by telephone, computer, or facsimile.

7-20.13 EMERGENCY DURATION

An emergency custody order must be executed within seventy two (72) hours of issuance. A youth taken into custody under an emergency custody order may be held until the conclusion of an emergency hearing or as ordered by the Court.

SECTION 7-21: YOUTH IN NEED OF CARE HEARINGS

7-21.01 YOUTH IN NEED OF CARE HEARING

If an emergency custody order is issued by this Court, or a Youth in Need of Care Petition is filed with this Court, the Court shall set a date and time for a Youth in Need of Care Hearing and shall advise the parties of the date, time and place of that hearing, and shall order their attendance at the hearing. If the whereabouts of the parent(s), guardian, or other custodian is unknown, notice of the Youth in Need of Care Hearing may be served in accordance with Chapter 3.

SECTION 7-22: YOUTH IN NEED OF CARE HEARINGS

7-22.01 PURPOSE

The Court shall conduct a Youth in Need of Care Hearing for the purpose of determining whether a youth is in need of care.

7-22.02 REQUEST FOR YOUTH IN NEED OF CARE HEARING

A request for a Youth in Need of Care Hearing may be initiated by a petition filed by the Presenting Officer or the Indian Child Welfare Worker.

7-22.03 PETITION - CONTENTS

A petition for Youth in Need of Care Hearing shall include:

(1) The name, birthdate, residence, domicile, and tribal status of the youth;

(2) The names, residences and tribal status of the youth's parent(s), guardian or custodian;

(3) A citation to the specific section of this Code and the facts which give the Court jurisdiction over theproceedings;

(4) A detailed statement of facts and reasons which support the allegation that the youth is in need ofcare; and

(5) If the youth is in out-of-home placement, the location of the placement and the time taken into custody, unless such information would jeopardize the safety of the youth.

7-22.04 TIME OF HEARING

The Court shall set the date for hearing on the next judicial day but not more than thirty five (35) days of receipt of the petition, unless continued by the Court.

7-22.05 NOTICE

Notice of a Youth in Need of Care Hearing shall be served as specified under Chapter 3 by the Court Clerk or other person designated by the Tribe to perform this duty, at least five (5) working days before the hearing. The notice shall include the name of the court; the date, the time, and place of the hearing; and a copy of the petition. The notices shall be served on the following:

(1) The youth or his/her representative or guardian ad litem;

(2) The youth's parent(s), guardian or custodian;

(3) Any person the Court believes is necessary for the hearing;

(4) Any person the parties believe necessary for the hearing;

(5) Presenting Officer; and

(6) The Indian Child Welfare Worker.

7-22.06 EVIDENCE

The Court may hear any evidence which is relevant to the case and which is reasonably reliable.

7-22.07 BURDEN OF PROOF

The burden of proof shall be preponderance of the evidence.

SECTION 7-23: DISPOSITION ORDER

7-23.01 PROPOSED FAMILY PROTECTION PLAN

The Indian Child Welfare Worker may prepare a written plan describing all reasonable and appropriate alternatives for caring for the youth and assisting his or her family. It should explain why the plan is necessary and its benefits to the youth and to the family. It should fully explain any recommendations for placement of the youth. The professional opinions of all persons consulted should be included. If a family protection plan is developed, the Indian Child Welfare Worker shall file the report with the Court and provide copies to all parties prior to any hearing on the Plan.

7-23.02 OTHER PROPOSED PLANS

Any party who is involved with a youth in need of care case may prepare his or her recommendations to the Court in the form of a proposed Family Protection Plan. Copies shall be provided to all parties to the case prior to any hearing on the Plan.

7-23.03 HEARING FOR FAMILY PROTECTION PLAN

A hearing shall be held to decide what plan will best meet the needs of the youth and assist his or her family. This hearing may take place at the end of the Youth in Need of Care Hearing or may take place separately. The Court shall determine the scheduling and shall direct the Court Clerk to notify all parties. The Court shall hear testimony and consider all proposed Family Protection Plans filed. All parties shall be given an opportunity to contest the facts and conclusions presented in each proposed plan.

7-23.04 COURT ORDERED FAMILY PROTECTION PLAN (DISPOSITION)

If a youth has been determined to be in need of care, the Court shall order a Family Protection Plan for his or her protection and well-being. The Plan shall either allow the child to remain with his or her parent(s), guardian, or custodian, subject to any such limitations and conditions the Court may order or the Court may order out-of-home placement subject to the following placement preferences:

(1) Place the youth with an extended family member subject to any limitations and conditions the Court may prescribe;

(2) Place the youth in a foster home which has been licensed or approved by the Tribe, subject to anylimitations and conditions the Court may order;

(3) Place the youth in another home or facility which will both meet the particular needs of the youth and will insure that the youth will keep his or her ties to the Kalispel Indian Community and to his or her family.

The Court may make other orders necessary for the protection and well-being of the youth and the family. Such orders may include but are not limited to: evaluation and treatment (including involuntary residential treatment) of substance abuse, mental illness, and emotional disturbance; parenting classes; mandatory school attendance; mediation; visitation orders; restraining orders; and other services or activities for the benefit of the youth and his or her family. The Court may make a particular placement conditional on compliance with any of the above listed orders.

7-23.05 PLACEMENT CONTINGENT ON CONSENT TO JURISDICTION

Placement of a youth with anyone who does not reside within the jurisdiction of the Kalispel Tribe of Indians shall be contingent on the person's written agreement to accept the jurisdiction of the Tribal Court and to cooperate fully with the Indian Child Welfare Worker and law enforcement.

7-23.06 REVIEW HEARING

The Court shall conduct a hearing to review its Family Protection Plan at least once every six months, or earlier upon motion of any party. The Court shall review whether the parties are complying with the Plan and shall consider whether modification of the order is necessary to protect the youth and strengthen the youth's family.

PART 3
GUARDIANSHIP

SECTION 7-24: GENERAL PROVISIONS

7-24.01 PURPOSE

This chapter provides a procedure for empowering a person who is not a youth's parent to perform the duties of a primary caregiver, without terminating the parental rights of the parent(s). It is intended that the chapter be applied with flexibility for a variety of family situations and problems.[1]

7-24.02 ADULT GUARDIANSHIP

Guardianship for the benefit of adults may be ordered by the Family [Tribal] Court. Until a Code is adopted by the Tribe, the Court may follow a process of its own discretion which provides basic fairness to and is cognizant of the rights of all parties.

SECTION 7-25: INITIATING AN ACTION TO APPOINT GUARDIAN

7-25.01 PETITION - WHO MAY FILE

Any person at least eighteen (18) years of age may file a petition with the Court requesting that he or she be appointed as a guardian. If the petitioner is married, his or her spouse must also be at least eighteen (18) years of age and must sign the petition, unless the spouse's whereabouts is unknown or unless waived by the Court. "Spouse" for purposes here, includes common law spouses. (See 7-4.01(3))

7-25.02 PETITION - CONTENTS

A petition for appointment of a guardian shall include:

(1) The name, birthdate, residence and tribal status of the youth who is the subject of the petition;

(2) The name, birthdate, residence and tribal status, if known, of the youth's parent(s) and of the petitioner(s);

(3) If the youth is residing with someone other than a parent, the location and length of stay at that location; and

(4) A concise statement of facts and reasons supporting the request that the petitioner be appointedguardian.

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1 For example, guardianship may be used by a youth's grandparent(s) to enroll the youth in school and obtain medical care for the youth. A young mother may wish to use guardianship rather than give a child up for adoption. Foster families may petition for guardianship if it appears the youth will not be returning to the parent(s) in the near future. A guardianship may be desirable if a youth's parents are deceased or have abandoned the child. This list is not exhaustive and is not intended in any way to limit the circumstances where a guardianship may be used.

7-25.03 SETTING THE HEARING

When the Court receives the petition it shall set a hearing date, which shall not be more than forty (40) days after the Court receives the petition.

7-25.04 NOTICE OF HEARING

Notice of the hearing shall be given by the Court Clerk or other person designated by the Tribe to perform this duty as provided under Chapter 3 at least twenty (20) days before the hearing. The notice shall include the date, time, and place of the hearing and a copy of the petition. The notice shall be served on:

(1) The petitioner(s);

(2) The youth or his/her representative;

(3) The youth's parent(s);

(4) The presenting officer;

(5) Any person the Court deems necessary for proper adjudication; and

(6) Any person the Court deems necessary for the hearing.

7-25.05 GUARDIANSHIP REPORT - PREPARATION

The Indian Child Welfare Worker, or his or her authorized designee in consultation with the Social Services Staff, shall prepare the guardianship report. In preparing the report, the Indian Child Welfare Worker shall conduct a complete home study and shall consult with the youth's parent(s), all health, education and social service personnel who have had prior professional contacts with the youth, and with the petitioner(s) to determine whether appointment of a guardian would be in the best interests of the youth. The Indian Child Welfare Worker may also review the youth's previous court record, if one exists. In addition, the Indian Child Welfare Worker must obtain the recommendation of the Indian Child Welfare Committee as to the disposition and any other relevant issues. The guardianship report shall be in writing the professional opinions of all personnel consulted.

7-25.06 GUARDIANSHIP REPORT - SERVICE

The Indian Child Welfare Worker shall mail the guardianship report to the Court and to all parties to the proceeding at least ten (10) days before the hearing.

7-25.07 ADDITIONAL REPORTS

Any party may file a report which shall include his or her recommendations for consideration by the Court. The party shall provide copies of the report to all other parties prior to the hearing.

7-25.08 GUARDIANSHIP HEARING - PURPOSE

The Court shall conduct the hearing to determine whether appointment of a guardian is in the best interest of the youth and the tribal community.

7-25.09 GUARDIANSHIP HEARING - CONDUCT

The hearing shall be private and closed. The Court shall hear testimony to determine whether the guardianship is in the best interest of the youth and the tribal community. The Court shall consider all guardianship reports submitted for review. All parties shall be given the opportunity to contest the factual contents and conclusions of the guardianship reports.

7-25.10 GROUNDS FOR APPOINTING A GUARDIAN AND BURDEN OF PROOF

The Court may appoint a guardian when the following conditions have been proved by clear and convincing evidence:

(1) There is written parental consent to the guardianship; or

(2) The youth is a youth in need of care as defined under this Code.

In addition to finding one of the above conditions has been proved, the Court must also find all the following conditions have been proved by clear and convincing evidence:

(A) That appointment of a guardian is in the best interest of the youth and the tribal community; and

(B) The youth's best interests would not be served if the youth remains under the care and custody of the parent(s); and

(C) That the petitioner(s) can provide appropriate and adequate parental care for the youth's financial and emotional support.

7-25.11 PLACEMENT PREFERENCE

The order of preference in placing a youth with a guardian is:

(1) A member of the youth's extended family;

(2) A member of or person eligible for enrollment in the Kalispel Tribe of Indians;

(3) A member of another Indian tribe; or

(4) If this order of placement preference cannot be met, for good cause shown, then placement may be made with any person who has knowledge of and a desire to foster the youth's tribal affiliation and special needs.

7-25.12 ENROLLMENT PRIOR TO APPOINTMENT OF GUARDIAN

If a youth is eligible for enrollment in the Kalispel Tribe of Indians, the Indian Child Welfare Worker shall assist the parent(s) in making application for enrollment of the youth to the Kalispel Enrollment Clerk. The parent(s) may also file an objection to enrollment in the Kalispel Tribe of Indians, in writing, with the Court.

7-25.13 ORDER OF APPOINTMENT - POWERS OF GUARDIAN

If the Court orders the appointment of a guardian, the Order shall declare the child to be a ward of the Court. The Order may define or limit the Guardian's power. If the Order does not define or limit the

power of the Guardian, the Guardian has the rights and responsibilities of the parent(s) except:

(1) The guardian shall not move outside a seventy-five (75) mile radius of the Kalispel Tribal Center without court approval upon notice and hearing;

(2) The guardian cannot consent to any adoption of the youth; and

(3) The guardian cannot enroll a youth who is eligible for enrollment in the Kalispel Tribe of Indians, in another tribe.

(4) Guardian shall notify the Court, in writing, of any change of address.

A guardian may petition the Court for authority to do any act if uncertain of his or her authority. The Court may grant such authority if it is in the best interest of the youth, after such notice and hearing as the Court may direct.

7-25.14 APPOINTMENT OF GUARDIAN FOR A YOUTH'S PROPERTY

The Court may appoint a person or financial institution to be the guardian of a youth's property. This may be a different person than the parent(s) or guardian who provides direct care for the youth. The Court has the authority to direct a youth's funds to be placed in trust under such terms as the Court deems just.

7-25.15 VISITATION

The Court may order visitation between the youth and parent(s) or any other person.

7-25.16 COURT REVIEW

Unless ordered by the Court, the guardianship shall not be subject to periodic or continuing supervision. However, any person may petition the Court for a review hearing in the best interest of the youth. The petition shall contain a concise statement setting forth why the review is required and requesting a hearing. The petition shall be served on all interested parties, along with notice of the hearing, by the Court Clerk in accordance with Chapter 3.

PART 4
EMANCIPATION

SECTION 7-29: GENERAL PROVISIONS

7-29.01 PURPOSE

The purpose of this chapter is to provide a process for young people to petition the Tribal Court for the removal of the legal disabilities that accompany the status of being a minor.

7-29.02 WHO MAY PETITION

Any youth may petition the Tribal Court for an order of emancipation provided the following requirements are met:

(1) The youth is a member of the Kalispel Tribe of Indians; or the youth resides or is domiciled withinthe jurisdiction of the Kalispel Tribe of Indians; and

(2) The youth is living separate and apart from his or her parent(s), guardian, or custodian; or the youth has special needs; or there exist special circumstances necessitating emancipation; and

(3) The youth is capable of arranging for his or her own support and the management of his or her own financial affairs.

7-29.03 YOUTH MAY FILE ON OWN BEHALF

A youth may file a petition for emancipation in his or her own name.

7-29.04 CONTENTS OF THE PETITION

The petition for emancipation shall include:

(1) The name, date of birth, address and tribal status of the youth;

(2) The name, date of birth, address and tribal status of each living parent;

(3) The name and address of the youth's custodian or guardian, if any;

(4) The reasons emancipation would be in the best interest of the youth; and

(5) The purposes for which emancipation is sought.

7-29.05 CONSENT

The youth must obtain the consent of each living parent, guardian, or other custodian of the youth who has control of the youth's person or property. If the person whose consent is required is unavailable or his or her whereabouts is unknown, or if a parent, guardian or custodian unreasonably withholds consent, the Tribal Court, acting in the best interests of the youth, may waive the requirement for that particular parent, guardian, or custodian.

7-29.06 GUARDIAN AD LITEM

The Tribal Court may appoint a guardian ad litem to represent the interest of the youth in an

emancipation proceeding.

7-29.07 NOTICE

Notice of the date, time, and place of the emancipation hearing shall be given by the Court Clerk to the parties, to the Indian Child Welfare Worker, to the Presenting Officer, and to those from whom consent is required under Section 7-29.05, at least five (5) days before the hearing.

7-29.08 RECOMMENDATION OF THE INDIAN CHILD WELFARE WORKER

The Indian Child Welfare Worker may file a recommendation with the Court on any petition for emancipation. A copy of the recommendation shall be provided to the youth, his or her parent(s), guardian, or custodian, and the Presenting Officer.

7-29.09 NOTICE OF PRIOR OR PENDING COURT ACTIONS

The Indian Child Welfare Worker shall notify the Court if he or she is aware of any court orders or legal actions, in any jurisdiction, involving the youth and which may be relevant to the emancipation proceedings (such as juvenile criminal proceedings, sentencing orders, parole, or dependency proceedings). No emancipation shall be ordered if it would circumvent a valid criminal sentence ordered by any court of competent jurisdiction.

7-29.10 APPLICABLE STANDARD

The Tribal Court may emancipate a youth if it is in his or her best interest. Emancipation may be ordered for general or limited purposes, and the Order of Emancipation shall specifically state the extent of the emancipation. A copy of the order shall be provided to the youth; his or her parent(s), guardian, or custodian; and to the Indian Child Welfare Worker, to the Presenting Officer, and Tribal Law Enforcement.

7-29.11 RIGHTS OF AN EMANCIPATED YOUTH

Except for limits placed by the Court and specific constitutional and statutory age limits such as voting and use of alcoholic beverages, a youth who has been emancipated has the rights and capacities of an adult, including but not limited to the right to control himself or herself, to be domiciled where he or she desires, to receive and control his or her earnings, to sue and be sued and to enter into contracts.

PART 5

SECTION 7-30: TERMINATION OF PARENTAL RIGHTS

7-30.01 PURPOSE

The Kalispel Tribe has not traditionally provided for the termination for a parent's rights. It is currently the custom of the Tribe to view involuntary termination of a parent's rights as a last resort. While the Tribe recognizes parental rights are entitled to protection, it also recognizes those rights must be balanced against those of the Tribal youth. Where parental rights and the rights of youth conflict, the child should be protected. A child has a right to proper care. Further, the parents have a duty to honor that right. Where it is evident that a youth is not receiving proper care, due to the negligent treatment or abuse of the youth by his or her parent(s), The Tribe may take extreme steps to protect the rights of the youth including involuntary termination of parental rights. This chapter also addresses termination of parental rights by consent of the parent(s) for adoption.

7-30.02 PETITION FOR TERMINATION OF PARENTAL RIGHTS - WHO MAY FILE

Any person at least eighteen (18) years of age may file a consent to allow the adoption of his or her children. Only a representative of the Kalispel Tribe may file a petition for involuntary termination of a parent's rights.

7-30.03 PETITION - CONTENTS

A petition for termination of a parent's rights shall include:

(1) The name, birthdate, residence, and tribal status of the youth who is the subject of the petition;

(2) The name, birthdate, residence, and tribal status, if known, of the youth's parent(s), guardian, or custodian;

(3) If the youth is residing with someone other than a parent, the location and length of time the youth has resided at that location, unless such information would jeopardize the safety of the youth; and

(4) A statement by the petitioner (whether the petitioner is the Tribe or a parent) of the facts and reasons supporting the request.

7-30.04 SETTING THE HEARING

When the Court receives the petition it shall set a hearing date, which shall not be more than forty (40) calendar days after the Court received the petition, unless continued for good cause.

7-30.05 NOTICE OF HEARING

Notice of the hearing shall be served as specified under Chapter 3 by the Court Clerk or other person designated by the Tribe to perform this duty, at least twenty (20) days before the hearing. The notice shall include the name of the court; the date, time, and place of the hearing; and a copy of the petition.

The notice shall be served on:

(1) The petitioner;

(2) The youth or his/her representative or guardian ad litem;

(3) The youth's parent(s);

(4) The Presenting Officer or other designated representative of the Kalispel Tribe of Indians;

(5) The Indian Child Welfare Worker;

(6) Any person the Court deems necessary for the hearing; and

(7) Any person the parties believe necessary for the hearing.

7-30.06 PRE-TERMINATION REPORT - PREPARATION

The Indian Child Welfare Worker, or his or her authorized designee, in consultation with the Social Services Staff shall prepare a pretermination report. In preparing the report, the Indian Child Welfare Worker shall conduct a complete home study and shall consult with the youth's parent(s); all health, education, and social service personnel who have had prior professional contacts with the youth and with the petitioner(s) to determine whether termination of the parent's rights would be in the best interest of the youth. In addition, the Indian Child Welfare Worker must obtain the recommendation of the Indian Child Welfare Committee as to the disposition and any other relevant issues. The report shall be in writing and shall contain all professional opinions of persons consulted, pertaining to the termination of parental rights. The Court may waive the requirement of a pre-termination report in cases where a parent consents, provided that all requirements for a proper consent under this chapter have been met.

7-30.07 PRE-TERMINATION REPORT - SERVICE

The Indian Child Welfare Worker shall mail the termination report to the Court and to all parties to the proceeding at least ten (10) days before the hearing.

7-30.08 ADDITIONAL REPORTS

Any party may file with the Court a report which shall include his or her recommendations regarding the proceeding. The party shall provide copies of the report to all other parties prior to the hearing.

7-30.09 TERMINATION HEARING - CONDUCT

The hearing shall be private and closed. The Court shall hear testimony to determine whether termination of parental rights is in the best interest of the youth and the tribal community. The Court shall consider all termination reports submitted for review. All parties shall be given the opportunity to contest the factual contents and conclusions of the termination reports.

7-30.10 GROUNDS FOR TERMINATION AND BURDEN OF PROOF

The Court may order involuntary termination of a parent's rights only if the Tribe proves by clear and convincing evidence of any of the following:

(1) That the parent has:

(A) Abused the youth physically or sexually

(B) Abandoned the youth,

(C) Chronically neglected the youth, or

(D) Chronically emotionally maltreated the youth;

(E) Been criminally convicted in the death of a sibling of the youth at issue by any of the above; and

(2) That termination of the parent's rights is in the best interest of the youth and of the tribal community.

(3) That the Tribe has offered or helped arrange for appropriate resources to help the parent care appropriately for the youth; and

(4) That it is unlikely that the parent will be able to care appropriately for the youth.

7-30.11 CONSENT

Consent of a parent to terminate his or her rights to a youth is not valid unless:

(1) The parent has received counseling from an appropriate professional who has explained the consequences of terminating his or her rights, has explored all available services to help the parent care for the youth (such as parenting classes and substance abuse treatment), and has explored alternatives to termination of parental rights, such as guardianship;

(2) The parent orally explains his or her understanding of the meaning of termination of parental rights to the Tribal Court and the Court certifies that the terms and consequences of the consent were fully explained and were fully understood by the parent; and

(3) The consent was given no sooner than thirty (30) days after the birth of the youth. This does not mean the youth cannot be placed with the prospective adoptive parents or other caregiver during the 30 day period.

Any consent may be withdrawn prior to the entry of a final decree of adoption and, if no other grounds exist for keeping the youth from the parent, the youth shall be returned to the parent.

7-30.12 ENROLLMENT PRIOR TO TERMINATION

If a youth is eligible for enrollment in the Kalispel Tribe of Indians, the Indian Child Welfare Worker shall assist the parent in making application for enrollment of the youth to the Kalispel Enrollment Clerk. The parent may file an objection to enrollment in the Kalispel Tribe of Indians, in writing, with the Court.

7-30.13 DISPOSITION

If the petition is denied, the Court shall specify the reasons for the denial and shall designate who shall have custody of the youth. If parental rights are not terminated, but sufficient grounds for finding the youth is in need of care have been proved to the Court, the Court may make a disposition consistent with

the youth in need of care or guardianship provisions of this Code.

SECTION 7-31: ADOPTION

7-31.01 PETITION FOR ADOPTION - WHO MAY FILE

Any person at least eighteen (18) years of age may file a petition with the Court to adopt a youth. If the petitioner is married, his or her spouse must also be at least eighteen (18) years of age and must sign the petition, unless the spouse's whereabouts is unknown or unless waived by the Court.

7-31.02 PETITION - CONTENTS

The adoption petition shall include:

(1) The name, birthdate, residence, and tribal status of the youth who is the subject of the petition;

(2) The name, birthdate, place and duration of residence, and tribal status of the petitioner(s);

(3) The name, birthdate, residence, and tribal status of the parent(s);

(4) The relationship, if any, of the petitioner(s) to the youth;

(5) The names and addresses, if known, of all persons whose consent is required and proof of such consent;

(6) A description of all previous court proceedings involving the care or custody of the youth to be adopted and the results of these proceedings along with copies of all court orders including orders terminating parental rights to the youth;

(7) The reasons the youth is available for adoption and the reasons the petitioner(s) desires to adopt the youth; and

(8) Any request the petitioner(s) has for changing the youth's name.

7-31.03 AVAILABILITY FOR ADOPTION

A youth may be adopted only if he or she has no parents by reason of death or by voluntary (by consent) or involuntary termination of the parent-youth relationship. The Court may conduct a hearing as provided under Section 7-30 of this Code, prior to, or together with an adoption hearing.

7-31.04 SETTING THE HEARING

When the Court receives the petition it shall set a hearing date, which shall not be more than forty (40) days after the Court receives the petition.

7-31.05 NOTICE OF HEARING

Notice of the hearing shall be given by the Court Clerk or other person designated by the Tribe to perform this duty as provided under Section 7-13 Service, at least twenty (20) days before the hearing. The notice shall include the date, time, and place of the hearing and a copy of the petition. The notice shall be served on:

(1) The petitioner(s);

(2) The youth or his/her representative or guardian ad litem;

(3) The youth's parent(s) if parental rights have not been terminated;

(4) The presenting officer;

(5) Indian Child Welfare Worker;

(6) Kalispel Indian Child Welfare Advisory Committee;

(7) Any person the Court deems necessary for proper adjudication; and

(8) Any person the parties believe is necessary for the hearing.

7-31.06 ADOPTION REPORT - PREPARATION

The Indian Child Welfare Worker or his or her authorized designee in consultation with the Social Services Staff, shall prepare the adoption report. In preparing the report, the Indian Child Welfare Worker shall conduct a complete home study and shall consult with the youth's parent(s), all health, education, and social service personnel who have had prior professional contacts with the youth and with the petitioner(s) to determine whether adoption would be in the best interests of the youth. The Indian Child Welfare Worker may also review the youth's previous court record, if any. In addition, the Indian Child Welfare Worker must obtain the recommendation of the Indian Child Welfare Committee as to the disposition and any other relevant issues. The adoption report shall be in writing and contain the professional opinions of all personnel consulted including the following:

(1) The physical and mental condition of the youth, petitioner(s) and person's living in the petitioner's home;

(2) The circumstances of the voluntary or involuntary termination of the parent's rights to maintain custody of the youth or of the parent's death;

(3) The home environment, family life, access to health services, and resources of the petitioner(s);

(4) The youth's and petitioner's cultural heritage and tribal status;

(5) The marital status of the petitioner(s);

(6) The names and ages of the petitioner's children and of any other persons residing with the petitioner(s);

(7) Information from health, education, and social service personnel who have had prior professional contacts with the youth and petitioner(s);

(8) A check of the criminal records, if any, of the petitioner(s) shall be requested from state and tribal law enforcement authorities;

(9) Any evidence of alcohol and drug abuse in petitioner's household; and

(10) Any other facts and circumstances relating to whether or not the adoption should be granted.

7-31.07 ADOPTION REPORT - SERVICE

The Indian Child Welfare Worker shall mail the adoption report to the Court and to all parties to the proceeding at least ten (10) days before the hearing.

7-31.08 ADDITIONAL REPORTS

Any party may file a report which shall include his or her recommendation for consideration by the Curt. The party shall provide copies of the report to all other parties prior to the hearing.

7-31.09 ADOPTION HEARING - CONDUCT

The hearing shall be private and closed. The Court shall consider all adoption reports submitted for review. All parties shall be given the opportunity to testify regarding the proposed adoption.

7-31.10 GROUNDS FOR ENTERING DECREE OF ADOPTION

The Court may enter a decree of adoption if it finds that:

(1) Adoption is in the best interest of the youth and the tribal community; and

(2) That the petitioner(s) can provide appropriate and adequate parental care for the youth.

7-31.11 PLACEMENT PREFERENCE IN GENERAL

The Court shall be guided by the following placement preferences in deciding whether an adoption will be granted. The Court may deny the adoption if the petitioner(s) does not fall into one of these categories:

(1) A member of the youth's extended family;

(2) A member of or person eligible for enrollment in the Kalispel Tribe of Indians;

(3) A member of another Indian tribe; or

(4) If this order of placement preference cannot be met, for good cause shown, then placement may be made with any person who has knowledge of and a desire to foster the youth's tribal affiliation and any potential special needs.

7-31.12 PLACEMENT PREFERENCE FOR SIBLINGS

When applying the preferences listed in Section 7-31.11 the Court shall, when possible:

(1) Whenever more than one sibling is to be placed, place siblings together or in close proximity, unlessthe placement would cause serious physical or emotional harm to one or more of the children; and

(2) Place the youth in a manner assuring maximum opportunity for maintenance of a sibling relationship.

7-31.13 ENROLLMENT PRIOR TO ENTRY OF ADOPTION DECREE

If a youth is eligible for enrollment in the Kalispel Tribe of Indians, the Indian Child Welfare Worker shall assist the parent(s) in making application for enrollment of the youth to the Kalispel Enrollment Clerk. Either parent may file an objection to enrollment in the Kalispel Tribe of Indians, in writing, with

the Court.

7-31.14 DENIAL OF ADOPTION PETITION

If the adoption petition is denied, the Court shall specifically state the reasons for the denial and shall designate who shall have custody of the youth.

7-31.15 DECREE OF ADOPTION

If the Court grants the petition for adoption, the Court shall enter Findings of Fact and Conclusions of Law and a separate Decree of Adoption. The Decree shall include:

(1) A statement that the youth is available for adoption and any order the Court may make concerningrecognition of the parental consent terminating parental rights and/or orders terminating parental rights filed in the case;
(2) A statement that the youth is, for all intents and purposes, the youth, legal heir, and lawful issue of the petitioner(s);
(3) The marital status of the petitioner(s);
(4) The full name of the youth upon adoption;
(5) Orders directing the Court Clerk to forward a certified copy of the decree to the appropriate Bureau of Vital Statistics for purposes of obtaining a corrected birth certificate when the adoption becomes permanent in one year; and
(6) a statement that the records of the proceeding shall remain sealed unless otherwise ordered by the Court.

7-31.16 EFFECT OF DECREE OF ADOPTION

A decree of adoption has the following effect: it creates the relationship between the adopted youth and the petitioner(s) and all relatives of the petitioner(s), that would have existed if the youth were a legitimate blood descendant of the petitioner(s). This relationship shall be created for all purposes including inheritance and applicability of statutes, documents, and instruments, whether executed before or after entry of the adoption decree, that do not expressly exclude an adopted person by their terms. The decree does not override any tribal enrollment laws or requirements.

7-31.17 VISITATION

Adoptive parents shall be encouraged to help the youth maintain positive relationships with the biological family. However, the adoptive parent(s) shall have the exclusive right and power to decide the terms, if any, of the visitation by any person(s) with the youth.

7-31.18 ADOPTION RECORDS

All records, reports, proceedings, and orders in adoption cases are confidential and shall not be available for release or inspection except:

(1) The Bureau of Indian Affairs may have access to such information as is necessary to protectinheritance rights or enrollment status of the adopted youth (and his or her descendants);

(2) A copy of the decree of adoption, but not the Findings of Fact and Conclusions of Law, maybe given to the Bureau of Vital Statistics as provided by this chapter; and

(3) An adopted youth may petition the Court, upon reaching eighteen (18) years of age, for release of specifically requested information, limited to: the biological parents' name, address, tribal status and social security number; and the names and relationship to the youth of relatives, for the purpose of medical need or medical history information or to assist in making a relative placement of a youth of the adoptive youth.

PART 6
STATE COURT PROCEEDINGS

SECTION 7-32 PLACEMENT PREFERENCE IN STATE COURT PROCEEDINGS

7-32.01 PLACEMENT PREFERENCE IN STATE COURT PROCEEDINGS

In any state court proceeding involving the adoptive or foster care placement of Kalispel children, placement preference shall be given in the following order, absent good cause to the contrary:

(1) the child’s biological parent or parents;

(2) a member of the child’s extended family;

(3) a member of or descendant of the Kalispel Tribe of Indians; or

(4) a member of another Indian tribe.

If this order of placement preference cannot be met, for good cause shown, then placement may be made with any person who has knowledge of and a desire to foster the youth's tribal affiliation and special needs.

CHAPTER 8 - DOMESTIC RELATIONS

SECTION 8-1: GENERAL PROVISIONS

8-1.01 PURPOSE

The purpose of this Chapter is to grant The Kalispel Tribal Court authority to perform and recognize marriages, hear and pass upon petitions for legal separations, and divorces by any and all persons residing within the external boundaries of the Kalispel Indian Reservation and of any other persons who consent to the Court's jurisdiction.

8-1.02 SEVERABILITY AND REPEALER

If any clause, sentence, paragraph, section or part of this Chapter, shall for any reason be held invalid, the remainder of the Chapter, or the application of the provision to other persons or circumstances is not affected. This Chapter repeals and supersedes any and all prior domestic relations codes.

8-1.03 DEFINITIONS

(1) Court Clerk or Clerk shall mean the clerk of the Kalispel Tribal Court

(2) Judge or Tribal Judge shall mean any judge of the Kalispel Tribal Court.

(3) Marriage shall mean a personal relationship between two (2) persons of the opposite sex arising out of a civil contract to which the consent of the parties is essential.

(4) Marriage Certificate shall mean a document issued by the Court Clerk certifying that the parties are married pursuant to this Chapter.

(5) Marriage License shall mean a document issued by the Court Clerk certifying that the parties are entitled to be married.

(6) Reservation shall mean all lands owned by the Kalispel tribe including but not limited to all fee land and land in held trust status for the Kalispel Indian Tribe or its members by the United States.

(7) Divorce or Dissolution shall mean the dissolving or termination of a marriage.

(8) Tribal Court or Court shall mean the Kalispel Tribal Court.

(9) Tribal Council or Council shall mean the Kalispel Business Committee.

(10) Tribe shall mean the Kalispel Indian Tribe.

SECTION 8-2: MARRIAGE

8-2.01 PERSONS WHO MAY MARRY

No marriage license shall be issued or marriage performed unless the persons to be married are of the opposite sex and at least sixteen (16) years of age; provided that if either is less than eighteen (18) years of age, written consent to marry shall be signed and properly notarized by the parents or legal guardians of the person less than eighteen (18) years of age.

8-2.02 PROHIBITED MARRIAGES

Marriages in the following case 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 fourth cousins; or any familiar relation closer in degree.

A marriage between two persons that is recognized as valid in another jurisdiction is valid in this Court only if the marriage is not prohibited or made unlawful under this section.

8-2.03 WHO MAY PERFORM MARRIAGES

(1) A marriage may be solemnized, after the issuance of a license by the Court Clerk, by any of thefollowing:

(A) a judge of the Kalispel Tribal Court;

(B) a recognized clergyman or person recognized by his religion as having authority to marry;

(C) any other persons appointed by the Tribal Court.

(2) No marriage solemnized or performed before any person professing to have authority to marry shall be invalid for want of such authority, if consummated in the belief of the parties or either of them that they have been lawfully joined in marriage.

8-2.04 MARRIAGE CEREMONY

No marriage ceremony performed under the authority of this Chapter shall be valid unless the parties have first obtained a marriage license from the Court Clerk pursuant to Section 8-2.05 of this Chapter. No particular form of marriage ceremony is required; provided, however, that the persons to be married must declare in the presence of the person performing the ceremony that they take each other as husband and wife, and must thereafter be declared husband and wife. The persons being married shall present the marriage license issued by the Court Clerk to the person performing the ceremony for endorsement, the original of which shall be returned to the Court Clerk within thirty (30) days of the ceremony.

8-2.05 MARRIAGE LICENSE AND CERTIFICATE

Persons wishing to be married must first obtain a marriage license from the Court Clerk. To obtain a license, the persons wishing to be married must attest before the Court Clerk that they are eligible to be married pursuant to Sections 8-2.01and 8-2.02 of this Chapter. Payment of a license fee, the amount of which shall be determined by Tribal Court is also required.

Upon satisfaction of the above requirements the Court Clerk shall issue a marriage license to the applicants. The marriage license shall be valid for ninety (90) days from the date of issue.

The marriage license, properly endorsed by the authorized person performing the marriage shall be returned to the Court Clerk within thirty (30) days of the ceremony. Upon receipt of the fully endorsed

marriage license, the Court Clerk shall issue a marriage certificate to the parties.

The Court Clerk shall keep a public record of all marriage licenses and certificates issued.

8-2.06 EXISTING MARRIAGES

All marriages performed other than as provided for in this Chapter, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Tribal Court.

8-2.07 VOIDABLE MARRIAGES

Marriages between an ancestor and his descendant, between brothers and sisters, of the half as well as the whole blood, between an uncle and his niece or an aunt and her nephew, or between first cousins are void from the beginning, whether or not the degree of relationship is legitimate or illegitimate.

If either party to a marriage be incapable from physical and / or mental causes of entering the marriage state, or if the consent of either be obtained by fraud or force, the marriage is voidable. Every marriage of a stepfather with a stepdaughter, or stepmother with a stepson, is illegal and void.

Marriages between a person who is at the time of the marriage married to another person still living are void; provided, however, that such marriages will be considered valid until ruled otherwise by a court of competent jurisdiction if the party previously married (1) actually believed, in good faith, that the prior marriage had been dissolved as a result of divorce; or (2) actually believed, in good faith, that his or her prior spouse was dead.

When a marriage is contracted in good faith and in the belief that it is a valid marriage, the issue of such marriage born or conceived prior to the voiding or receiving notice of the invalidity of the marriage for any reason shall be the legitimate issue of both parents.

8-2.08 LEGITIMACY OF CHILDREN

When a marriage is dissolved for any reason, children begotten before judgment are legitimate and succeed to the estate of both parents. The Court may at the time of granting the divorce, or at any future time, make necessary orders for the custody and support of said child or children as the circumstances and surroundings of the parents require.

SECTION 8-3: DIVORCE OR DISSOLUTION OF MARRIAGE AND LEGAL SEPARATION

8-3.01 DISSOLUTION OF MARRIAGE

Marriage is dissolved only by judgment of the Kalispel Tribal Court decreeing a divorce of the parties. The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons.

8-3.02 GROUNDS FOR DIVORCE

A divorce shall be granted where the Court finds that (1) irreconcilable differences have caused the irreparable breakdown of the marriage.

8-3.03 PETITION FOR DIVORCE

One (1) or both parties may file a petition with the Court, sworn before a notary public or the Court Clerk. The petition shall state the grounds for divorce and the facts and circumstances substantiating those grounds. The petition must be in writing and signed by the petitioner or the petitioner's counsel or attorney. A divorce decree shall be granted upon default where good cause is shown that the opposing party, after adequate service has been performed, has failed to respond in the required manner.

The Tribal Court may charge a filing fee, which shall be paid at the time the petition for divorce is filed in Tribal Court. Upon a showing satisfactorily to the Court that the petitioner is indigent, the Court shall waive all or so much of the filing fee as may be appropriate in the circumstances.

8-3.04 RIGHT TO DIVORCE

The husband may in all cases obtain a divorce from his wife for the same causes and in the same manner as the wife may obtain a divorce from her husband.

8-3.05 PETITION FOR LEGAL SEPARATION

One (1) or both parties may file a petition with the Court, sworn before a notary public or the Court Clerk. The petition shall state the grounds for legal separation and the facts and circumstances substantiating those grounds. The petition must be in writing and signed by the petitioner or the petitioner's counsel or attorney. A decree of legal separation shall be granted upon default where good cause is shown that the opposing party, after adequate service has been performed, has failed to respond in the required manner.

The Tribal Court may charge a filing fee, which shall be paid at the time the petition for legal separation is filed in Tribal Court. Upon a showing satisfactorily to the Court that the petitioner is indigent, the Court shall waive all or so much of the filing fee as may be appropriate in the circumstances.

8-3.06 SUMMONS

Upon the filing of a petition for divorce or legal separation, the Court Clerk shall cause to be issued to the respondent a summons and petition. The summons shall inform: (1) the respondent that he/she has twenty (20) days in which to respond to the petition; (2) the petitioner will have ten (10) days to reply to the respondent's response (if any); and (3) the parties a hearing on the petition will be set within thirty (30) days after all responses and replies are properly filed. The summons shall also contain a notice that, in case of failure to appear at the hearing on the petition, judgment will be rendered against them according to the demand of the petition.

8-3.07 SERVICE

Service under this chapter shall be consistent with Chapter 3, Section 3-3 of this Code.

8-3.08 RESPONSE

The respondent in a divorce proceeding may file a response to the petition within twenty (20) days of receipt of the petition. Such response may state the background facts and circumstances which show that there are no valid grounds for divorce, or may seek a division of property or custody of children different from any proposed by the petition.

8-3.09 REPLY

The petitioner shall have ten (10) days to reply to the respondent's response (if any).

8-3.10 HEARING

The Court shall hold a hearing on the petition for divorce or legal separation within thirty (30) days after all responses and replies are properly filed. If the parties have stipulated to all matters and issues pending, the Court shall have the discretion to enter a decree without a hearing if the Court is convinced the stipulation is fair and equitable. Where custody of children is at issue, the Court may order a home study by an appropriate social worker or other professional, to be completed and submitted to the Court prior to the hearing. The purpose of the home study shall be to assist the Court in determining the custody issue.

Each spouse may retain counsel at his/her own expense. The hearing shall be closed to the public unless both spouses/parties agree otherwise.

At the hearing, both spouses shall have an opportunity to testify, cross-examine the other spouse and any witnesses, call and question other witnesses, and present documentary evidence.

8-3.11 DISPOSITION OF PROPERTY

In a proceeding for dissolution of marriage or legal separation, 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:

(1) The nature and extent of the community property;

(2) The nature and extent of the separate property;

(3) The nature and extent of any trust or restricted property which is subject to the jurisdiction of the United States;

(4) The duration of the marriage; and

(5) 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 reasonably jeopardized.

8-3.12 CHILD SUPPORT COMPUTATION FACTORS

In a proceeding for dissolution of marriage, legal separation, 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 her/his educational needs;

(5) excessive and abnormal expenditures, destruction, concealment, or fraudulent disposition of property held in common; and

(6) the age and ability of the child to finish high school before age eighteen (18).

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.

8-3.13 CHILD SUPPORT SCHEDULE

Method and payment schedule may be set at the discretion of the Court which upon a showing to the Court, may be modified or amended. Support amounts paid by either party may either be set by the court at the final dissolution decree hearing or at a later time not to exceed six (6) months.

SECTION 8-4: DETERMINATION OF PATERNITY AND SUPPORT

8-4.01 DETERMINATION OF PATERNITY AND SUPPORT

The Kalispel Tribal Court shall have jurisdiction of suits to determine the paternity of a child and to obtain a judgment against the father for the support of the child. Such suits shall be in accordance with the procedures for civil actions of this code. Judgment of the Court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance.

SECTION 8-5: DOMESTIC VIOLENCE PREVENTION ACT

8-5.01 DEFINITIONS

As used in this chapter, the following terms shall have the meanings given them:

(1) "Domestic Violence" includes but is not limited to any of the following acts defined below, when committed by one family or household member against another:

(A) Aiding and Abetting: any person who knowingly aids and abets another person to commit an act or engage in conduct which is defined in this section as domestic violence.

(B) Arson: any person who knowingly causes a fire on his own property or that of another and thereby places the person or the property of another in danger of damage or destruction or causes

damage or destruction to the person or property of another.

(C) Assault: any person who willfully attempts or threatens to inflict bodily harm on another person through force or violence.

(D) Battery: any person who willfully strikes another person or otherwise inflicts bodily harm, or who, by offering violence causes another to harm himself or herself.

(E) Disorderly Conduct: any person who:

(i) uses abusive language and thereby intentionally creates a risk of an assault or battery; or

(ii) intentionally disrupts any lawful assembly or meeting of persons without lawful authority.

(F) Disturbing the Peace: any person who, by means of a loud noise or disruptive act, endangers or disrupts the peace, tranquility, health, or welfare of any person or natural wildlife community.

(G) Endangering the Welfare of a Child: any person who knowingly endangers the welfare of a child by violating a duty of care, protection or support, or by intentionally leaving a child without care or by otherwise neglecting to care for a child in any manner which threatens serious harm to the physical or emotional well-being of a child including the failure to provide adequate food, clothing, shelter, or medical care.

(H) Incest: any person who engages in sexual intercourse or has sexual contact with a person whom he knows to be related, either legitimately or illegitimately, as an ancestor, descendant, brother, sister, first cousin, aunt, uncle, niece, nephew, or second cousin, of either the whole or half blood. As used in this section, "descendant" includes step-children and adopted children. Sexual contact is defined below. See also Indecent Liberties, Rape, Sexual Abuse.

(I) Indecent Liberties: any person who engages in "Sexual Contact", which is defined as any touching of the sexual or other intimate parts of a person done for the purpose of arousing or gratifying sexual desire of either person. See also Incest, Rape, Sexual Abuse.

(J) Intimidation: any person who either implicitly or explicitly threatens another with the intent to coerce the other person to act against his or her will.

(K) Interference with Custody: any person who knowingly takes or entices a minor or incompetent person from the legal custody of a person, agency, or institution or who fails to return a minor or incompetent person to another's legal custody as required by the terms of a valid court order.

(L) Intimidating a Juror: any person who, by use of a threat, attempts to:

(i) influence the testimony of a witness in any official proceeding or

(ii) induce a witness to be absent from the proceeding.

(M) Kidnapping: any person who:

(i) restrains another by use of threat of deadly force; or

(ii) who secrets or holds another in a place he or she is not likely to be found, with intent:

- to hold him or her for ransom, as a shield, or as a hostage; or
- to inflict bodily injury on him or her; or
- to inflict extreme mental distress on him or her to or a third person.

(N) Rape: any person who engages in penetration however slight, under the following circumstances:

(i) Where the other person is under the age of eighteen (18) years of age;

(ii) Where he or she is incapable, through any unsoundness of mind, whether temporary or permanent, of giving legal consent;

(iii) Where he or she resists but his or her resistance is overcome by force or violence;

(iv) Where he or she is prevented from resistance by threats of immediate and great bodily harm, accompanied by apparent power of execution; or by any intoxicating, narcotic, or anesthetic substance administered by or with the privity of the accused;

(v) Where he or she is at the time unconscious of the nature of the act, and this is known to the accused; and

(vi) Where he or she submits under the belief that the person committing the act is his or her spouse, and the belief is induced by artifice, pretense, or concealment practiced by the accused, with intent to induce such belief. See also Incest, Indecent Liberties, Sexual Abuse.

(O) Reckless Endangerment: any person who recklessly engages in conduct which creates substantial risk of death or serious physical injury to another.

(P) Robbery: any person who unlawfully takes personal property:

(i) from the person of another or in his or her presence;

(ii) against his will; and

(iii) by threat of injury to the person or his or her property.

(Q) Sexual Abuse: any person responsible for a youth's health or welfare who causes or who by action or inaction acquiesces in the non-accidental physical or mental injury of a youth, including lewd or indecent acts or proposals, and sexual exploitation. See also Rape, Incest, Indecent Liberties.

(R) Telephone Abuse: any person who makes a telephone call without purpose of legitimate communication and with intent to annoy, alarm, insult, or taunt another person who refuses to surrender the use of a party line when the telephone is needed for an emergency.

(S) Trespass: any person who knowingly enters lands or buildings of another when:

(i) lands or buildings are curtilage or designed to exclude intruders; or

(ii) who refuses to leave immediately on request of the owner, occupant, or caretaker of the

property, or on request of a law enforcement officer.

(T) Unlawful Discharge of Firearm: any person who discharges any firearm or other device which propels a missile capable of causing injury in any manner near any gathering of people.

(U) Unlawful Imprisonment: any person who knowingly restrains another person against his or her will, without lawful authority.

(V) Vandalism : any person who uses, injures, or destroys public or private property of any kind, not his or her own, with malice or without authority.

(2) "Family members or household members" means spouses, former spouses, adults related by blood or marriage, persons who reside together or have resided together in the past, and persons who have a child in common regardless of whether they have ever been married or lived together. Family members or household members includes persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(3) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include:

(A) The length of time the relationship has existed;

(B) The nature of the relationship; and

(C) The frequency of interaction between the parties.

(4) "Victim" means a family or household member who has been subjected to domestic violence.

SECTION 8-5: OFFICIAL RESPONSE

8-5 A.01 DUTIES OF THE COURT IN DOMESTIC VIOLENCE

Because of the serious nature of domestic violence, the Court in domestic violence cases:

(1) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;

(2) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;

(3) Shall not disclose the victim's location to any person, upon a showing that there is a possibility of danger of further violence; and

(4) Shall order a chemical dependency assessment in every case of domestic violence in which alcohol or other drugs were used. Treatment as recommended in the assessment shall be made part of any order.

(5) Provide certified copies of all court orders to the victim.

8-5 A.02 ENFORCEMENT OFFICERS - DUTIES IN DOMESTIC VIOLENCE CASES

(1) The primary duty of law enforcement, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the victim(s) from further immediate harm.

(2) When a law enforcement officer responds to a domestic violence call and he or she has probable cause to believe a crime has been committed, he or she shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider:

(A) the intent to protect victims of domestic violence;

(B) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and

(C) the history of domestic violence between the persons involved.

(3) Booking the defendant into jail shall be a mandatory procedure if the defendant's actions violate an existing order of protection.

(4) If the officer does not make an arrest or issue a criminal citation (because of lack of probable cause), he or she shall advise the victim of the victim's right to make a civil and /or criminal complaint. The parties shall be advised of the importance of preserving evidence.

(5) A law enforcement officer responding to a domestic violence call shall take a complete incidentreport including the officer's disposition of the case.

(6) When a law enforcement officer responds to a domestic violence call, the officer shall advise victims of the availability of a shelter or other services in the community, and give each person immediate notice of the legal rights and remedies available. The notice shall include handing each person a copy of the following statement:

IF YOU ARE A VICTIM OF DOMESTIC VIOLENCE, you can file a criminal complaint in the Kalispel Tribal Court if the abuser is Indian. If the abuser is non-Indian, you can file a criminal complaint in the Pend Oreille County Court. You also have the right to file a petition in the Kalispel Family Court requesting an order for protection from domestic abuse which could include any of the following: (a) An order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available from the Clerk of the Tribal Court and from the Tribal Law Enforcement Office.

(7) The law enforcement officer may arrange or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter.

(8) The enforcement officer shall notify Kalispel Social Services in all cases of domestic violence to facilitate services being offered to the family.

(9) All incident reports shall be forwarded to the appropriate prosecutor whether or not the officer believes that an offense has been committed.

SECTION 8-6: ORDERS OF PROTECTION

8-6.01 PETITION FOR PROTECTION - VICTIMS MAY FILE

(1) Any person who alleges that he or she has been the victim of domestic violence may file a petition for an order of protection. A person may petition for relief on his or her own behalf and on behalf ofany family or household members under the age of eighteen (18) years of age. Family or householdmembers, including adults, may jointly file a single petition. Persons under the age of eighteen (18)years of age, must have the parent(s) or guardian file the petition unless the parent(s) or guardian isthe alleged abuser or unless the youth is emancipated. In the case of an emancipated youth, an adultrelative or friend may file the Petition for Protection on behalf of the minor.

(2) The Kalispel Tribal Court has jurisdiction over proceedings under this chapter.

(3) A person's right to petition for relief under this chapter is not affected by the person leaving the residence or household to avoid abuse.

8-6.02 PETITION - CONTENTS

A petition for protection from domestic violence shall include the name and address where the petitionerwould like to receive notices from the Court; the allegation that domestic violence has taken place; the names and ages of all persons known by the petitioner to be in need of protection; the name, address, and age of the alleged abuser and his or her relationship to each victim; any other litigation concerning the custody or residential placement of the children; the existence of any other restraining, protection orno-contact orders between the parties. An affidavit or declaration under penalty of perjury shall be filed with the petition stating, in the petitioner's own words, the specific facts and circumstances of the alleged domestic violence.

8-6.03 NO BOND REQUIRED

A person filing a petition for an order of protection is not required to post a bond in order to receive relief under this chapter.

8-6.04 EFFECT OF OTHER PROCEEDINGS PENDING

A petition for an order of protection may be filed regardless of whether other court proceedings between the parties have been filed or criminal charges have been filed against the alleged abuser.

8-6.05 DEVELOPMENT OF FORMS AND INSTRUCTIONAL BROCHURES BY THE ADMINISTRATOR FOR THE COURTS - DISTRIBUTION

The administrator for the courts shall develop and prepare, in consultation with interested persons, the forms and instructional brochures.

8-6.06 EXPARTE TEMPORARY ORDER FOR PROTECTION

Where an application under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the court may grant by telephone an ex parte temporary order for protection, pending a full hearing, and grant relief as the court deems proper, including an order:

(1) Restraining any party from committing acts of domestic violence;

(2) Excluding any party from the dwelling shared or from the residence of the other until further order of the court;

(3) Restraining any party from interfering with the other’s custody of the minor children or from removing the children from the jurisdiction of the court; and

(4) Prohibit contact between the parties.

8-6.07 HEARING - SERVICE - TIME

Upon issuance of an ex parte emergency order, or receipt of the petition the court shall order a hearing

which shall be held not later than fourteen days from the date of the order or receipt of the petition. Personal service shall be made upon the respondent not less than five court days prior to the hearing. If timely service cannot be made, the court may set a new hearing date. If personal service cannot be made after reasonable efforts, the Court may allow another form of service such as service by certified mail with return receipt requested, posting, or publication.

8-6.08 ORDER OF PROTECTION - TEMPORARY & PERMANENT

(1) Upon notice and after hearing, the Court may make an order of protection binding on either petitioner or respondent, based on the Court's determination of which party is found to be the victim and which party is found to be the abuser, or both. The order may:

(A) Restrain a party from committing domestic violence;

(B) Restrain a party from having contact, including physical, verbal, written, and telephone contact, with any person(s) specified by the Court.

(C) Exclude any party from the dwelling shared or from the residence of the other, the workplace, school of petitioner or from the day care or school of the child(ren) until further order of the Court;

(D) Award temporary physical and/or legal custody and establish temporary visitation regarding minor children of the parties and restrain any interference with child custody;

(E) Order the abuser and/or any victim to participate in treatment or counseling;

(F) Order a law enforcement officer to accompany a party and assist in executing the order of protection;

(G) Assess costs against the abuser, including filing fees, court costs, and costs of service.

(H) Order distribution and use of the parties' and the minor children's personal possessions, household furnishings, vehicles, and other personal property;

(I) Length of duration of the order, not to exceed one year for permanent orders of protection;

(J) Require respondent to submit to electronic monitoring;

(K) Whether respondent was served personally, by publication or by mail; and

(L) Each protection order shall state in bold the following:

WARNINGS TO THE RESPONDENT: Violation of the provisions of this order with actual notice of its terms is a criminal offense under the Kalispel Law and Order Code and will subject a violator to arrest. Any assault that is a violation of this order and that does not amount to assault under the Kalispel Law and Order Code is a criminal offense. Any conduct in violation of this order that is reckless and creates a substantial risk of death or serious risk of death or serious physical injury to another person is a criminal offense YOU CAN BE ARRESTED EVEN IF THE PERSON OR PERSONS WHO OBTAINED THE ORDER INVITES OR ALLOWS YOU TO VIOLATE THE ORDER'S PROHIBITIONS. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application.

(2) Any relief granted by the order for protection, other than a judgment for costs, shall be for a fixed period not to exceed one year.

8-6.09 EMERGENCY ORDERS OF PROTECTION

(1) Where a petition alleges that irreparable injury could result from domestic violence if an order is not issued immediately, without prior notice to the respondent, the Court may grant an emergency order for protection, pending a full hearing and grant relief as the Court deems proper. Telephone and facsimile (fax) orders are hereby authorized. A telephone order shall be followed with a written order from the judge, either mailed or faxed within three (3) working days from the date of the telephone order. The order may:

(A) Restrain any party from committing acts of domestic violence;

(B) Restrain any party from having contact with any person(s) specified by the Court;

(C) Exclude any party from the dwelling shared or from the residence of the other workplace, school of other or from the day care or school of the child(ren) until further order of the Court;

(D) Restrain any party from interfering with the other's custody of minor children or from removing the child(ren) from the jurisdiction of the Court; and

(E) Order distribution and use of the parties' and the minor children's personal possessions, household furnishings, vehicles, and other personal property.

(F) Must state the following:

EACH ORDER SHALL STATE: WARNINGS TO THE RESPONDENT: Violation of the provisions of this order with actual notice of its terms is a criminal offense under the Kalispel Law and Order Code and will subject a violator to arrest. Any assault that is a violation of this order and that does not amount to assault under the Kalispel Law and Order Code is a criminal offense. Any conduct in violation of this order that is reckless and creates a substantial risk of death or serious risk of death or serious physical injury to another person is a criminal offense YOU CAN BE ARRESTED EVEN IF THE PERSON OR PERSONS WHO OBTAINED THE ORDER INVITE OR ALLOW YOU TO VIOLATE THE ORDER'S PROHIBITIONS. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application.

(2) Irreparable injury under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with bodily injury or has engaged in acts of domestic violence against the petitioner.

(3) The court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day.

(4) An ex parte temporary order for protection shall be effective for a fixed period not to exceed fourteen days, but may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order unless the original order is reissued. The respondent shall be served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

(5) Any emergency order shall contain the date and time of issuance and the expiration date.

8-6.10 SERVICE OF ORDER

Except as otherwise expressly provided in this Code, every pleading, motion, notice and similar document which is required or permitted to be served upon a person shall be given in the following manner:

(1) By personally delivering a copy to the individual's legal counsel or to the individual; or by leaving it at the individual's office with the individual's secretary or other person; or if the individual to be served has no office, leaving it at the individual's dwelling place or primary place of residence with some person of suitable age and discretion who resides at such residence; or

(2) If personal service cannot be made, then by certified mail, return receipt requested, postage prepaid,

and properly addressed to the last known residential address of the individual to be served; or

(3) Any method approved by the Court as reasonable if the above methods are unsuccessful; and

(4) Personal service of documents on behalf of the Tribe may be made by tribal law enforcement.

(5) The Court Clerk shall have a copy of any order issued under this chapter forwarded on or before the next judicial day to law enforcement for service upon the respondent. Service of an order issued under this chapter shall take precedence over the service of other documents unless they are of a similar emergency nature.

(6) If law enforcement cannot complete service upon the respondent within ten (10) days, the petitioner shall be notified. The petitioner shall provide information sufficient to permit notification, if possible.

(7) If an order entered by the Court recites that the respondent appeared in person before the Court, the necessity for further service is waived and proof of service of that order is not necessary.

8-6.11 ASSISTANCE OF LAW ENFORCEMENT IN EXECUTING THE ORDER

When an order is issued under this chapter upon request from the petitioner, the Court may order a law enforcement officer to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in the execution of the order of protection. If the Court orders the respondent to remove his or her belongings from the dwelling, law enforcement may be required to supervise the removal, at a time scheduled by law enforcement. The Court shall specify in its order the individual items which shall be removed. A copy of the Order shall be provided to law enforcement. Law enforcement shall not be required to actually move the respondent's belongings.

8-6.12 VIOLATION OF ORDER - PENALTIES

(1) Any person who violates the restraint provisions of an order of protection, knowing that the order has been issued against him or her is guilty of an offense and shall be sentenced to a fine not to exceed Five Thousand Dollars ($5,000); and jail time, not to exceed one year; and appropriate treatment to prevent further domestic violence, if available. This offense may be charged in additionto any offense committed in violating the order.

(2) The violator shall be required to pay the costs of incarceration and costs of transportation to the jail facility incurred by law enforcement under this Code.

(3) A violation of an order of protection shall also constitute contempt of court and may be dealt with under Chapter 9 of this Code.

(4) Violation of an order of protection by a non-tribal member shall be grounds for exclusion from the jurisdiction of the Kalispel Tribe of Indians and penalties for civil contempt of court as set forth in Section 1-15.

8-6.13 VIOLATING THE ORDER - ARREST

A law enforcement officer shall arrest without a warrant and take into custody, a person who the officer has probable cause to believe has violated an order issued under this chapter that restrains the person or excludes the person from a residence, if the person has knowledge of the Order.

8-6.14 ORDER - MODIFICATION - TRANSMITTAL

Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing order for protection. In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the law enforcement information system.

8-6.15 RENEWAL OF PROTECTION ORDER

The petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal the court shall order a hearing which shall be not later than fourteen days from the date of filing the petition or as soon thereafter as possible. Personal service shall be made on the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication or by mail. If the court permits service by publication or mail, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires. The court may renew the protection order for one year.

If the court declines to renew an order for protection, the court shall state in writing on the order the particular reasons for the court's denial.

8-6.16 PEACE OFFICERS - IMMUNITY

No tribal police officer may be held criminally or civilly liable for making an arrest under this chapter if the officer acts in good faith and without malice.

8-6.17 TITLE TO REAL ESTATE - EFFECT

Nothing in this act may affect the title to real estate.

8-6.18 PROCEEDINGS ADDITIONAL

Any proceeding under this act is in addition to other civil or criminal remedies.

8-6.19 SHORT TITLE

This section 8-6 may be cited as the “Domestic Violence Prevention Act”.

SECTION 9-1: OFFENSES AGAINST THE PERSON

9-1.01 ASSAULT

(1) Any person who knowingly places another person in reasonable fear of imminent bodily harm either through menace or attempt by the use of unlawful force or violence, including the use of a dangerous or deadly weapon, shall be deemed guilty of assault.

(2) At the court's discretion, upon conviction, such offender may be ordered to furnish a peace bond in an amount determined by the Court to be adequate for such purpose of keeping the peace.

9-1.02 ASSAULT AND BATTERY

Any person who willfully makes contact with another person, including an unborn child by injuring the mother, either through striking or otherwise, with intent to cause bodily injury or who through his actions of menace or attempt causes another to harm himself shall be deemed guilty of assault and battery.

9-1.03 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 (18) years, who shall willfully detain, entice or take away that person without the consent of the parent or other lawful custodian shall be deemed guilty of abduction.

9-1.04 RECKLESS ENDANGERMENT

Any person who recklessly engages in conduct that creates a substantial risk of death or serious physical injury to another person shall be deemed guilty of reckless endangerment.

9-1.05 RAPE

Any person who shall by threat or imposition of force or violence, rape or attempt to rape another person or assist another in such rape or attempt to rape shall be deemed guilty of rape. Lack of capacity for the commission of the offense of rape or attempted rape shall not be a defense.

9-1.06 ASSISTING SUICIDE

Any person who shall purposely or recklessly aid another to commit suicide shall be guilty of assisting suicide.

9-1.07 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 tending to expose another person to hatred, contempt or ridicule shall be deemed guilty of criminal libel.

9-1.08 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.

SECTION 9-2: OFFENSES INVOLVING CHILDREN

9-2.01 DESERTION AND NON-SUPPORT OF CHILDREN

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, or children in the lawful custody of such person shall be deemed guilty of desertion and non-support of children.

9-2.02 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 the charges are sustained, shall cause said person to be delivered to the authorities of the requesting court.

9-2.03 CONTRIBUTING TO THE DELINQUENCY OF A CHILD

Any person over the age of seventeen (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 contributing to the delinquency of a child.

9-2.04 FAILURE TO SEND CHILDREN TO SCHOOL

(1) All parents, guardians or persons having legal custody residing within the Kalispel Indian Reservation of any child five (5) years of age and under eighteen (18) years of age shall cause such child to attend the public school full time, when such school may be in session unless:

(A) The child is attending an approved private school for the same time or is enrolled in an extension program,

(B) The child is receiving home-based instruction,

(C) The child is attending an education center,

(D) The school district superintendent of the district in which the child resides shall have excused such child from attendance because the child is physically or mentally unable to attend school, is attending a residential school operated by the department of social and health services, is incarcerated in an adult correctional facility, or has been temporarily excused upon the request of his or her parents for purposes agreed upon by the school authorities and the parent: PROVIDED, that such excused absences shall not be permitted if deemed to cause a serious adverse effect upon the student's educational progress; or

(E) The child is sixteen (16) years of age or older and:

(i) The child is regularly and lawfully employed and either the parent agrees that the child should not be required to attend school or the child is emancipated;

(ii) The child has already met graduation requirements in accordance with state board of education rules and regulations; or

(iii) The child has received a certificate of educational competence under rules and regulations established by the state board of education;

(2) Instruction shall be home-based if it 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 approved private schools and if such activities are:

(A) Provided by a parent who is instructing his or her child only and are supervised by a certificated person. For purposes of this section, "supervised by a certificated person" means: The planning by the certificated person and the parent of objectives consistent with this subsection; a minimum each month of an average of one contact hour per week with the child being supervised by the certificated person; and evaluation of such child's progress by the certificated person. The number of children supervised by the certificated person shall not exceed thirty for the purposes of this subsection; or

(B) Provided by a parent who is instructing his or her child only and who has either earned forty-five college level quarter credit hours or its equivalent in semester hours or has completed a course in home-based instruction at a post secondary institution or a vocational-technical institute; or

(C) Provided by a parent who is deemed qualified to provide home-based instruction by the superintendent of the local school district in which the child resides.

9-2.05 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 child abuse.

9-2.06 CHILD MOLESTATION

Any person who shall entice, persuade or attempt to persuade a child under the age of fourteen (14) years with intent to commit any sex related act shall be deemed guilty of child molestation.

9-2.07 LURING

Any person who orders, lures or attempts to lure a minor or a person with a developmental disability without the consent of the parent or guardian is guilty of the crime of luring.

9-2.08 CARNAL KNOWLEDGE

Any person who shall engage in any sexual acts with any person under the age of fourteen (14) years who is not his or her lawful spouse shall be deemed guilty of carnal knowledge.

9-2.09 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 fourteen (14) years to be on the streets, highways or other public places within the Kalispel Reservation between the hours of 11:00 p.m. and 6:00 a.m. or if they be over the age of fourteen (14) years but under the age of sixteen (16) years between the hours of 12:00 p.m. midnight and 6:00 a.m. or if they be over the age of sixteen (16) years but under the age of eighteen (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 a curfew violation.

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.

9-2.10 TRUANCY

Any child between the ages of five (5) and eighteen (18) who does not attend school as required in Chapter 9-2.04 of this Code shall be guilty of the offense of truancy.

9-2.11 SEXUAL MISCONDUCT

Any person who has or knowingly causes another person under the age of eighteen (18) to engage in any sex related act with another person who is at least fourteen (14) years old but less than eighteen (18) and not married to the perpetrator shall be guilty of an offense of sexual misconduct.

9-2.12 CRIMINAL GANG INTIMIDATION

Any person who threatens another person with bodily injury because the other person refuses to join or has attempted to withdraw from a gang shall be guilty of criminal gang intimidation.

9-2.13 ABANDONED ICE BOXES OR OTHER CONTAINERS ACCESSIBLE TO CHILDREN

Any person who abandons or discards, in any place accessible to children, any 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.

9-2.14 DISTRIBUTION OF ALCOHOL, MARIJUANA, AND DRUGS TO CHILDREN

Any person who shall sell, barter or give any alcoholic beverage, marijuana, drugs or any harmful substance to any minor under the age of twenty-one (21) years shall be guilty of distribution of alcohol, marijuana and drugs to children.

9-2.15 MINOR IN POSSESSION OR CONSUMPTION

Any person under the age of twenty-one (21) who shall possess, consume, or otherwise acquire alcoholic beverages, marijuana, drugs, or any harmful substance shall be guilty of minor in possession or consumption.

SECTION 9-3: OFFENSES AGAINST PROPERTY

9-3.01 THEFT

Any person who shall take personal property of another person with intent to steal shall be deemed guilty of theft.

9-3.02 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.

9-3.03 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.

9-3.04 FORGERY

Any person who shall, with intent to defraud, falsely sign, execute or alter any written instrument shall be deemed guilty of forgery.

9-3.05 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 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 extortion.

9-3.06 RECEIVING STOLEN PROPERTY

Any person who shall receive or conceal or aid by receiving or concealing any property which he knows to be stolen, embezzled or obtained by fraud, false pretenses, theft, robbery or burglary shall be guilty of receiving stolen property.

9-3.07 MALICIOUS DESTRUCTION OF PROPERTY

Any person who shall maliciously disturb, deface, injure or destroy any tangible property not belonging to him shall be deemed guilty of malicious destruction of property.

9-3.08 CRIMINAL TRESPASS TO LAND

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 that such entry is forbidden, or remains upon the land is

guilty of criminal trespass to land. 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.

9-3.09 CRIMINAL TRESPASS - BUILDING

Any person commits the offense of criminal trespass to a building by:

(1) Entering or remaining in any building, structure, dwelling house or premises of another without permission of the owner or the owner's agent;

(2) Refusing to depart from any building, structure or premises of another after being notified in writing or verbally by the owner or the owner's agent to immediately depart;

(3) Entering or remaining on any Kalispel Tribal property including Northern Quest Resort & Casino inAirway Heights, in violation of the terms of a valid Tribal Court Order, a Tribal Gaming Agency Barring Notice or after having been excluded under KLOC Chapter 5; or

(4) Entering or remaining in a vehicle of another, or any part thereof, without permission of the vehicle owner or operator.

9-3.10 FENCE DESTRUCTION

Any person who shall willfully destroy or, in any manner render ineffective, a fence belonging to another person or the Kalispel Tribe shall be guilty of fence destruction.

9-3.11 DESTRUCTION OF SIGNS

Any person who shall maliciously pull down or deface any sign of the Kalispel Tribe, State, Federal Government, or any advertisement authorized by law shall be guilty of destruction of signs.

9-3.12 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 disposing of property of an estate.

9-3.13 UNAUTHORIZED USE OF PROPERTY

Any person who shall use, without proper authorization, any personal property not belonging to him, including automobiles and other motor propelled vehicles, shall be deemed guilty of unauthorized use of property.

SECTION 9-4: OFFENSES INVOLVING ANIMALS

9-4.01 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 animals which are in his custody or who causes or procures the same shall be guilty of cruelty to animals.

9-4.02 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 misbranding of livestock.

9-4.03 ABANDONMENT OF DOMESTICATED ANIMALS

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 Kalispel Reservation or who causes or procures the same shall be deemed guilty of abandonment of domesticated animals.

9-4.04 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 Kalispel Reservation shall be deemed guilty of unattended livestock.

SECTION 9-5: OFFENSES INVOLVING CONDUCT

9-5.01 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 shall be deemed guilty of disorderly conduct.

9-5.02 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 such a condition as to injure or endanger the safety, health, comfort or property of the public in general shall be deemed guilty of maintaining a public nuisance. The Tribal Court, in addition to any sentence authorized by law and in its discretion, may order the Defendant 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 of disobedience of lawful orders of Court, Chapter 9-7.07.

9-5.03 UNLAWFUL ASSEMBLY

Any person who, in company with two or more other persons, having assembled for any purpose, shall disturb the public peace by using force, or violence or any threats thereof against any other person or to property, or, being ordered to disburse by any authorized Tribal official, shall fail or refuse to do so shall

be deemed guilty of unlawful assembly.

9-5.04 FALSE ALARMS

Any person who shall knowingly cause the transmission of a 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 false alarms.

9-5.05 WEAPONS DISCHARGE

Any person who shall willfully discharge any firearm or other 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 weapons discharge.

9-5.06 CONCEALED WEAPONS

Any person who shall go about in public places armed with a deadly weapon concealed upon his person unless he shall have a permit signed by a Judge of the Kalispel Tribal Court, shall be deemed guilty of concealed weapons. The Tribal Court, in addition to any other sentence authorized by law, may confiscate and dispose of the weapons so carried. The term "deadly weapon" as used in this Code shall be defined as one likely to produce death or great bodily injury.

9-5.07 LOADED FIREARM IN VEHICLE

Any person who shall have a loaded firearm, which shall be a firearm with a cartridge in the chamber, magazine, clip or cylinder in a vehicle within the boundaries of the Kalispel Reservation shall be deemed guilty of loaded firearm in vehicle.

A person shall not be guilty of this offense if the individual has a permit to carry a concealed weapon, and the concealed weapon is:

(a) On the permittee's person;

(b) The permittee is within the vehicle at all times that the concealed weapon is there; or

(c) The permittee is away from the vehicle and the concealed weapon is locked within the vehicle and concealed from view from outside the vehicle.

(d) This exemption is not intended to apply to any restrictions on firearms outlined in any other section of the KLOC, including prohibitions on transporting a loaded rifle or shotgun.

9-5.08 PUBLIC ACTIVITIES

The Kalispel Tribe prohibits and restricts the abuse, possession and consumption of alcohol and drugs at all public activities on Tribal property. The Kalispel Tribal Police shall strictly enforce the prohibition of possession and consumption of alcohol and illicit drugs at all public activities on Tribal property.

A violation of this section by individuals who the Tribe has criminal jurisdiction over and if the

individual has been found guilty by the Tribal Court, the individual shall be sentenced to a minimum fine of $200, and if the Tribal Court so decides, sentenced to a minimum period of confinement not to exceed 10 days.

A violation of this section by individuals who the Tribe does not have criminal jurisdiction over and the Tribal Court at a hearing finds the individual in violation, the individual shall be civilly fined a minimum of $200 for each violation.

9-6.01 GAMBLING

Any person who shall violate any law, rule or regulation adopted by the Kalispel Business Council for the control or regulation of gambling or traditional Indian games on the Kalispel Reservation shall be deemed guilty of illegal gambling.

9-6.02 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 activities or who shall procure any person to engage in such activities, or live off the earnings of any person engaged in such activities, shall be deemed guilty of prostitution.

9-6.03 TRANSMISSION OF VENEREAL DISEASE

Any person who shall knowingly infect another person with a venereal disease or who knowingly is afflicted with any communicable disease of this nature and neglects or refuses to seek treatment shall be deemed guilty of transmission of venereal disease. The Court may order and compel the medical examination and treatment of any person afflicted with any such disease.

9-6.04 USE, SALE OR POSSESSION OF DRUGS OR CONTROLLED SUBSTANCES, INCLUDING PARAPHERNALIA

Any person who shall use, sell, deliver, introduce or possess any narcotic drug or other controlled substance as defined in the Controlled Substances Act, 21 U.S.C. § 800 et. Seq., as it presently exists or is later amended, (Uniform Controlled Substance Act), or any drug paraphernalia within the exterior boundaries of the Kalispel Reservation shall be deemed guilty of use, sale, or possession of drugs or controlled substances.

The Court may order any person convicted of the use of drugs or other controlled substance as defined in this section to participate in any available drug abuse program.

9-6.05 INDECENT EXPOSURE

Any person who publicly makes any indecent or obscene exposure of his person or of the person of another, whether with or without his or her consent shall be guilty of indecent exposure.

9-6.06 BIGAMY

Any person who, being married to another, marries any other human, shall be guilty of an offense of bigamy; provided, that no person shall be guilty thereof who believes the prior spouse to be dead or whose original spouse shall have been absent for seven (7) successive years, without being known to be living, or if, the original marriage has been dissolved, pronounced invalid or annulled by the decree of a court of competent jurisdiction.

9-7.01 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 or 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 he is responsible and any person who shall accept, solicit or attempt to solicit money, property, services or other gain or advantage as above defined shall be deemed guilty of bribery.

9-7.02 PERJURY

Any person who shall willfully and deliberately in any judicial proceeding in the Kalispel 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.

9-7.03 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 false arrest.

9-7.04 RESISTING LAWFUL ARREST AND FLIGHT

Any person who shall willfully and knowingly, by force or violence, resist or assist another person to resist a lawful arrest or any person who shall flee after observing the presence of a law enforcement officer when he has reasonable ground to believe that he is about to be arrested shall be deemed guilty of resisting lawful arrest and flight.

9-7.05 REFUSING TO AID OFFICER

Any person who shall neglect or refuse, when called upon by any tribal policeman or other law enforcement officer whose jurisdiction extends to the Kalispel Reservation, to assist the arrest of any person charged with or convicted of any offense or in securing such offender when apprehended, or in conveying such offender to the nearest place of confinement shall be deemed guilty of refusing to aid an officer.

9-7.06 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 escape.

9-7.07 DISOBEDIENCE OF LAWFUL ORDERS OF COURT

Any person who shall willfully disobey any order, subpoena, warrant or command duly issued, made or

given by the Kalispel Tribal Court or any officer thereof, shall be deemed guilty of disobedience of lawful orders of court.

9-7.08 MISAPPROPRIATION OF TRIBAL PROPERTY

Any person who shall embezzle, steal, or knowingly convert to his use or the use of another, or who willfully misapplies, or willfully permits to be misapplied, any of the property, both tangible and intangible, of the Kalispel Tribe and Reservation or any Tribal organization or such property entrusted to the custody or care of any officer, employee or agent of the Tribe or Tribal organization or any person knowing any such property, tangible or intangible, to have been so embezzled, stolen, converted, misapplied or permitted to be misapplied who receives, conceals or retains such property with the intent to convert it to his use or the use of another, shall be deemed guilty of misappropriation of tribal property. The Tribal Court shall order the individual to make restitution of such property so misappropriated.

9-7.09 FAILURE TO REPORT OR CONTROL A FIRE

Any person who shall, with knowledge that a fire is endangering life or property, fail to give a timely fire alarm or fail to take reasonable measures to extinguish or control such fire when such action would not endanger himself when he knowingly has an official, contractual or other legal duty to prevent or combat such fire; or if such individual started the fire, lawfully or unlawfully, or if such fire was started with his assent on property within his custody or control, shall be deemed guilty of failure to report or control a fire.

9-7.10 SETTING FIRE TO WOODED AREAS

Any person who shall willfully set on fire any wooded or grassland area of the Kalispel Reservation shall be deemed guilty of setting fire to wooded areas.

Provided, that this section shall not apply to those persons who have obtained a Tribal burning permit and have demonstrated efforts on their part at maintaining control of said fire.

9-7.11 UNLAWFUL GARBAGE DISPOSAL

Any person who shall dispose of any garbage, litter or waste anywhere within the exterior boundaries of the Kalispel Reservation except in public waste dumping areas so designated by the Kalispel Business Committee or any person who shall leave uncovered animal carcasses or who shall dispose of or dismantle automobiles in said designated public dumping areas shall be deemed guilty of unlawful garbage disposal.

9-7.12 HIGHWAY LITTERING

Any person who shall discard litter of any type from any vehicle whether moving or stationary, which is utilizing the roads and highways within the exterior boundaries of the Kalispel Reservation shall be

deemed guilty of highway littering.

9-7.13 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 Kalispel Reservation shall be deemed guilty of recreation area littering. Provided, that any expense entailed by the Tribe in remedying a condition created by such acts shall be assessed against such individual in addition to the other penalties.

9-7.14 ABUSE OF OFFICE - FALSE ARREST

Any person who shall act or purport to act for the Kalispel Tribe in an official capacity who shall use such official or purported capacity with knowledge that such conduct is illegal and shall subject another person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights or shall deny or impede another in the exercise or enjoyment of any right, privilege, power or immunity, shall be guilty of abuse of office. Upon conviction thereof shall be ordered dismissed from such official or purported capacity in addition to any other penalty allowed by law.

9-7.15 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 Kalispel Tribal Council shall be deemed guilty of unauthorized cutting of tribal timber.

9-7.16 DESTRUCTION OF PUBLIC PROPERTY

Any person who mischievously or maliciously defaces or destroys any public property located within the exterior boundaries of the Kalispel Tribe and of the United States Government shall be guilty of destruction of public property.

9-7.17 PROHIBITED PRACTICES OF TRIBAL OFFICIALS

Any person serving in an official capacity for the Tribe who shall use his position to secure special privileges or exemptions for himself, his spouse, child or parents shall be deemed guilty of prohibited practices of tribal officials.

9-7.18 OBSTRUCTING JUSTICE

Any person who shall willfully hinder the apprehension, prosecution, conviction or punishment of another charged with a crime by harboring, concealing, providing a weapon, providing transportation or other means of escape, by warning of impending discovery, preventing or obstructing by any means anyone from performing an act that might aid in the discovery or apprehension of another charged with a

crime, concealing, altering or destroying any physical evidence that might aid in the discovery or apprehension of another charged with a crime, or who volunteers false information to a law enforcement officer to further such end shall be deemed guilty of obstructing justice.

9-7.19 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 Kalispel Tribe or the United States Government within the limits of the Kalispel reservation shall be deemed guilty of destruction of landmarks or navigational aids.

9-7.20 INTIMIDATION

Any person who shall threaten unlawful harm in any manner whatsoever to any public official or voter with the intent of influencing or curtailing the exercise of discretion by such public official or voter or to influence such public official to violate any public duty to which he has been entrusted shall be deemed guilty of intimidation. Any person who shall threaten or use unlawful force or violence in any manner whatever to a law enforcement official or a judge of the Kalispel Tribal Court with intent of influencing or curtailing the performance of an official duty shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a minimum period of confinement of six months or ordered to pay a minimum fine of $500.00, or both, and costs.

9-7.21 GRAVE DESECRATION

Any person who shall willfully and knowingly desecrate, in any manner whatsoever, any grave or burial ground or deface, alter, or destroy any Indian painting or marks or remove, alter or destroy any Indian artifacts located within the exterior boundaries of the Kalispel Reservation shall be deemed guilty of grave desecration.

9-7.22 ATTEMPTS

Any person committing an act with the intent to commit any offense defined by this chapter, tending 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, one-half of the maximum provided herein for the offense itself.

9-7.23 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 destruction of evidence.

9-7.24 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 ensign of the United States, the State of Washington, or the Kalispel Tribe shall be deemed guilty of desecration of the flag.

9-7.25 PUNISHMENT FOR VIOLATIONS

When an act or omission is made or deemed an offense under this Code or by other ordinances or by resolutions of the Kalispel Business Council, upon conviction thereof, such guilty individual shall be sentenced to a period of confinement not to exceed one year or ordered to pay a fine not to exceed $5,000.00, or both jail sentence and fine, and costs. When the individual has caused the victim to incur costs, such as medical expenses, property damage or destruction, by way of example not limitation the Tribal Court may order financial restitution be paid to the victim.

9-7.26 DISCRETION OF COURT

Any order of confinement handed down by a Judge of the Kalispel Tribal Court may include at the discretion of the Tribal Judge the serving of sentence on week-ends, labor for Tribal purposes during confinement or in substitution thereof, and the confiscation and retention by the court of any equipment or material substance used in wrongful and illegal acts.

9-7.27 JUVENILE OFFENDERS

When an act or omission is made or deemed an offense under this Code or by other ordinances or by resolutions of the Kalispel Business Council is committed by any person under the age of eighteen (18), upon conviction thereof, such guilty juvenile shall be sentenced to a period of confinement not to exceed one (1) year or ordered to pay a fine not to exceed $5,000 or both jail sentence and fine, and costs. When the juvenile has caused the victim to incur costs, such as medical expenses, property damage or destruction, by way of example not limitation the Tribal Court may order financial restitution be paid to the victim.

9-7.28 PUBLIC DRUNKENNESS

It shall be the policy of the Kalispel Reservation in concurrence with the provisions of RCW 70.96A, that alcoholics and intoxicated persons within the jurisdiction of the Kalispel Reservation may not be subjected to criminal prosecution solely because of their consumption of alcoholic beverages and that such individuals, upon detention by a law enforcement officer, shall be placed in protective custody towards the end that such individual be made available for participation in an alcoholic rehabilitation program under the Washington State Department of Social & Health Services in accordance with RCW 70.96A.

9-8.01 KALISPEL ASSIMILATIVE CRIMES ACT

Assimilative Crimes Act – Whoever within or upon any of the places now existing or hereafter reserved or acquired which are subject to the Kalispel Tribal Code, is guilty of any act or omission which, although not made punishable by any enactment of the Kalispel Business Committee, would be punishable if committed or omitted within the jurisdiction of the State of Washington by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment or such punishment which the Tribal Court finds is appropriate subject to the limitations that the punishment is not more than a fine of $5,000.00 and/or jail time for a period greater than one year.

CHAPTER 9A -

SEX OFFENDER REGISTRATION CODE

SECTION 9A-1: TITLE, LEGISLATIVE HISTORY, PURPOSE, CREATION OF REGISTRY, SUPERSESSION, AND SEVERABILITY

9A-1.01 TITLE

This chapter shall be known as the Sex Offender Registration Code.

9A-1.02 LEGISLATIVE HISTORY

The Kalispel Business Committee enacted this statute to implement Title I of the Adam Walsh Act, also known as the Sex Offender Registration and Notification Act (SORNA) (42 U.S.C. §16927). Resolution No. 2007-50 specified that the Tribe elected to participate as a registration jurisdiction in the National Sex Offender Registry system.

9A-1.03 PURPOSE

The intent of this chapter is to implement the federal Sex Offender Registration and Notification Act (SORNA). Implementation is in the best interest of the Tribe, its children, and the community. This chapter shall be interpreted liberally to comply with the terms and conditions of the SORNA as presently written or hereafter amended.

9A-1.04 CREATION OF REGISTRIES

(1) Sex Offender Registry. There is hereby established a sex offender registry, which Tribal Law Enforcement or its designee shall maintain and operate pursuant to the provisions of this chapter, as currently written or hereafter amended.

(2) Public Sex Offender Registry Website. There is hereby established a public sex offender registry website, which Tribal Law Enforcement or its designee shall maintain and operate pursuant to the provisions of this chapter, as currently written or hereafter amended.

9A-1.05 SUPERSESSION

This chapter supersedes other laws or regulations relating to the same subject matter. If any provision of this chapter is in conflict with any other law of the Tribe or any rule promulgated thereunder, this chapter shall govern and control and the other law or rule shall be deemed superseded for the purpose of this chapter. Amendments to this chapter shall have the same effect.

9A-1.06 RETROACTIVITY

This chapter shall apply retroactively to individuals with convictions that require registration under this chapter even though the individual did not have said chapter at the time of conviction.

9A-1.07 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.

9A-1.08 NO RIGHT OF ENTRY

Nothing in this chapter negates the inherent authority of the Kalispel Tribe of Indians to exclude people from the Kalispel Indian Reservation.

SECTION 9A-2: DEFINITIONS AND COVERED OFFENSES

9A-2.01 DEFINITIONS

The definitions below apply to this chapter only.

(1) "Convicted" shall mean for an adult sex offender, that the sex offender has been subject to penal consequences based on the conviction however the conviction may be styled. A juvenile offender is convicted for the purposes of this chapter when prosecuted as an adult for a sex offense, or 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.

(2) "Employee" shall mean and include, but is not limited to, an individual who is self-employed or works for any other entity or business, regardless of compensation. Volunteers, interns, externs, and apprentices are included within the definition of "employee" for registration purposes under this chapter.

(3) "Foreign Convictions" shall mean convictions obtained outside of the United States.

(4) "Immediate" and "immediately" shall mean within three (3) business days.

(5) "Imprisonment" shall mean 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 any local, state, tribal facility, or house arrest for purposes of incarceration as well as in a federal, military, foreign, BIA, private or contract facility.

(6) "Jurisdiction" shall mean 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, including the Kalispel Tribe of Indians.

(7) "Minor" shall mean any individual who has not attained the age of 18 years or an individual who has not attained the age of 21 years and has been determined a Youth In Need of Care (YINOC) as defined in the Chapter 7 of the Law and Order Code of the Kalispel Tribe of Indians and the Kalispel Tribal Court has continued jurisdiction over said individual.

(8) "Reservation" shall mean the Kalispel Indian Reservation as defined in the Law and Order Code of

the Kalispel Tribe of Indians Chapter 1 section 1-2.03 and includes all Tribally owned enterprises and entities for registration purposes.

(9) "Reside", "residing", or "resides" or "residence" or "residency" shall mean, with respect to an individual, the location of the individual's home, or any other place where the individual habitually stays, lives, or sleeps. "Resides" shall also mean and include those who will be visiting, staying, living, or sleeping on the Reservation. For the purposes of this chapter, a person may have more than one place where they reside.

(10) "Sex Offense" shall mean and includes those offenses contained in section 42 U.S.C. §16911(5)and those offenses enumerated in section 9A-2.02 of this chapter, or as any other covered offense under Tribal law. 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.

(11) "Sex Offender" shall mean a person convicted of a sex offense in any local, state, tribal, military orforeign court under the laws of Canada, the United Kingdom, Australia, New Zealand, or under thelaws 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.

(12) "Student" shall mean a person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, an institution of higher education, or who is home schooled.

(13) "Sexual Act" shall mean:

(A) Contact between the penis and the vulva or the penis and the anus, and for purposes of this chapter, contact involving the penis occurs upon penetration, however slight,

(B) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus,

(C) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with any intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, or

(D) The intentional touching, not through the clothing, of the genitalia of another person who is a minor as defined in this chapter with intent to abuse, humiliate, harass, degrade, or arouse, or gratify the sexual desire of any person. This shall not include the lawful touching conducted by law enforcement officials within the course and scope of their official duties.

(14) "Sexual Contact" shall mean the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with intent to abuse, humiliate,

harass, degrade, or arouse, or gratify the sexual desires of another person.

(15) "SORNA" means The Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006 Pub. L. 109-248, (42 U.S.C. §16911 et. seq., as amended).

(16) "Sex Offender Registry" means the registry of sex offenders, and the notification program, maintained by Tribal Law Enforcement or its designee.

(17) "NSOR" means The National Sex Offender Registry, the national database maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16919.

(18) "SMART Office" means The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking, which was established within the United States Department of Justiceunder the general authority of the Attorney General of the United States pursuant to 42 U.S.C.
§16945.

(19) "NSOPW" or "NSOPR" means the Dru Sjodin National Sex Offender Public Website, the public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16920.

(20) "Tier 1 Sex Offender" or a sex offender designated as "Tier 1", is one that has been convicted of a Tier 1 sex offense as defined in section 9A-3.01 and 9A-3.02.

(21) "Tier 2 Sex Offender" or a sex offender designated as "Tier 2", is one that has been either convicted of a Tier 2 sex offense as defined in section 9A-3.03, or who is subject to the recidivist provisions of 9A-3.03(1).

(22) "Tier 3 Sex Offender" or a sex offender designated as "Tier 3", is one that has been either convicted of a Tier 3 sex offense as defined in section 9A-3.04, or who is subject to the recidivist provisions of 9A-3.04(1).

9A-2.02. COVERED OFFENSES:

Offenders who reside or are employees or students within the Reservation 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:

(1) Tribal Offenses: Any offense listed in the Kalispel Tribe's Criminal Code that contains a sexual act.

(2) Federal Offenses: A conviction for any of the following, and any other offense hereafter included in the definition of "Sex Offense" at 42 U.S.C. §16911(5):

(A) 18 U.S.C. §1591 (sex trafficking of children),

(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. §2243 (sexual abuse of a minor or ward),

(F) 18 U.S.C. §2244 (abusive sexual contact),

(G) 18 U.S.C. §2245 (offenses resulting in death in context of a sex crime),

(H) 18 U.S.C. §2251 (sexual exploitation of children),

(I) 18 U.S.C. §2251A (selling or buying of children),

(J) 18 U.S.C. §2252 (material involving the sexual exploitation of a minor),

(K) 18 U.S.C. §2252A (material containing child pornography),

(L) 18 U.S.C. §2252B (misleading domain names on the internet),

(M) 18 U.S.C. §2252C (misleading words or digital images on the internet),

(N) 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the United States),

(O) 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity),

(P) 18 U.S.C. §2422 (coercion and enticement of a minor for illegal sexual activity),

(Q) 18 U.S.C §2423 (transportation of minors),

(R) U.S.C. §2424 (failure to file factual statement about an alien individual),

(S) 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).

(3) Foreign Offenses: Any conviction for a sex offense involving any conduct listed in this section under 9A-2.02 (6). 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.

(4) Military Offenses: Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Pub. L. 105-119 (codified at 10 U.S.C. 951 note).

(5) Juvenile Offenses or Adjudications: Any sex offense, or attempt or conspiracy to commit a sex offense committed by a minor who is 14 years of age or older at the time of the offense.

(6) Jurisdiction Offenses: Any sex offense committed in any jurisdiction that involves:

(A) Any type or degree of genital, oral, or anal penetration,

(B) Any sexual touching of or contact with a person's body, either directly or through the clothing,

(C) Kidnapping of a minor,

(D) False imprisonment of a minor,

(E) Solicitation to engage a minor is sexual conduct understood broadly to include any direction, request, enticement, persuasion or encouragement of a minor to engage in sexual conduct,

(F) Use of a minor in a sexual performance,

(G) Solicitation of a minor to practice prostitution,

(H) Possession, production, or distribution of child pornography,

(I) 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,

(J) Any conduct that by its nature is a sex offense against a minor, and

(K) Any offense similar to those outlined in:

(i) 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion),

(ii) 18 U.S.C. §1801 (video voyeurism of a minor),

(iii) 18 U.S.C. §2241 (aggravated sexual abuse),

(iv) 18 U.S.C. §2242 (sexual abuse),

(v) 18 U.S.C. §2243 (sexual abuse of a minor or ward),

(vi) 18 U.S.C. §2244 (abusive sexual contact),

(vii) 18 U.S.C. §2422(b) (coercing a minor to engage in prostitution), or

(viii) 18 U.S.C. §2423(a) (transporting a minor with intent to engage in criminal sexual activity).

SECTION 9A-3: TIERED OFFENSES

9A-3.01 KALISPEL TRIBAL TIER OFFENSES

Conviction for any offenses under the Kalispel Tribe's Criminal Code that involves a sexual act shall be considered Tier 1 offenses unless otherwise specified in the specific offense.

9A-3.02 TIER 1 OFFENSES

(1) Sex Offenses: A Tier 1 offense includes any sex offense, for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that is not a Tier 2 or Tier 3 offense.

(2) Offenses Involving Minors: A Tier 1 offense also includes any offense for which a person has been convicted by any jurisdiction, local government, or qualifying foreign country pursuant to section 9A-2.02 (3). that involves:

(A) The false imprisonment of a minor,

(B) Video voyeurism of a minor, or

(C) Possession or receipt of child pornography.

(3) Certain Federal Offenses: Conviction for any of the following federal offenses shall be considered a conviction for a Tier 1 offense:

(A) 18 U.S.C. §1801 (video voyeurism of a minor),

(B) 18 U.S.C. §2252 (receipt or possession of material involving the sexual exploitation of a minor),

(C) 18 U.S.C. §2252A (receipt or possession of material containing child pornography),

(D) 18 U.S.C. §2252B (misleading domain names on the internet),

(E) 18 U.S.C. §2252C (misleading words or digital images on the internet),

(F) 18 U.S.C. §2422(a) (coercion to engage in prostitution),

(G) 18 U.S.C. §2423(b) (travel with the intent to engage in illicit conduct),

(H) 18 U.S.C. §2423(c) (engaging in illicit conduct in foreign places)

(I) 18 U.S.C. §2423(d) (Transportation of an adult – ancillary offenses)

(J) 18 U.S.C. §2424 (failure to file factual statement about an alien individual), or

(K) 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).

(4) Certain Military Offenses: Any Military offenses specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Pub. L. No. 105-119, (codified at 10 U.S.C. §951 note), that is similar tothose outlined in 9A-3.02 (1), (2), or (3).

9A-3.03 TIER 2 OFFENSES

(1) Recidivism and Felonies: Unless otherwise covered by section 9A-3.04, any sex offense, which is not the first sex offense for which a person has been convicted of, is considered to be a Tier 2 offense.

(2) Offenses Involving Minors: A Tier 2 offense includes any sex offense against a minor for which a person has been convicted by any jurisdiction, local government, or qualifying foreign country (pursuant to section 9A-2.02(3)), or an attempt or conspiracy to commit such offense, that involves:

(A) The use of minors in prostitution, including solicitations,

(B) Enticing a minor to engage in criminal sexual activity,

(C) A non-forcible sexual act with a minor 16 or 17 years old,

(D) Sexual contact with a minor 13 years of age or older, whether direct or through the clothing, that involves the intimate parts of the body,

(E) The use of a minor in a sexual performance, or

(F) The production for distribution of child pornography.

(3) Certain Federal Offenses: Conviction for any of the following federal offenses shall be considered a conviction for a Tier 2 offense:

(A) 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion),

(B) 18 U.S.C. §2244 (abusive sexual contact, victim 13 years of age or older),

(C) 18 U.S.C. §2251 (sexual exploitation of children),

(D) 18 U.S.C. §2251A (selling or buying of children),

(E) 18 U.S.C. §2252 (production or distribution of material involving the sexual exploitation of a minor),

(F) 18 U.S.C. §2252A (production or distribution of material containing child pornography),

(G) 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the united states),

(H) 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity),

(I) 18 U.S.C. §2422(b) (coercing a minor to engage in prostitution),

(J) 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct),

(K) 18 U.S.C. §2423(d) (Transportation of a minor - ancillary offenses)

(4) Certain Military Offenses: Any military offenses specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Pub. L.105-119, (codified at 10 U.S.C. §951 note), that is similar to thoseoutlined in 9A-3.03 (1), (2), or (3). shall be considered a Tier 2 offense.

9A-3.04 TIER 3 OFFENSES

(1) Recidivism and Felonies: Any sex offense that is punishable by more than one year in jail where the offender has at least one prior conviction for a Tier 2 sex offense or has previously become a Tier 2 sex offender, is a Tier 3 offense.

(2) General Offense: A Tier 3 offense includes any sex offense for which a person has been convicted by any jurisdiction, local government, or qualifying foreign country pursuant to section 9A-2.02(3), or an attempt or conspiracy to commit such an offense, that involves:

(A) Non-parental kidnapping of a minor,

(B) A sexual act with another by force or threat,

(C) 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

(D) 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 clothing.

(3) Certain Federal Offenses: Conviction of any of the following federal offenses shall be considered conviction for a Tier 3 offense:

(A) 18 U.S.C. §2241 (aggravated sexual abuse),

(B) 18 U.S.C. §2242 (sexual abuse),

(C) 18 U.S.C. §2243 (sexual abuse of a minor or ward), or

(D) 18 U.S.C. §2244 (abusive sexual contact) where the victim is 12 years of age or younger.

(4) Certain Military Offenses: Any Military offenses specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Pub. L. 105-119, (codified at 10 U.S.C. §951 note), that is similar to those

outlined in 9A-3.04 (1), (2), or (3) shall be considered a Tier 3 offense.

SECTION 9A-4: FREQUENCY AND DURATION

9A-4.01 FREQUENCY

A sex offender who is or should be registered with the Tribe shall, at a minimum, appear in person at the Tribal Law Enforcement office located in the **Public Safety Building at 3292 LeClerc Road North Cusick, Washington 99119, or at the Public Safety Building located at 100 North Hayford Road Airway Heights, Washington 99001, or at a location as directed by Tribal Law Enforcement of its designee** for purposes of verification and keeping their registration current in accordance with the following time frames:

(1) For Tier 1 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 2 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 apexoffender who is not incarcerated for the registration offense.

(3) For Tier 3 offenders, once every 90 days for the rest of their lives.

9A-4.02 REDUCTION OF REGISTRATION PERIODS

A sex offender may have their period of registration reduced as follows:

(1) A Tier 1 offender may have their period of registration and verification reduced to 10 years if they have maintained a clean record for 10 consecutive years,

(2) A Tier 3 offender may have their period of registration and verification reduced to 25 years if they were adjudicated delinquent of an offense as a juvenile which required Tier 3 registration and they have maintained a clean record for 25 consecutive years.

9A-4.03 CLEAN RECORD

For purposes of section 9A-4.02 a person has a clean record if:

(1) He or she has not been convicted of any criminal offense in any jurisdiction,

(2) He or she has successfully completed, without revocation, any period of supervised release, probation, or parole, and

(3) He or she has successfully completed an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General of the United States (42 U.S.C. §16915(b)(1)).

SECTION 9A-5: REQUIREMENTS FOR IN PERSON APPEARANCES

9A-5.01 REQUIREMENTS FOR IN PERSON APPEARANCES

(1) Photographs. At each verification, the sex offender shall permit Tribal Law Enforcement or its designee to take a photograph of the offender.

(2) Review of Information. At each verification, the sex offender shall review existing information for accuracy.

(3) Notification. If any new information or change in information is obtained at an in person verification, Tribal Law Enforcement or its designee shall immediately notify all other registrationjurisdictions that the Tribal Police has knowledge of, of the information or change in information.

SECTION 9A-6: REQUIRED INFORMATION

9A-6.01 GENERAL REQUIREMENTS

(1) Duties. A sex offender covered by this chapter who is required to register with the Tribe pursuant to section 9A-7, shall provide all of the information detailed in this section 9A-6 to Tribal Law Enforcement or its designee, and Tribal Law Enforcement or its designee 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 policies and procedures.

(2) Digitization. All information obtained under this code shall be, at a minimum, maintained by Tribal Law Enforcement or its designee in a digitized format.

(3) Electronic Database. A sex offender registry shall be maintained in an electronic database by Tribal Law Enforcement or its designee and shall be in a form capable of electronic transmission or otherwise electronically accessible by other jurisdictions.

9A-6.02 CRIMINAL HISTORY

Tribal Law Enforcement or its designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's criminal history:

(1) Dates of all arrests,

(2) Dates of all convictions,

(3) Sex offender's status of parole, probation, or supervised release,

(4) Sex offender's registration status, and

(5) Any outstanding arrest warrants.

9A-6.03 DATE OF BIRTH

Date of birth. Tribal Law Enforcement or its designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's date of birth:

(1) Actual date of birth, and.

(2) Any alternate dates of birth used by offender.

9A-6.04 DNA SAMPLE

(1) DNA. If the sex offender's DNA is not already contained in the Combined DNA Index System (CODIS), the sex offender shall provide Tribal Law Enforcement or its designee a sample of his or her DNA.

(2) CODIS. Any DNA sample obtained from a sex offender shall be submitted to an appropriate lab for analysis and entry of the resulting DNA profile into CODIS. If not already in system, offender shall submit, in a manner determined appropriate by Tribal Law Enforcement or its designee, to DNA testing at the offender's expense.

9A-6.05 DRIVER'S LICENSES, IDENTIFICATION CARDS, PASSPORTS, AND IMMIGRATION DOCUMENTS

(1) Drivers License. Tribal Law Enforcement or its designee shall obtain, and a covered sex offender shall provide, a photocopy of all valid driver's licenses issued by any jurisdiction.

(2) Identification Cards. Tribal Law Enforcement or its designee shall obtain, and the covered sex offender shall provide, a photocopy of any identification card, including the sex offender's tribal enrollment card, issued by any jurisdiction.

(3) Passports. Tribal Law Enforcement or its designee shall obtain, and the covered sex offender shall provide, a photocopy of any passports used by the sex offender.

(4) Immigration Documents. Tribal Law Enforcement or its designee shall obtain, and the covered sex offender shall provide, a photocopy of any immigration documents.

9A-6.06 EMPLOYMENT INFORMATION

Tribal Law Enforcement or its 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, internship, externship, apprenticeship, and unpaid positions.

(1) The name of the sex offender's employer,

(2) The address of the sex offender's employer, and work location if different from the employersaddress, and

(3) Similar information related to any transient or day labor employment.

9A-6.07 FINGER AND PALM PRINTS

Tribal Law Enforcement or its designee shall obtain, and a covered sex offender shall provide, both finger prints and palm prints of the sex offender. Any cost associated with this requirement shall be at the expense of the offender. In the event the offender is indigent the Tribe may choose to implement a

sliding scale or alternate payment arrangement.

9A-6.08 INTERNET IDENTIFIERS

Tribal Law Enforcement or its designee shall obtain, and a covered sex offender shall provide, the following information related to the covered sex offenders internet related activity:

(1) Any and all email addresses,

(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

(4) Any and all designations used by the sex offender for the purpose of routing or self-identification in internet communications or postings.

9A-6.09 NAME

Tribal Law Enforcement or its designee shall obtain, and the covered sex offender shall provide, the following information related to the sex offender's name:

(1) The sex offender's full primary given name – including also maiden names,

(2) The sex offenders nicknames, aliases, and pseudonyms regardless of the context in which it is used, and

(3) Ethnic or Tribal names by which the offender is commonly known.

9A-6.10 PHONE NUMBERS

Tribal Law Enforcement or its designee shall obtain, and the covered sex offender shall provide, the following information related to the sex offenders phone numbers:

(1) Any and all land line telephone numbers,

(2) Any and all cellular telephone numbers (including also any prepaid cellular telephones), and

(3) Any Voice over Internet Protocol (VoIP) information or other designations used by the offender for purposes of routing or self-identification in telephonic communications.

9A-6.11 PICTURE

(1) Photograph. Tribal Law Enforcement or its designee shall obtain, and the covered sex offender shall provide, a current, full faced, photograph of the sex offender.

(2) Update Requirements. Unless the appearance of a sex offender has not changed significantly, a digitized photograph shall be collected:

(A) Every 90 days for Tier 3 sex offenders,

(B) Every 180 days for Tier 2 sex offenders, and

(C) Every year for Tier 1 sex offenders.

9A-6.12 PHYSICAL DESCRIPTION

Tribal Law Enforcement or its 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, including but notlimited to, height, weight, facial hair, hair color, eye color, and

(3) Any identifying marks, such as, but not limited to, scars, moles, birthmarks, or tattoos.

9A-6.13 PROFESSIONAL LICENSING INFORMATION

Tribal Law Enforcement or its designee shall obtain, and the covered sex offender shall provide, all licensing of the sex offender that authorized the sex offender to engage in an occupation or carry out a trade or business.

9A-6.14 ADDRESS

Tribal Law Enforcement or its designee shall obtain, and the covered sex offender shall provide, the following information related to the sex offender's residence:

(1) 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 street or address.

9A-6.15 SCHOOL

Tribal Law Enforcement or its designee shall obtain, and the covered sex offender shall provide, the address and name of each school where the offender is or will be a student.

9A-6.16 SOCIAL SECURITY NUMBER

Tribal Law Enforcement or its designee shall obtain, and the covered sex offender shall provide, the offender's valid social security number and any social security number used in the past by the offender valid or otherwise.

9A-6.17 TEMPORARY LODGING

(1) Lodging Information. Tribal Law Enforcement or its designee shall obtain, and the covered sex offender shall provide, the following information when the sex offender will be absent from his residence for three (3) days or more:

(A) Identifying information of the temporary lodging locations including names, addresses and telephone numbers, and including the names, addresses and telephone numbers of co-travelers, and

(B) The dates the sex offender will be staying at each temporary lodging location.

(2) Travel Outside United States of America:

(A) The covered sex offender must inform Tribal Law Enforcement or its designee of intended traveloutside of the United States at least 21 days in advance of such travel.

(B) Tribal law enforcement or its designee shall immediately provide the international travel information to the U.S. Marshals Service and will transmit or make available that information to national databases, law enforcement and supervision agencies and other jurisdictions where the offender is either registered, or is required to register.

(C) In the event the sex offender will be traveling outside of the United States of America for morethan three (3) days, Tribal Law Enforcement or its designee should consider providing this information to INTERPOL.

9A-6.18 OFFENSE INFORMATION

(1) Tribal Law Enforcement or its designee shall obtain the text of each provision of the law defining any criminal offense(s) for which the sex offender is registered.

(2) Database. The text of each provision of law mentioned in Section 9A-6.18 (1). shall be cross linked to the database containing the text of relevant sex related laws for all jurisdictions.

9A-6.19 VEHICLE INFORMATION

Tribal Law Enforcement or its designee shall obtain, and the 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 9A-7: REGISTRATION

9A-7.01 WHERE REQUIRED

(1) Jurisdiction of Conviction. A sex offender must initially register with Tribal Law Enforcement or its designee if they were convicted of a covered sex offense in this Tribe's Court regardless of the sex offender's actual or intended residency.

(2) Jurisdiction of Incarceration. A sex offender must register with Tribal Law Enforcement or its designee if they are incarcerated while completing any sentence for a covered sex offense, regardless of whether it is the same jurisdiction as the jurisdiction of conviction or residence.

(3) Jurisdiction of Residence. A sex offender must register with Kalispel Tribal Law Enforcement or its designee if the sex offender resides within the Kalispel Indian Reservation.

(4) Jurisdiction of Employment. A sex offender who is an employee within the Reservation or with any

Tribally owned agency, organization, enterprise or entity must register with Tribal Law Enforcement or its designee.

(5) Jurisdiction of School Attendance. A sex offender who is a student at any school within the Reservation must register with Tribal Law Enforcement or its designee.

(6) Sex offenders are required to register with Tribal Law Enforcement or its designee upon entry to thejurisdiction of Kalispel Tribe of Indians.

9A-7.02 INITIAL REGISTRATION

(1) Timing. A sex offender required to register with Tribal Law Enforcement or its designee under this chapter shall do so in the following timeframe:

(A) If convicted by the Kalispel Tribal Court for a covered sex offense and incarcerated, the sexoffender must register before release from incarceration.

(B) If convicted by the Kalispel Tribe, but not incarcerated for the registration offense, prior toleaving the Court facility.

(C) Upon entry to the Reservation or when the offender establishes residency, commences employment, or becomes a student, as defined in this chapter the offender must report to Tribal Law Enforcement as follows: contact Tribal Law Enforcement or designee by calling the Pend Oreille County Sherriff's Office non-emergency number (509-447-3151) for dispatch of the on duty Tribal Law Enforcement Officer. The offender will be directed by Tribal Law Enforcement to appear in person to fulfill their registration requirements at a certain time and location.

(2) Duties of Tribal Law Enforcement or its designee. Tribal Law Enforcement or its designee shall have policies and procedures in place to ensure the following:

(A) That any sex offender incarcerated or convicted by the Kalispel Tribal Court for a covered sexoffense completes their initial registration with the Tribe,

(B) That any sex offender initially registering with the Tribe is informed of their duties under SORNA and this chapter, and that such duties under SORNA and this chapter are explained to them,

(C) 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,

(D) That the sex offender is registered, and

(E) 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.

9A-7.03 RETROACTIVE REGISTRATION

(1) Retroactive Registration. Tribal Law Enforcement or its designee shall have in place policies and procedures to ensure the following categories of sex offenders are subject to the registration and updating requirements of this chapter:

(A) Sex offenders incarcerated or under supervision of the Tribe whether for a covered sex offense orother crime,

(B) Sex offenders already registered or subject to a pre-existing sex offender registration requirementunder the Tribe's laws, and

(C) Sex offenders reentering the justice system due to conviction of any crime.

(D) Tribal Law Enforcement or its designee may require registration of other sex offenders not included in the above three categories.

(2) Timing of Recapture. Tribal Law Enforcement or its designee shall ensure recapture of the sex offenders mentioned in section 9A-7.03 (1) within the following timeframe to be calculated from the date of passage of this chapter:

(A) For Tier 1 sex offenders, within 1 year,

(B) For Tier 2 sex offenders, within 180 days, and

(C) For Tier 3 sex offenders, within 90 days.

9A-7.04 KEEPING REGISTRATION CURRENT

(1) Jurisdiction of Residency. All sex offenders required to register in this jurisdiction shall immediately appear in person at Tribal Law Enforcement or its designee to update any change in their name, residence (including termination of residency), employment, school attendance, vehicle information, temporary lodging, subsequent criminal convictions, internet identifiers (including email addresses, addresses, VoIP numbers, and any other designation used in internet communications), and telephone/cell phone numbers. In the event of a change in temporary lodging, the sex offender and Tribal Law Enforcement or its designee shall immediately notify the jurisdiction in which the sex offender will be temporarily staying.

(2) Jurisdiction of School Attendance. Any sex offender, who is a student in any capacity on the Reservation that changes their school, or otherwise terminates their schooling, shall immediately appear in person at Tribal Law Enforcement to update that information. Tribal Law Enforcement or its designee 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, are immediately notified of the change.

(3) Jurisdiction of Employment. Any sex offender who is employed by the Tribe in any capacity or

otherwise is employed on the Reservation or with any Tribally owned agency, organization, enterprise or entity, that changes their employment, or otherwise terminates their employment, shall immediately appear in person at Tribal Law Enforcement to update that information. Tribal Law Enforcement or its designee 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, are immediately notified of the change.

(4) Duties of Tribal Law Enforcement. With regard to changes in a sex offender's registration information, Tribal Law Enforcement or its designee shall immediately notify:

(A) All jurisdictions where a sex offender intends to reside, work or attend school,

(B) Any jurisdiction where the sex offender is either registered or required to register,

(C) Specifically with respect to information relating to a sex offender's intent to commence residence, school, or employment outside of the United States, any jurisdiction where the sex offender is either registered or required to register, and the U.S. Marshals Service, and

(D) Tribal Law Enforcement or its designee shall also ensure this information is immediately updatedon the National Sex Offender Registry (NSOR) by entry through the Tribe's National Crime Information Center (NCIC) terminal.

9A-7.05 FAILURE TO APPEAR FOR REGISTRATION AND ABSCONDING

(1) Failure to Appear. In the event a sex offender fails to register with the Tribe as required by this chapter, Tribal Law Enforcement or its 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.

(2) Absconded Sex Offenders. If Tribal Law Enforcement or its designee receives information that a sex offender has absconded, Tribal Law Enforcement shall make an effort to determine if the sex offender has actually absconded.

(A) In the event no determination can be made, Tribal Law Enforcement or its designee shallensure that the Tribal Police and any other appropriate law enforcement agency are notified.

(B) 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.

(C) If an absconded sex offender cannot be located then Tribal Law Enforcement shall take thefollowing steps:

(i) Update the registry to reflect the sex offender has absconded or is otherwise not capable of being located,

(ii) Seek a warrant for the sex offender's arrest, and in the case of a non-Indian, the U.S. Marshals Service or FBI shall be contacted in an attempt to obtain a federal warrant for the sex offender's arrest,

(iii) Notify the U.S. Marshals Service regardless of whether the sex offender is Indian or non-Indian,

(iv) Update the NSOR through entry into the Tribe's NCIC terminal to reflect the sex offender's status as an absconder, or is otherwise not capable of being located,

(v) Enter the sex offender into the NCIC Wanted Person File

(3) Failure to Register. In the event a sex offender who is required to register fails to do so or otherwise violates a registration requirement of this chapter, Tribal Law Enforcement or its designee shall take all appropriate follow-up measures including those outlined in 9A-7.05 (2). Tribal Law Enforcement or its designee shall make a reasonable effort to determine if the sex offender has failed to register.

SECTION 9A-8: PUBLIC SEX OFFENDER REGISTRY WEBSITE

9A-8.01 WEBSITE

(1) Website. Tribal Law Enforcement or its designee shall use and maintain a public sex offender registry website.

(2) Links. The registry website shall include links to sex offender safety and education resources.

(3) Instructions. The registry website shall include instructions on how a person can seek correction of information that the individual contents in erroneous.

(4) Warnings. The 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 criminal penalties.

(5) Search capabilities. The registry website shall have the capability of conducting searches by name, county, city, zip code, and geographic radius.

9A-8.02 REQUIRED AND PROHIBITED INFORMATION

(1) Required Information. The following information shall be made available to the public on the sex offender registry website:

(A) Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded,

(B) All sex offenses for which the sex offender has been convicted,

(C) The sex offense(s) for which the offender is currently registered,

(D) The address of the sex offender's employer(s),

(E) The name of the sex offender including all aliases,

(F) A current photograph of the sex offender,

(G) A physical description of the sex offender,

(H) The residential address and, if relevant, a description of a habitual residence of the sex offender,

(I) All addresses of schools currently attended by or enrolled in by the sex offender,

(J) All addresses where the sex offender has been engaging in training as an intern, extern and/or apprentice, and

(K) The sex offender's vehicle license plate number along with a description of the vehicle.

(2) Prohibited Information. The following information shall not be available to the public on the sex offender registry website:

(A) Any arrest that did not result in conviction,

(B) The sex offender's social security number,

(C) Any travel and immigration documents,

(D) The identity of the victim,

(E) Internet identifiers (as defined in 42 U.S.C. §16911), and

(F) Information concerning sex offenders required to register on the basis of juvenile delinquency adjudications are exempt from public website disclosure unless the juvenile is convicted of a sex offense, or attempt or conspiracy to commit a sex offense that is comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in 18 U.S.C. §2241) committed by a minor who is 14 years of age or older at the time of the offense. This includes engaging in a sexual act with another by force or the treat of serous violence; or engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim.

(3) Witness Protection. For sex offenders who are under a witness protection program, Tribal Law Enforcement or designee may honor the request of the United States Marshal 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.

9A-8.03 COMMUNITY NOTIFICATION

(1) Law Enforcement Community Notification. Whenever a sex offender registers or updates their information with Tribal Law Enforcement or its designee, Tribal Law Enforcement or its designee shall:

(A) Monitor and utilize the SORNA Exchange Portal for inter-jurisdictional change of residence,employment, or student status,

(B) Immediately update the National Sex Offender Registry (NSOR) through the Tribe's National

Crime Information Center (NCIC) terminal or other relevant databases,

(C) 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 Bureau of Indian Affairs (BIA), Tribal or FBI, prosecutors, probation, Tribal Court (for Tribal Court convictions), Indian Child Welfare (ICW), the Kalispel Legal Department, and the Chairman of the Kalispel Business Committee.

(D) Immediately notify any agency, department, or programs responsible for family/education services including, but not limited to local schools, social services, daycares within the jurisdiction of the Tribe, and the Tribal Wellness Center,

(E) Immediately notify any agency, department, or programs that may be responsible for housing, employment, or departments/programs responsible for health, safety, and/or welfare issues,

(F) 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,

(G) Immediately notify any and all other registration jurisdictions where the sex offender is registered due to the sex offender's engagement as intern, extern, and/ or apprentice, and

(H) 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).

(2) Community Notification. The Tribal Law Enforcement or designee shall ensure there is an automated community notification process in place that ensures the following:

(A) Upon sex offender's registration or update of information with the Tribe, the public registrywebsite is immediately updated, and

(B) Email notice is available to the general public to 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.

SECTION 9A-9: IMMUNITY AND GOOD FAITH

9A-9.01 IMMUNITY

Nothing under this chapter shall be construed as a waiver of sovereign immunity by Kalispel Tribe of Indians, its departments, agencies, businesses, enterprises, employees, or agents.

9A-9.02 GOOD FAITH

Any person acting under good faith of this chapter shall be immune from any civil liability arising out of such actions.

9A-10.01 CRIMINAL PENALTY

Any violation of a provision of this chapter by a person who is subject to the criminal jurisdiction of the Tribe shall be considered a crime and subject to imprisonment up to the maximum amount allowable under the federal law, a fine up to the maximum amount allowable under federal law, and shall be referred to the Kalispel Business Committee for review and potential exclusion from the Kalispel Reservation. Nothing in this chapter negates the inherent authority of the Kalispel Tribe of Indians to exclude people from the Reservation pursuant to Chapter 5 of the Law and Order Code of the Kalispel Tribe of Indians.

9A-10.02 CIVIL PENALTY

Any violation of a provision of this chapter by a sex offender shall also be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of fines, forfeitures, civil contempt, and exclusion. Nothing in this chapter negates the inherent authority of the Kalispel Tribe of Indians to exclude people from the Reservation pursuant to Chapter 5 of the Law and Order Code of the Kalispel Tribe of Indians.

9A-10.03 REGISTRATION HINDRANCE

A person commits an offense if they:

(1) Knowingly harbor or knowingly attempt to harbor, or knowingly assist another person in harboring or attempting to harbor a sex offender who is in violation of this chapter,

(2) Knowingly assists a sex offender in the 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, noncompliance with the requirements of this chapter, or

(3) Knowingly provide false information to law enforcement regarding a sex offender.

9A-10.04 MISUSE OF REGISTRATION INFORMATION

(1) Any person who willfully misuses public record information relating to a sex offender, or a person residing at, employed at or attending school at an address reported by a sex offender, including information displayed by law enforcement agencies on websites, including but not limited to unlawfully injuring, harassing, or committing a crime against any individual named in the registry, has committed an offense.

(2) Any person who willfully alters public record information relating to a sex offender, or a personresiding at, employed at or attending school at an address reported by a sex offender, including information displayed by law enforcement agencies on websites, has committed an offense.

(3) The sale or exchange of sex offender information for profit is prohibited. Anyone violating this

provision has committed an offense.

9A-10.05 REGISTRATION OFFENSES

(1) Failure to register. Any person required to register under this chapter who fails to register within the timeframes specified herein has committed an offense.

(2) Providing false or misleading registration information. Any person required to register under this chapter who knowingly provides false or misleading information required herein has committed an offense.

(3) Failure to update registration information. Any person required to update their registration information who fails to do so within the required timeframes in violation of this chapter has committed an offense.

(4) Failure to appear for periodic registration. Any person required to appear for periodic in-person verification of their registration information who fails to appear within the timeframes specified herein has committed an offense.

CHAPTER 10 - KALISPEL TOBACCO AND LIQUOR CODE

SECTION 10-1 TITLE AND PURPOSE

10-1.01 TITLE

This chapter shall be known as the Kalispel Tobacco and Liquor Code.

10-1.02 PURPOSE

This Code is enacted to:

(1) Regulate the distribution and sale of tobacco products on the Kalispel Reservation in conformity with the compact between the Kalispel Tribe and the State of Washington.

(2) Regulate the distribution and sale of liquor and beer products on the Kalispel Reservation in conformity with 18 U.S.C. § 1161 and any Tribal-State liquor compact.

(3) Regulate tobacco, liquor and beer products in order to protect and promote the general health, safety and welfare of members of the Kalispel Tribe.

(4) Generate revenue to fund needed Tribal programs and services.

SECTION 10-2 DEFINITIONS

10-2.01 DEFINITIONS

Unless otherwise required by the context, the following words and phrases shall have the designated meanings:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substance including all dilutions and mixtures of this substance.

(2) "Beer" means any malt beverage, flavored malt beverage, or malt liquor as these terms are defined in this chapter.

(3) "Cigarette" shall mean any roll for smoking made wholly or in part of tobacco being flavored, adulterated, or mixed with any other ingredients, where such wrapper is wholly or in the greater part made of paper of any material except where such is wholly or in the greater part made of natural leaf tobacco in its natural state.

(4) "Commercial Sale" shall mean the transfer, exchange or barter, in any or by any means whatsoever for a consideration, by any person, association, partnership, or corporation, of cigarettes, tobacco products and/or liquor and beer products.

(5) "Council" shall mean the Kalispel Tribal Business Committee as constituted by Article III of the Constitution and By-laws of the Kalispel Indian Tribe, Washington.

(6) "Distributor" shall mean a person who buys liquor in any variety from a brewery, distillery,

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vineyard, foreign source outside of the United States, and includes any representatives of such a source such as a brewer or brewer agent.

(7) "Liquor" includes the four 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 semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(8) “Liquor Outlet” shall mean a Tribally licensed retail sales business selling liquor or beer on the Kalispel Indian Reservation.

(9) “Malt Beverage” or “malt liquor” means any beverage such as beer, ale, lager, stout, porter, flavored malt beverages such as wine coolers, or Guinness obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or the pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. Any such beverage containing more than eight percent of alcohol by weight shall be referred to as “strong beer.”

(10) “Member” shall mean any person whose name appears on the official roll of the Kalispel Indian Tribe.

(11) “Operator” shall mean an enrolled member of the Kalispel Tribe, enrolled member of another federally recognized Tribe, a tribal leasee or tribally-licensed business entity licensed by the Kalispel Tribe of Indians to operate a tobacco and/or liquor and beer outlet.

(12) “Reservation” shall mean the Kalispel Indian Reservation as set apart by Executive Order of March 23, 1914, and all other lands, wherever located, owned by the Kalispel Tribe of Indians, including lands held in fee, or any interest in lands held by the Tribe, whether or not such lands or interests are held in trust for the Tribe by the United States, and any lands, wherever located, held in trust by the United States for a member or members of the Kalispel Tribe of Indians unless located on another Federally Recognized Indian Tribe’s Reservation and having already been determined by the Federal Government to be in “reservation” status as to a Tribe other than the Kalispel Tribe of Indians. All waterways, roadways, rights of way, public lands, lakes, and streams located on the above described lands held by the Tribe or its members are considered Reservation lands, subject to applicable federal and Tribal laws and regulations.

(13) "Spirits" shall mean any beverage which contains alcohol obtained by distillation and intended for consumption.

(14) "Tobacco Outlet" shall mean a Tribally licensed retail sales business selling tobacco products on the Kalispel Indian Reservation.

(15) "Tobacco Products" shall mean cigars, cheroots, stogies, granulated, plug cut, crim cut, ready rubbed, and other smoking tobacco, snuff, cavendish, snuff flour, plug and twist tobacco, fine cut and other chewing tobaccos shorts and other kinds and forms of tobacco, prepared in such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for smoking and chewing. Tobacco products shall not include cigarettes.

(16) "Tribe" shall mean the Kalispel Indian Community of the Kalispel Indian Reservation, Washington.

(17) "Wholesale Price" shall mean the established price for which cigarettes, tobacco products and/or liquor and beer products are sold to the Kalispel Indian Tribe or any licensed operator by the manufacturer or distributor, exclusive of any discount or other reduction.

(18) "Wine" shall mean any alcoholic beverage obtained by fermentation of fruits or other agricultural products containing sugar and containing not more than twenty-four percent alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this chapter "wine coolers" shall not be defined as wine but rather as a "malt beverage."

SECTION 10-3 KALISPEL TOBACCO, LIQUOR AND BEER CONTROL COMMISSION

10-3.01 CREATION AND AUTHORITY

The Kalispel Business Committee shall be the Kalispel Tobacco, Liquor and Beer Control Commission. The Commission is empowered to:

(1) Administer this Code by exercising general control, management, and supervision of all tobacco and/or liquor and beer sales, places of sale and sales outlets as well as exercising all powers necessary to accomplish the purposes of this Code;

(2) Adopt and enforce rules and regulations in furtherance of the purposes of this Code and in the performance of its administrative functions.

10-3.02 RECORDS CONFIDENTIAL

All records of the Kalispel Tobacco, Liquor and Beer Commission showing purchase of liquor by any individual or group shall be confidential and shall not be inspected except by members or employees of the Kalispel Tobacco, Liquor and Beer Commission or its authorized representative.

SECTION 10-4 GENERALLY APPLICABLE REGULATIONS

10-4.01 CONFORMITY WITH STATE AND FEDERAL LAWS

Operators of tobacco and/or liquor and beer outlets shall comply with applicable Tribal-State compact requirements and State of Washington liquor standards to the extent required by 18 U.S.C.

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1161.

However, total jurisdiction over the sale of liquor and beer products is reserved to and exercised by the Kalispel Tobacco, Liquor and Beer Commission within the boundaries of the Kalispel Indian Reservation.

10-4.02 SALES TO PERSONS APPARENTLY INTOXICATED

Any person who sells, gives or otherwise provides liquor, wine or beer to a person apparently under the influence of liquor shall be in violation of this Chapter.

10-4.03 IDENTIFICATION FOR SALE REQUIRED – PROOF OF MINIMUM AGE

Where there may be question of a person's right to purchase cigarettes, tobacco products or alcoholic beverages by reason of his or her age, such person shall be required to present any one of the following officially issued cards of identification which shows correct age and bears his or her signature and photograph:

(1) Driver's license of any State or Identification Card issued by any State Department of Motor Vehicles;
(2) United States Active Duty Military Identification;
(3) Passport;
(4) Tribal Identification Card approved by the Washington State Liquor Control Board;
(5) Kalispel Tribal Identification or Enrollment card.

10-4.04 EXPIRED IDENTIFICATION NOT VALID

An officially issued identification card described in Section 10-4.03 must be current to be valid identification. An officially issued identification card that is expired is not valid identification for the purpose of purchasing cigarettes, tobacco products or alcoholic beverages.

10-4.05 SALES TO MINORS PROHIBITED

It shall be unlawful to:

(1) Provide, give, sell or otherwise supply liquor, beer or other alcoholic beverages to any person under twenty-one (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.
(2) Provide, give, sell or otherwise supply cigarettes or tobacco products to any person under eighteen (18) 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.

10-4.06 EMPLOYMENT OF MINORS

No person under the age of twenty-one (21) years shall be employed in any service in connection

with the sale, handling or dispensing of liquor, either on a paid or voluntary basis, except as otherwise provided herein.

(1) Northern Quest Casino employees must be twenty-one (21) years of age to be employed in a position involving the sale or dispensing of liquor. Northern Quest Casino employees under twenty-one (21) years of age shall not sell or dispense liquor. Individuals under twenty-one (21) years of age may be employed as:

(A) servers not working on the gaming floor who handle beer, wine and liquor provided they have successfully completed Mandatory Alcohol Server Training (MAST) and there is direct supervision by an adult twenty-one (21) years of age or older; or

(B) as cashiers, greeters, cooks or custodians, or as a gaming employee as defined in Kalispel Tribal Code § 11-11.02(2), where they are not selling or handling beer, wine or liquor.

(2) Non-gaming facility employees eighteen (18) years or older may sell and handle beer or wine not to be consumed on the premises provided that they have successfully completed Mandatory Alcohol Server Training (MAST) and there is direct supervision by an adult twenty-one (21) years of age or older.

10-4.07 CONSUMPTION OF LIQUOR UPON LICENSED PREMISES PROHIBITED

No Tribal 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. This prohibition shall not apply to lawful sales and consumption of alcohol at the Kalispel Tribe's Northern Quest Casino located on the Reservation lands in Airway Heights, Washington, or upon approval of the Commission of additional licensed liquor outlets on Reservation lands acquired in the future.

10-4.08 CONDUCT ON LICENSED PREMISES

(1) 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.

(2) No Tribal operator or employee shall consume liquor of any kind while working on the licensed premises.

(3) No Tribal operator shall encourage, sanction or knowingly permit any activity that would be in violation of Chapter 9 of the Kalispel Tribe Law and Order Code.

SECTION 10-5 TRIBAL TAXATION OF TOBACCO AND LIQUOR

10-5.01 TRIBAL CIGARETTE TAX

The Kalispel Tribe will levy a tax on the retail sale of each pack of cigarettes, the amount of which is established by the cigarette tax compact between the Kalispel Tribe and the State of Washington.

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10-5.02 TRIBAL TOBACCO PRODUCT TAX

Other tobacco products, excluding cigarettes, shall be taxed at a rate determined to be fair and equitable by the Commission, but the Commission may establish tax rates dependent solely on the given class of merchandise.

10-5.03 EXEMPTION FROM CIGARETTE AND TOBACCO TAX

An operator may, upon approval of the Commission and in a non-discriminatory manner, exempt enrolled members of the Kalispel Tribe and enrolled members of another federally-recognized Indian tribe, band, or Alaskan Native, or a member of the Canadian First Nations, from imposition of the tribe's cigarette and tobacco product taxes, provided, however, the individual present a valid tribal identification card upon purchase of the cigarettes or tobacco products.

10-5.04 TRIBAL ALCOHOL BEVERAGE TAX

All alcoholic beverages, including packaged liquor, wine and beer, and those products dispensed for consumption at a licensed liquor outlet, shall be taxed at a rate determined to be fair and equitable by the Commission, but the Commission may establish tax rates dependent solely on the given class of merchandise.

10-5.05 ADDED TO RETAIL PRICE

The excise taxes levied hereunder shall be added to the retail selling price of cigarettes, tobacco products, and alcoholic beverages sold to the ultimate consumer.

10-5.06 USE AND ALLOCATION OF REVENUE

The excise taxes levied hereunder shall be placed in the General Fund of the Kalispel Tribe. The revenue may be allocated at the discretion of the Tribal Council to Tribal projects and expenses for essential government services.

SECTION 10-6 APPLICATION FOR TOBACCO OUTLET LICENSE OR LIQUOR AND BEER OUTLET LICENSE

10-6.01 ELIGIBILITY FOR APPLICATION

Any enrolled member of the Kalispel Indian Tribe, an enrolled member of another federally recognized Tribe, a tribal leasee or a tribally-licensed business entity may apply to the Commission for a tobacco outlet license and/or a liquor and beer outlet license.

10-6.02 PROCESSING OF APPLICATION

The Tribal secretary-treasurer shall receive and process applications, and be the official representative of the Tribe and Commission in matters relating to tobacco and/or liquor and beer outlets excise tax collections and related matters. The Commission or its authorized representative shall obtain additional information as deemed appropriate. If the Commission or its authorized representative is

satisfied that the applicant is a suitable and reputable person, the Commission or its authorized representative may issue a license for the sale of tobacco products and/or liquor and beer products.

10-6.03 APPLICATION FEE

Each application shall be accompanied by an application charge or fee of fifty dollars ($50.00). An application for both a tobacco outlet license and a liquor and beer outlet license shall be considered to be two applications with an application charge of fifty dollars ($50.00) each.

10-6.04 ISSUANCE OF LICENSE

Upon approval of an application, the Commission shall issue the applicant a tobacco outlet license and/or a liquor and beer outlet license whichever the case may be, for one year which shall entitle the operator to establish and maintain one outlet for the type being permitted on the Kalispel Indian Reservation. This license shall be nontransferable. It shall be renewable annually at the discretion of the Commission by filing a new application form and payment of the application fee as provided in this Section.

10-6.05 DISPLAY OF LICENSE

Any entity issued a license shall frame under glass and display the license on the premises.

10-6.06 REVOCATION OF OPERATOR'S LICENSE

Failure of an operator to abide by the provisions of this chapter and any additional regulations or requirements imposed by the Commission will constitute grounds for revocation of the operator's license as well as enforcement of the penalties provided in Section 10-10.

SECTION 10-7 NON-TRIBAL OWNED OUTLETS

10-7.01 APPLICABILITY

This Section applies to tobacco and liquor outlets that are owned and operated by an individual who is an enrolled member of the Kalispel Indian Tribe, an enrolled member of another federally recognized Tribe, a Tribal leasee or a tribally-licensed business entity. This section shall not apply to gaming facilities or outlets operated by the Kalispel Tribe as business enterprises of the Tribe.

10-7.02 NATURE OF OUTLET

Each tobacco and/or liquor and beer outlet, licensed hereunder, shall be managed by an operator pursuant to a license granted by the Commission, hereunder, and shall conform to the regulations and prohibitions outlined by this Chapter.

10-7.03 RIGHT OF COMMISSION TO SCREEN SUPPLIERS

The operator of any licensed outlet shall keep the Commission informed in writing of the identity of suppliers and wholesalers who supply or are expected to supply tobacco or liquor stocks to the outlet. The Commission may at its discretion and for any reasonable cause limit or prohibit the purchase of

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said stock from a supplier or wholesaler.

10-7.04 FREEDOM OF INFORMATION FROM SUPPLIERS

Operators shall in their purchase of stock and in their business relationships with suppliers cooperate with and assure a free flow of information and data to the Commission from suppliers relating to all sales to and business arrangements between the suppliers and operators. The Commission may, in its discretion, require the receipt by from the suppliers of all invoices, bills of lading, billings or other documentary record of sales to the operator.

10-7.05 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 Kalispel Liquor Commission.

10-7.06 OPERATOR'S RECORDS

The originals or copies of all sales slips, invoices and other memoranda covering all purchases of liquor by operators shall be kept on file in the retail premises of the operator purchasing the same for at least five (5) years after each purchase, and shall be filed separately and kept apart from all other records, and as nearly as possible shall be filed in consecutive order and each month's records kept separate so to render the same readily available for inspection and checking. All canceled checks, bank statements and books of accounting covering or involving the purchase of liquor, and all memoranda, if any, showing payment of money for liquor other than by check, shall be likewise preserved for availability for inspection and checking.

10-7.07 OTHER BUSINESS BY OPERATOR

An operator may conduct another business simultaneously with managing a tobacco or liquor and beer outlet for the Tribe. The other business may be conducted on the same premises, but the operator shall be required to maintain separate books of account for the other business.

10-7.08 AUDIT

All of the books and other business records of the outlet shall be available for inspection and audit by the Commission or its authorized representative for any reasonable time.

10-7.09 TRIBAL LIABILITY AND CREDIT

An operator is forbidden to represent or give the impression to any supplier or other person with whom he or she does business that he 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. The operator shall hold the Kalispel Indian Tribe harmless from all claims and liability of whatever nature. The Commission shall revoke the operator's outlet license if it is not operated in a businesslike

manner or if it does not remain financially solvent or does not pay its operating expenses and bills before they become delinquent.

10-7.10 BOND FOR EXCISE TAX

The excise tax together with reports on forms to be supplied by the Tribe shall be remitted to the Tribal office monthly unless otherwise specified in writing by the Commission. The operator shall furnish a satisfactory bond to the Tribe in an amount to be specified by the Commission guaranteeing his or her payment of excise tax.

10-7.11 INSURANCE

The operator shall maintain at his or her expense adequate insurance covering liability, fire, theft, vandalism and other insurable risks. The Commission or the Business Committee may establish as a condition of any licenses, higher limits and any additional coverage it deems advisable. All insurance policies shall name the Tribe as an insured.

10-7.12 LIABILITY FOR BILLS

The Tribe shall have no legal responsibility for any unpaid bills owed by a non-tribally owned tobacco or liquor and beer outlet to a wholesale supplier or to any other person. The operator shall make arrangements with his or her wholesalers to send copies of all of his or her purchase invoices to the Tribal office.

10-7.13 ASSENT TO TRIBAL COURT JURISDICTION

Operation of a tribally-licensed tobacco or liquor outlet by a business entity creates a consensual relationship between the Tribe and the operator and the operator consents to tribal court jurisdiction.

SECTION 10-8 TRIBAL ENTERPRISES.

10-8.01 APPLICABILITY

This Section applies to Kalispel Tribal business enterprises, including tobacco and liquor outlets and gaming facilities. This Section is not applicable to outlets described in Section 10-7.01.

10-8.02 SUBROGATION OF CHAPTER 17 PROVISIONS

Each tobacco and/or liquor and beer outlet, owned, managed and operated as a Kalispel Tribal Business Enterprise and shall conform to the regulations and prohibitions outlined by this Chapter, to the extent

that they are not in conflict with Chapter 17 of the Kalispel Tribe Law and Order Code. In case of conflict, the provisions of this Chapter shall be subrogated for the applicable provisions in Chapter 17.

10-8.03 OTHER BUSINESS

A tobacco and/or liquor and beer outlet, owned, managed and operated as a Kalispel Tribal Business

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Enterprise may conduct another business simultaneously with the outlet. The other business may be conducted on the same premises, but separate books of account for the other business shall be maintained.

10-8.04 INSURANCE

A tobacco and/or liquor and beer outlet, owned, managed and operated as a Kalispel Tribal Business Enterprise shall be covered by adequate insurance covering liability, fire, theft, vandalism and other insurable risks. The Commission or the Business Committee may establish higher limits and any additional coverage it deems advisable. All insurance policies shall name the Tribe as an insured.

10-8.05 LIABILITY FOR BILLS

The Tribe shall have legal responsibility for any unpaid bills owed by a tobacco or liquor and beer outlet owned, managed and operated as a Kalispel Tribal Business Enterprise to a wholesale supplier or to any other person. This liability is expressly limited by Section 17-8 of the Kalispel Tribe Law and Order Code.

SECTION 10-9 TRIBAL COURT JURISDICTION

10-9.01 JURISDICTION

The Kalispel Tribal Court shall have jurisdiction over all matters described in this Code. This jurisdiction shall extend over Indians and Non-Indians to the full extent allowed by Federal, State and Tribal Law.

SECTION 10-10 VIOLATIONS AND PENALTIES

10-10.01 VIOLATION AND PENALTIES

Any tobacco or liquor outlet operator violating this chapter shall be guilty of an offense and subject to fine in Tribal Court of not less than Fifty Dollars ($50.00) and not exceed a maximum of Two Hundred- Fifty Dollars ($250.00). An operator who violates the provisions of this Code forfeits all of the remaining stock in the outlet. The Tribal Law Enforcement officer shall be empowered to seize forfeited products.

10-10.02 INTEGRATION OF CHAPTER 9

With the exception of Section 10-4.07 which permits purchase and consumption of alcoholic beverages at Northern Quest casino and other tribally licensed liquor outlets, nothing in this chapter shall be

deemed to override the criminal offenses described in Chapter 9 of the Kalispel Tribe Law and Order Code. The criminal offenses described therein shall have full force and effect concurrently with any

violation of this Chapter.

10-10.03 INTEGRATION OF CHAPTER 13

If an action or omission is deemed to violate both this Chapter and Chapter 9, the tribal prosecutor shall prosecute the offense or violation under whichever provision provides for the harsher sentence, either under this Chapter or Chapter 13 of the Kalispel Tribe Law and Order Code.

10-10.04 NON-INDIAN VIOLATORS

Non-Indian individuals found to be in violation of this Chapter, Chapter 9 or an applicable statute under the Revised Code of Washington shall be subject to legal action that is in conformity with current Washington law.

SECTION 10-11: SOVEREIGN IMMUNITY

10-11.01 CONSENT TO SUE TRIBE NOT GRANTED

This Chapter does not grant jurisdiction or authority to bring suit against the Kalispel Indian Tribe. Nothing in this Chapter shall be deemed a waiver of the sovereign immunity from suit of the Tribe or its agents, entities, instrumentalities, or officials, which immunity is hereby held to extend to the Tribe and its officers and employees acting for the Tribe within the scope of their Tribal authority.

SECTION 10-12 SEPARABILITY

10-12.01 SEPARABILITY

If any provision of this chapter, 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.

CHAPTER 11 – FINAL KALISPEL TRIBE GAMING ORDINANCE

SECTION 11-1: PURPOSE OF THIS ORDINANCE

11-1.01 PURPOSE

The purposes of this Ordinance are:

(1) To provide a new and continuous source of revenue to the Tribe for the Tribe's governmental needs;

(2) To ensure the proper regulation and operation or authorize amusement games and gambling;

(3) To allow Tribal members and guests to participate in certain forms of amusement games and gambling;

(4) To provide for the social welfare and protection of Tribal members and all others who reside within or who may pass through the Reservation.

(5) To preempt State law including the licensing, taxing, revenue distributions and enforcement parts of Washington State RCW 9.46 as that law may apply to those activities specifically covered by this Ordinance, and to implement in the place of State law, Tribal regulation and control of the activities covered herein.

SECTION 11-2: PUBLIC POLICY

11-2.01 PUBLIC POLICY

Public policy of the Kalispel Tribe concerning gaming:

(1) The Kalispel Business Committee hereby finds, and declares to be the public policy of the KalispelTribe that:

(A) The gaming industry is vitally important to the economy of the Tribe and general welfare of the Tribal members.

(B) The growth and success of gaming is dependent upon public confidence and trust that licensed gaming is conducted honestly and competitively, and that gaming is free from criminal and corruptive elements.

(C) Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, activities related to the operation of licensed gaming establishments.

(D) All establishments where gaming is conducted and where gambling devices are operated must therefore be licensed, controlled and assisted to protect the public health, safety, morals, good order and general welfare of the Tribal members, to foster the stability and success of gaming.

(2) No applicant for a license has any right to a license or the granting of the approval sought. Any license issued pursuant to the provisions of this Ordinance is a revocable privilege, and no holder acquires any vested right therein or thereunder.

SECTION 11-3:
DEFINITIONS

11-3.01 DEFINITIONS

As used in this Ordinance, the following words or phrases shall each have the designated meaning unless a different meaning is expressly provided, or the context is clearly indicated:

(1) "Adjusted gross receipts" shall be computed according to the following formula: Gross receipts minus total moneys expended for prizes and operators' salaries.

(2) "Bingo equipment' includes all equipment which is actually used, or made or sold for the purpose of use, in bingo games for which consideration is charged persons to play in connection with which prizes are awarded. Unless otherwise specified, the term shall include, but not be limited to, machines or other devices from which balls or other items are withdrawn to determine the letters and numbers or other symbols to be called, those balls or items themselves, bingo cards, and any other device commonly used in the direct operation of the game.

Bingo game sets commonly manufactured and sold as children's games for retail price of twenty-five (25) dollars or less shall be presumed not to be bingo equipment for purposes of this Ordinance unless the set, or portion thereof is actually used in a bingo game defined in subsection (5) below.

(3) "Board" means the Kalispel Tribal Gaming Board, including its designated agents.

(4) "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.

(5) "Class II Gaming" means:

(A) the game of chance commonly known as bingo (whether or not electronic, computer, or other technological aids are used):

(i) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations.

(ii) in which the holder of the card covers such numbers or designations when objects, similarly, numbered or designated, are drawn or electronically determined; and

(iii) 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

(B) Non-banking card games that~~:~~

(i) State law explicitly authorizes, or does not explicitly prohibit, and are played legally anywhere in the state; and

(ii) Players play in conformity with state laws and regulations concerning hours, periods of operation, and limitations on wagers and pot sizes.

(C) The term "class II gaming" does not include:

(i) any banking card games, including baccarat, chemin de fer, or blackjack (21); or

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

(D) Notwithstanding any other provisions 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, as determined by the Chairman of the National Indian Gaming Commission (NIGC).

(6) "Class III Gaming" means all forms of gaming that are not Class I gaming or Class II gaming. Class III gaming includes, but is not limited to,

(A) Any house banking game, including but not limited to

(i) Card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games);

(ii) Casino games such as roulette, craps, and keno;

(B) Any slot machines as defined in 15 U.S.C. Sec. 1171(a)(1) and electronic or electromechanical facsimile of any game of chance.

(C) Any sports betting and parimutuel wagering including but not limited to wagering on horse racing, dog racing or jai alai; or

(D) Lotteries

(7) "Council" means the Kalispel Business Committee of the Kalispel Indian Reservation.

(8) "Game" and "gambling game" mean any banking or percentage game played with cards or any device, for money, property, credit or any representative of value, including bingo, pan, poker, Texas hold-em, twenty-one, and all other forms of gaming as defined in 25 U.S.C. Section 2703 (7) and (8) but shall not include social games in private homes or residences, not open to the general public, and not otherwise subject to regulation under the provisions of this Ordinance.

(9) "Gambling": A person engages in gambling if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome, but shall not include bona fide business transactions valid under the law of contracts, nor include traditional Indian games played by Tribal members and their guests.

(10) "Gross receipts" means the total of all sums received as revenue from the operation of an authorized gambling activity during a given period of time, without allowances, or deduction for pay out of winnings, costs of the transaction, cost of materials or equipment used, labor expense, salaries or any other compensation for services rendered, interest, discount, rent, taxes, or any other allocated or allocable expense or loss during the same period of time.

(11) "Immediate family" means and is limited to, the subject individual's spouse, children, and parents---- adopted or biological.

(12) "Indian Land" means:

a. Any lands located within the exterior boundaries of the Kalispel Indian Reservation; and

b. Any lands title to which is either held in trust by the United States for the benefit of the Kalispel Tribe of Indians, or held by the Kalispel Tribe of Indians subject to restriction by the United States against alienation and over which the Kalispel Tribe of Indians exercises governmental power; and

c. Any lands title which is either held in trust by the United States for the benefit of the individual Indian or held by an individual Indian subject to restriction by the United States against alienation and over which the Kalispel Tribe of Indians exercises governmental power.

(13) "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 bingo callers, counting room supervisor, cashiers, dealers, pit bosses, floor managers, chief of security, supervisors, custodian of gaming supplies or cash, croupier, approver of credit, or custodian of gambling devices including persons with access to cash and accounting records within such devices. If not otherwise included, any other person whose total cash compensation is in excess of $50,000 per year. If not otherwise included, the four most highly compensated persons in the gaming operation.

(14) "Management Contract" means any contract, subcontract, or collateral agreement between the Kalispel Tribe and a contractor or between a contractor or subcontractor, if such contract or agreement provides for management of all or part of a gaming operation.

(15) "Net Revenue" means gross gaming revenue of an Indian gaming operation less amounts paid out as, or paid for, prizes and less total gaming-related operating expenses, excluding management fees.

(16) "Patron" means any person or group of persons who participate as players in games as defined by this Ordinance, or who are physically present on premises wherein or whereon such games are being played, but shall not include current employees of the gaming establishment who are actually providing services at the time of such games are being played.

(17) "Person" means any association, partnership, corporation, firm, co-operative or other forms of business entity, as well as a natural person.

(18) "Premises" means land together with all buildings, improvements, fixtures, and personal property located thereon.

(19) "Primary Management Official" means the person having management responsibility for a management contract, any person who has authority to hire and fire employees, to supervise employees or to establish operational policy for the gaming operation, the chief financial officer or other person who has financial management responsibility.

(20) "Pulltab" means a single folder or banded ticket or card, the face of which is initially covered or otherwise hidden from view to conceal a number, symbol or set of symbols, a few of which numbers or symbols out of every set of pulltabs have been designated in advance and at random as prize winners, when for the opportunity to obtain each such folded or bonded ticket or card, view the numbers or symbols thereon and possibly obtain a prize-winning pulltab a person pays some consideration to an operator.

(21) "Punch board" means a board or similar item containing a number of holes or receptacles of uniform size in which are placed mechanically and at random serially numbered slips of paper or other substance which may be punched or drawn from said hole or receptacle by any person desiring to do so, when, for the opportunity to obtain symbols thereon and possibly obtain a prize-winning slip of paper, a person pays some consideration to an operator.

(22) "Reservation" means the Kalispel Indian Reservation.

(23) "Services" means labor provided by one person to or for another, where such labor is provided in pursuit of the purposes of gambling on the Kalispel Reservation.

(24) "Tribe" and "Tribal" refer to the Kalispel Indian Tribe of the Kalispel Reservation.

(25) "Tribal-State Compact" means a written document, either negotiated and agreed to by the Kalispel Tribe and an official or agency of the State of Washington, or prescribed by the Secretary pursuant to 25 U.S.C. Sec. 2710(7)(B), governing the conduct of Class Ill gaming activities on Indian lands.

SECTION 11-4: AUTHORIZED ACTIVITES

11-4.01 AUTHORIZED ACTIVITIES

The Kalispel Tribe may operate or authorize Class II and Class Ill gaming activities, including bingo, lotteries, punch boards, and all other forms of gaming as defined in 25 U.S.C. Section 2703 (7) and (8), and pulltabs consistent with the provisions of this ordinance.

If the Indian Gaming Regulatory Act is unconstitutional, the Board may license and regulate Class Ill gaming activities without regard to the IGRA and without regard to the laws of the State of Washington. In such situation, agents of the Washington State Gambling Commission are prohibited from entry onto Indian lands subject to the jurisdiction of the Kalispel Tribe of Indians.

11-4.02 LICENSE REQUIRED

It is unlawful for any person, either as owner, lessee or employee, whether for hire or not, either solely or in conjunction with others to knowingly license any gambling game within the exterior boundaries of the Kalispel Reservation unless licensed by the Board. The Board shall issue a separate license to each place, facility, or location on Indian lands where the Tribe elects to allow gaming.

Each gaming facility shall be constructed, maintained, and operated in a manner that adequately protects the environment and the health and safety of the public.

11-4.03 TRADITIONAL INDIAN GAMES

Traditional Indian games played by Tribal members and their guests shall not constitute gaming within the meaning of this Ordinance.

SECTION 11-5: RULES OF CONSTRUCTION

11-5.01 RULES OF CONSTRUCTION

In this title, unless otherwise specifically provided:

(1) The masculine includes the feminine;

(2) The singular includes the plural;

(3) "Includes" or "including" are not limiting; and

(4) "Or" is not exclusive.

SECTION 11-6: ADMINISTRATION

11-6.01 KALISPEL TRIBAL GAMING BOARD ESTABLISHED

The Kalispel Tribal Gaming Board, consisting of the seated members of the Kalispel Tribal Council, is hereby created. The Tribal Gaming Board may delegate their authority to other individuals. This delegation must be approved by the Kalispel Tribal Council through Resolution.

11-6.02 OWNERSHIP - REVENUES TO BENEFIT TRIBE (res. 2008-44)

The Tribe shall have the sole proprietary interest in, and the sole responsibility for the conduct of any gaming operation authorized by this Ordinance. 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. 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.

11-6.03 LICENSING POWERS

(1) The provisions of this Ordinance with respect to Tribal gaming licenses must be administered by the Board or its designated agents for the protection of the public and in the public interest in accordance with the policy of the Kalispel Tribe.

(2) The Board or its designated agents shall be charged with the responsibility to promulgate regulations necessary to administer the provisions of this Ordinance. Their duties shall include but not be limited to the following:

(A) Printing and making available application forms for initial and renewal licenses, as well as any other necessary forms required by this Ordinance;

(B) Supervising the collection of all fees and taxes prescribed in this Ordinance;

(C) Processing all license applications and tax returns;

(D) Issuing licenses;

(E) Determining applicable license fees;

(F) Auditing all returns;

(G) The Board shall investigate the qualifications of each applicant under this Ordinance before any license is issued, and shall continue to observe the conduct of all licensees and other persons having a material involvement directly or indirectly with a licensed gaming operation to ensure that licenses are not issued or held by, nor is there any material involvement directly or indirectly with a licensed gaming operation by unqualified, or unsuitable person or persons whose operations are conducted in an unsuitable manner or in unsuitable or prohibited places or locations.

(H) The Board has full and absolute power and authority to deny any application or limit, condition, restrict, revoke or suspend any license or fine any person licensed for any cause deemed reasonable by the Board. In all decisions, the Board shall act to promote and ensure integrity, security, honesty, and fairness of the operation and administration of all gaming activities.

(I) The Board and their agents may:

(i) Inspect and examine all premises wherein gaming is conducted.

(ii) Inspect all equipment and supplies in, upon or about such premises.

(iii) Summarily seize and remove from such premises and impound any equipment or supplies for the purpose of examination and inspection.

(iv) Demand access to and inspect, examine, photocopy and audit all papers, books and records of licensees, on their premises, and if practicable in the presence of the licensee or his agent, respecting the gross income produced by any gaming business, and require verification of income, and all other matters affecting the enforcement of the policy.

(v) To seize and impound any patron's winnings which the Board may have reasons to believe may

have been won or obtained in violation of this Ordinance pending a civil forfeiture hearing on such seizure.

(J) For the purpose of conducting audits after the cessation of gaming by a licensee, the former licensee shall furnish, upon demand of an agent of the Board, books, papers and records as necessary to conduct the audits. The former licensee shall maintain all books, papers and records necessary for audits, pursuant to 25 CFR 571.7 and generally accepted accounting principles after the date of the surrender or revocation of his/her gaming license.

(K) TGA shall retain, for no less than three (3) years from the date a primary management official or key employee is terminated from employment with the Tribe the following documentation:

(i) Application for licensing;

(ii) Investigative Reports; and

(iii) Eligibility Determinations

11-6.04 ADMINISTRATIVE DUTIES OF THE TRIBAL GAMING BOARD

The Tribal Gaming Board shall perform all duties, exercise all powers, assume and discharge all responsibilities, and carry out and affect all purposes of this Ordinance relating to the regulation of all gaming activity. In all decisions, the Board shall act to promote and ensure integrity, security, honesty, and fairness of the operation and administration of all gaming activity. The Board's duties shall include but not be limited to the following:

(1) Cause to be conducted independent audits of gaming operations annually and shall submit the results of those audits to the National Indian Gaming Commission ("NIGC"), specifically including all gaming-related contracts that result in the purchase of supplies, services or concessions for more than $25,000 in any year (except contracts for professional legal and accounting services);

(2) Assure that all gaming activity is conducted in a manner which adequately protects the environment and the public health and safety;

(3) Proscribe an adequate system which ensures that background investigations are conducted on all primary management officials and key employees of any gaming operation and that oversight of such officials and their management is conducted on an ongoing basis. In conducting a background investigation, the Board or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

(4) The Board shall immediately notify the NIGC of the issuance of such licenses. The Board will review all applications and background investigations to ensure that no person shall be eligible for licensure 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. The Board shall notify the NIGC of the results of such background checks before the issuance of such licenses;

(5) Recommend the hiring of such professional, clerical, technical, and administrative personnel as may be necessary to carry out the provisions of this Ordinance;

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 Ordinance.

11-6.05 MEETINGS OPEN TO PUBLIC

General meetings of the Board shall be open to the general membership of the Kalispel Tribe, all meetings shall be governed by Roberts Rules of Order.

11-6.06 QUORUM - MAJORITY VOTE

A quorum shall consist of three members of the Board. All decisions shall be made by majority vote of the quorum present (or participating by telephone line), unless indicated otherwise in this Ordinance. Proxy or assignments of voting shall be prohibited.

11-6.07 AMENDING REGULATIONS

The Board may summarily adopt, amend or repeal any regulation if the Board determines such action is necessary for the preservation of the public peace, health, safety, morals, and good order or general welfare of the Kalispel Tribe of Indians.

11-6.08 POWERS OF DELEGATION

The Board 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. The Board shall establish its own budget for operations, and acquire such furnishings, equipment, supplies, stationary, 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. Within the limits of the budget, the Board 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 Board may require.

11-6.09 DUTY OF BOARD TO INITIATE PROCEEDINGS, ACTIONS

The Board shall initiate proceedings or actions appropriate to enforce the provisions of this Ordinance, and may request that the Tribal prosecuting attorney prosecute any public offense committed in violation of this Ordinance.

SECTION 11-7: LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

11-7.01 APPLICATION FORMS

(1) The following notice shall be placed on the Tribe's license application form for a key employee or a primary management official before it is filled out by an applicant:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. §§ 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and by the NIGC members and staff who have need for the information in the performance of their official duties. The information may be disclosed by the Tribe or the NIGC to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the NIGC in connection with the issuance, denial, or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe being unable to license you for a primary management official or key employee position.

(A) The disclosure of your Social Security Number ("SSN") is voluntary. However, failure to supply a SSN may result in errors in processing your application.

(2) The following additional notice shall be placed on the application form for a key employee or a primary management official before it is filled out by an applicant:

A false statement on any part of your license application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

11-7.02 FAILURE OF APPLICANT TO DISCLOSE MATERIAL INFORMATION

An applicant for licensing shall make true and full disclosure of all information to the Board as necessary or appropriate in the public interest or as required in order to carry out the policies of the Tribe relating to licensing and control of the gaming industry. 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 required to provide that information. It shall constitute a violation of this Ordinance to fail to disclose, to mislead or to misstate any such material information to the Board, or to any licensee's employer.

11-7.03 BACKGROUND INVESTIGATIONS

The Tribe shall perform a background investigation for each primary management official and key employee in its gaming operation. The investigation must be sufficient to allow the Tribal Gaming Agency to make an eligibility determination under Section 11-7.04 of this Ordinance.

(1) The Board shall obtain from each primary management official and key employee all of the following information:

(A) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

(B) Currently and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers;

(C) The names and current addresses of at least three (3) personal references, including one (1) personal reference who was acquainted with the applicant during each period of residence listed under paragraph 1(B) of this section;

(D) Current business and residential telephone numbers, and all cell phone numbers;

(E) A description of any existing and previous business relationships with other Indian tribes, including any ownership interests in those businesses;

(F) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(G) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(H) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;

(I) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within ten (10) years of the date of the application, the name and address of the court involved and the date and disposition, if any;

(J) For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to paragraph 1(H) or 1(I) of this section, the criminal charge, the name and address of the court involved and the date and disposition, if any;

(K) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

(L) A current photograph;

(M) Any other information the Board deems relevant; and Fingerprints obtained in accordance with procedures adopted by the Board, pursuant to 25 C.F.R. Sec. 522.2(h). The Tribe shall perform a background investigation for each primary management official and key employee of the gaming operation. The Tribe shall request fingerprints from each primary management official and key employee.

(N) The Board shall keep and maintain a file of said applications for licenses under this Ordinance, together with a record of all action taken with respect to such applications.

(2) If the NIGC has received an investigative report concerning an individual who another tribe wishes to employ as a key employee or primary management official and if the second tribe has access to the investigative materials held by the first tribe, the second tribe may update the investigation and update the investigative report under 11- 7.06 below.

11-7.04 ELIGIBILITY DETERMINATION:

The Board, an authorized Tribal official, shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for licensure in a gaming operation. If the Board, in applying the standards adopted in this tribal ordinance, determines that licensure of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a management contractor or a tribal gaming operation shall not employ that person in a key employee or primary management official position. In conducting a background investigation, the Board or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

11-7.05 TEMPORARY EMPLOYMENT LICENSES

TGA 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. In no event shall such temporary license be valid for greater than ninety (90) days, and no such employee shall work without a gaming license.

11-7.06 PROCEDURES FOR FORWARDING APPLICATIONS AND REPORTS FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS TO THE NATIONAL INDIAN GAMING COMMISSION

(1) Before issuing a license to a primary management official or key employee, TGA shall prepare a notice of results of the applicant's background investigation to submit to the NIGC.

(A) The notice of results shall include the following information:

i. The applicant's name, date of birth, and social security number; and

ii. The date on which the applicant began, or will begin, working as a primary management official or key employee.

(B) A summary of the information presented in the investigative report, including:

i. licenses that have previously been denied;

ii. gaming licenses that have been revoked, even if subsequently reinstated;

iii. every known criminal charge brought against the applicant within the last ten (10) years of the date of the application; and

iv. every felony offense of which the applicant has been convicted or any ongoing prosecution;

(D) A copy of the eligibility determination made in accordance with Section 11-7.04.

(2) The notice of results must be submitted to the NIGC no later than sixty (60) days after the applicant begins working for the Tribe.

11-7.07 REPORT TO THE NATIONAL INDIAN GAMING COMMISSION

(1) Before issuing a license to a primary management official or key employee, pursuant to the procedures set out in Section 11-7.06 of this section, the Board shall create and maintain an investigative report for each background investigation of a primary management official or key employee. An investigative report shall include all of the following:

(A) Steps taken in conducting a background investigation;

(B) Results obtained;

(C) Conclusions reached; and

(D) The basis for those conclusions.

(2) The Board shall submit, with the report, a copy of the eligibility determination made under Section 11-7.04 of this section.

(3) If a license is not issued to an applicant, the Board:

(A) Shall notify the NIGC; and

(B) Shall forward copies of its eligibility determination and Notice of Results to the NIGC for inclusion in the Indian Gaming Individuals Records System.

11-7.08 GRANTING A GAMING LICENSE

(1) All primary management officials and key employees of the gaming operation must have a gaming license issued by the Tribe.

(2) The Board is responsible for granting and issuing gaming licenses to primary management officials and key employees.

(3) TGA may license a primary management official or key employee applicant after submitting a notice of results of the applicant's background investigation to the NIGC, as required by Section 11-7.06.

(4) TGA shall notify the NIGC of the issuance of a license to a primary management official or key employee within thirty (30) days of issuance.

(5) TGA shall not employ an individual in a primary management official or key employee position who does not have a license after ninety (90) days of beginning work at the gaming operation.

(6) TGA must reconsider a license application for a primary management official or key employee if it receives a statement of itemized objections to issuing such a license from the NIGC, and those objections are received within thirty (30) days of the NIGC receiving a notice of results of the applicant's background.

(7) TGA shall take the NIGC's objections into account when reconsidering a license application.

(8) The Tribe will make the final decision whether to issue a license to an applicant for a primary management official or key employee position.

(9) If TGA has issued a license to a primary management official or key employee before receiving the NIGC's statement of objections, notice and a hearing as specified in 11-7.09, shall be provided to the licensee.

11-7.09 LICENSE SUSPENSION

(1) If, after a license is issued to a primary management official or a key employee, the Tribe receives notice from the NIGC that the primary management official or key employee is not eligible for employment, TGA shall do the following:

(A) Immediately suspend the license;

(B) Provide the licensee with written notice of the suspension and proposed revocation; and

(C) Provide the licensee with notice of a time and place for a hearing on the proposed revocation of the license.

(2) The right to a revocation hearing vests only when a license is granted under an ordinance approved by the NIGC Chair.

(3) Following a revocation hearing, the Tribe shall decide whether to revoke or reinstate the license at issue.

(4) The Tribe shall notify the NIGC of its decision to revoke or reinstate a license within forty-five (45) days of receiving notification from the NIGC that a primary management official or key employee is not eligible for employment.

11-7.10 DENYING GAMING LICENSES

(1) The TGA shall not license a primary management official or key employee if an authorized Tribal official determines, in applying the standards in Section 11-7.04 for making a license eligibility determination, that licensing the person:

(A) Poses a threat to the public interest;

(B) Poses a threat to the effective regulation of gaming; or

(C) Creates or enhances the dangers of unsuitable, unfair or illegal practices, methods and/or activities in the conduct of gaming.

(2) When the TGA does not issue a license to an applicant for a primary management official or key employee position, or revokes a previously issued license after reconsideration, it shall:

(A) Notify the NIGC; and

(B) Forward copies of its eligibility determination and notice of results of the applicant's background investigation to the NIGC for inclusion in the Indian Gaming Individuals Record System.

11-7.11 RECORDS RETENTION

The Board or its designated agent shall retain, for no less than three years from the date a primary management official or key employee is terminated from employment with the Tribe, the following documentation:

(1) Application for licensing;

(2) Investigative Reports; and

(3) Eligibility Determinations.

SECTION 11-8: LICENSING PROCEDURE FOR GAMING OPERATION EMPLOYEES OTHER THAN KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

11-8.01 LICENSING PROCEDURE

All gaming operation employees, other than key employees and primary management officials, shall submit an application form containing the notices set forth in Section 11-7.01 of this Ordinance and all information requested in Section 11-7.03(1) of this Ordinance. An applicant for licensing shall make a true and full disclosure of all information to the Board as necessary or appropriate in the public interest or as required in order to carry out the policies of the Tribe relating to licensing and control of the gaming industry. It shall be a violation of this Ordinance to fail to disclose, to mislead or to misstate any such material information to the Board, or to any licensee's employer.

The Board or its designated agent shall conduct an investigation sufficient to make a determination under Section 11-8.02 below. In conducting a background investigation, the Board or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation. The Board may issue a temporary employment license to any person applying for a license to work in a licensed gaming establishment which shall be valid pending the background investigation of the applicant. In no event shall such temporary license be valid for greater than ninety (90) days.

11-8.02 ELIGIBILITY DETERMINATION

The Board, an authorized Tribal official, shall review a person's prior activities, criminal record, if any, and reputation, habits and association to make a finding concerning the eligibility of a person for employment in a gaming operation. If the Board, in applying the standards adopted in this tribal Ordinance, determines that

employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a management contractor or a tribal gaming operation shall not employ that person.

11-8.03 NO RIGHT TO APPEAL

The determinations of the Board with regard to issuance, revocation, termination, suspension, or limitations of any employment license are final.

SECTION 11-9: APPLICATION, LICENSING, AND REGULATION OF GAMING OPERATIONS

11-9.02 LICENSE APPLICATION (res. 2008-44)

Any agency or department of the Tribe shall submit a request for a license to engage in any authorized activity. The request shall contain the following information:

(1) The complete name of the applicant.

(2) The name and address of the department, agency or organization head and his/her position.

(3) For each person identified, provide the following information:

(A) The nature and extent of any interest in the applicant agency, department, or organization. Identify specifically the extent of any financial managerial or control interest.

(B) Whether the person, organization or agency, or department has a substantial interest in or has applied for, and/or received any license under this part.

(4) The location of the proposed gambling area.

(5) Identify the type of activity for which the license is sought (e.g., bingo, lotteries, punch boards, pulltabs).

(6) A description of the purpose for holding or engaging in the activity for which the license is sought, and a description of the purposes for which the revenues, if any, will be expended.

(7) Each application shall contain an acknowledgment that the applicant assumes full responsibility for the fair and lawful operation of all licensed activities that the applicant conducts.

(8) The Board shall furnish to the applicant supplemental forms, which the applicant shall complete and file with the application. Such supplemental forms shall require, but shall not be limited to complete information and details with respect to the applicant's habits, character, criminal record, business activities, financial affairs and business associates, covering a time period specified immediately preceding the date of filing of the application.

11-9.03 ELIGIBILITY FOR STATE LICENSE (res. 2008-44)

The Board shall deny a license for any person or entity, other than the Tribe or an agency or department of the Tribe, that would not be eligible to receive a State license to conduct the same activity within the State of Washington. State law standards, if applicable, shall apply with respect to purpose, entity, pot limits and hours of operation.

11-9.04 ASSESSMENT FEE

The owner of a gambling license issued under this section shall pay an assessment fee to the NIGC as annually published in the Federal Register pursuant to 25 C.F.R. Sec. 514.1.

11-9.05 PUBLIC INFORMATION REQUIRED

All licensees prior to conducting any of the activities authorized by this Ordinance shall first provide the following information which shall be publicly available:

(1) What particular activity will be conducted.

(2) When such activity will be conducted and the exact location where the activity will be conducted.

(3) The names and addresses of those persons who will be in charge of the operation of said activity along with a statement that said operators shall have no interest in the activity to be conducted except for the receipt of a reasonable salary which will be paid in consideration for their operation of the activity.

(4) Any special limitations or considerations which may be applicable to the particular activity.

11-9.06 LIMITATIONS

No licensee shall hold more than one license to conduct bingo or a license to operate punch boards or pulltabs at more than one business site. Each such license shall authorize the conduct of the activity only upon the premises shown on the license application.

11-9.07 ISSUANCE LIMITED

The Board may limit the number or licenses issued to ensure that the purposes of this Ordinance are met.

11-9.08 REGULATIONS

The Board may adopt regulations to administer and implement any part of this Ordinance that are

at least as restrictive as those established by Washington State law governing similar gaming.

SECTION 11-10: GAMING

11-10.01 CLASS AND FEES

Two classes of licenses shall be issued. Each shall have a separate fee. Licensees shall operate and conduct only those activities authorized under each license as listed below and may be further specified in regulations promulgated hereunder.

Class A: Five hundred ($500) dollars annual fee. Class A licenses shall carry a life of twelve months or less, and shall expire on December 31 of each calendar year. The fee shall be prorated according to the date of issuance.

Class B: Twenty-five ($25) dollar fee. A Class B license shall be issued only for special events and shall carry life of three (3) days only. Said special event days must fall within a period seven (7) consecutive calendar days from the date of issuance. All license fees will be paid in advance.

11-10.02 REFILING OF APPLICATION

Every licensee intending to continue engaging in gaming activities on the reservation during the next following year shall apply for renewal of the license at least thirty (30) days prior to the expiration of the previous license period.

11-10.03 NO RIGHT TO APPEAL

The determinations of the Board with regard to issuance, revocation, termination, suspension, or limitations of any license are final.

11-10.04 INDEPENDENCE OF BOARD

The Board, 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. 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. Any property received in violation of this provision, including cash payments, shall be immediately forfeited to the Tribe and the offending persons shall be prosecuted to the fullest extent possible under tribal law for accepting a bribe. The Board shall cooperate to the fullest extent possible with any Federal or State law enforcement agency to pursue prosecution under applicable Federal or State law.

11-10.05 PARAMETERS OF LICENSEE

Violation of any provision of this Ordinance or any of the Board's regulations by the licensee, his agent, or employee shall be deemed contrary to the public health, safety, morals, good order and general

welfare of the Kalispel Tribe and the inhabitants of the Kalispel 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 Board. 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 Board and by the provisions of this Ordinance as the same are now, or may hereafter be amended or promulgated, and to cooperate fully with the Board. 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. The Board shall use reasonable efforts to notify all licensees of changes in regulations.

SECTION 11-11: RULES OF OPERATION AND GENERAL APPLICABILITY

11-11.01 HOUSE RULES TO BE DEVELOPED AND POSTED

Each licensee shall develop a set of house rules which will govern the type, scope and manner of all gambling activities to be conducted. A copy of the rules shall be posted conspicuously on the licensed premises at all times, and a copy thereof shall be made available upon request to any Tribal enforcement officer or representative of the Board.

11-11.02 SECURITY

Licensees shall provide for their in-house security PROVIDED, that such security personnel are approved by the Board.

11-11.03 AGE LIMITATIONS

(1) No person under the age of eighteen (18) shall participate in any gaming operation, or be allowed on the gaming floor during actual hours of operation. Should alcoholic beverages be offered in the gaming area pursuant to applicable law, then no patron under the age of twenty-one (21) shall be permitted in the gaming area during actual hours of operation. PROVIDED, that such age limitation shall not apply to an individual accompanied by an adult for the specific and limited purpose of proceeding directly and immediately across the gaming area for a legitimate non-gaming purpose, with no gaming area loitering or gaming participation by the underage person or accompanying adult.

(2) No person under the age of eighteen (18) years of age shall be employed as a gaming employee.

(3) Any licensee, employee, dealer or other person(s) who violates or permits the violation of any of the provisions of this section and any person who violates any of the provisions of this section is guilty under this Ordinance and shall be prosecuted in the Tribal Court, or Washington State Court for any non- Indian.

(4) In any prosecution or other proceeding for the violation of any of the provisions of this section, it is

no excuse for the licensee, employee, dealer or other person to plead that he believes the person to be eighteen (18) years old or over, or if applicable, twenty-one (21) years old or over.

11-11.04 CHEAT DEFINED

As used in this Ordinance:

(1) Cheat means to alter the selection of criteria which determine:

(A) The result of a game; or

(B) The amount or frequency of payment in a game.

11-11.05 FRAUDULENT ACTS

It is unlawful for any person:

(1) 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.

(2) To place a bet after acquiring knowledge, not available to all players, of the outcome of the game or other event which is the subject of the bet or to aid anyone in acquiring such knowledge for the purpose of placing a bet contingent upon the outcome.

(3) 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.

(4) To use counterfeit chips in a gambling game.

11-11.06 CHEATING PROHIBITED

It is unlawful for any person, whether he is an owner or employee of or a player in an establishment to cheat at any gambling game.

Detention and questioning of person suspected of violating Ordinance.

(1) Any licensee, or his officers, employees or agents may question any person in his establishment suspected of violating any of the provisions of this Ordinance. No licensee or any of his officers, employees or agents is subject to criminal or civil liability:

(A) On account of any such questioning; or

(B) For reporting to the Board or Tribal law enforcement authorities the person suspected of the violation.

(2) Any licensee or any of his officers, employees or agents who has seen a violation of this Ordinance in his establishment by any person may take that person into custody and detain him in the establishment in a reasonable manner and for a reasonable length of time. Such a taking into custody and detention does not render the licensee or his officers, employees or agents criminally or civilly liable unless it is established by clear and convincing evidence that the taking into custody and detention were unreasonable under all the circumstances.

(3) No licensee or his officers, employees or agents are entitled to the immunity from liability provided for in subsection B unless there is displayed in a conspicuous place in his establishment a notice in boldface type clearly legible and in substantially this form:

ANY GAMING LICENSEE, OR ANY OF HIS OFFICERS, EMPLOYEES OR AGENTS WHO HAS PROBABLE CAUSE FOR BELIEVING THAT ANY PERSON HAS VIOLATED ANY PROVISION OF CHAPTER 11 OF THE KALISPEL TRIBAL CODE PROHIBITING CHEATING IN GAMING MAY DETAIN THAT PERSON IN THE ESTABLISHMENT.

11-11.07 WORKERS TO WEAR IDENTIFICATION TAGS

Each licensee shall furnish to each person participating in the management or operation of the event an identification tag which at a minimum shall contain that person's name. The licensee shall cause each such person to wear this tag at all times when the person is working. The tag shall be in plain view so as to be easily seen and read by persons participating in the event.

11-11.08 NO CREDIT TO BE ALLOWED

No licensee, or any of its members or employees, or any operator, conducting, or in any way participating in the conduct of any gambling activities, shall allow a person to play that activity on credit or shall grant a loan of any kind at any time to a person playing the activity, unless provided for in a separate agreement.

11-11.09 ON DUTY OPERATORS SHALL NOT PLAY

No operator shall allow a person who manages or receives any compensation directly or indirectly, for the operation of any gambling game conducted by the operator to play in a gambling game while on duty.

11-11.10 GAMBLING ORDINANCE ON PREMISE

Each licensee shall obtain, maintain, and keep current a copy of the Kalispel Tribal Gaming Ordinance which shall be located upon the premises used for the conduct of a licensed activity by a licensee during all times the activity is there conducted. The rules shall be produced by the licensee and shown to any person upon demand. The fact that the licensee may not have a current copy of each of the rules of the Board shall not in any way diminish the licensee's obligation to abide by these rules.

11-12.01 OPERATION

(1) No person under the age of eighteen (18) years and no person visibly intoxicated or visibly under the influence of any narcotic shall be allowed to play or operate any pulltab or Punch board game.

(2) Whenever alcoholic beverages are being served in the same room in which a Punch boards and pulltab games are being conducted, no one under the age of twenty-one (21) years shall be allowed in the same room.

(3) It shall be the responsibility of the person physically operating the pulltab or Punch board game to determine that no unauthorized person is allowed to play.

(4) No licensee shall license the display or operation of any pulltab or Punch board game which may have in any manner been marked, defaced, tampered with or otherwise place in a condition, or operated in a manner, which may deceive the public or which affects the chances of winning or losing upon the taking of any chance thereon.

(5) No licensee shall display any Punch board:

(A) To which any key to any winning number, or symbol, exists other than a key which is furnished to the operator, which key designates the color codes or all chances on that board without regard to whether or not such chances or designated winner; or

(B) Which has taped sides, corners, or edges.

11-12.02 PRIZES

(1) All prizes in pulltab and Punch board games shall be in cash or in merchandise. Prizes may not involve the opportunity of taking an additional chance or chances on another Punch board or of obtaining another pulltab or pulltabs unless the customer specifically asks for such.

(2) Where the prize involves the opportunity to punch again on the same Punch board, all prizes must be awarded for each such punch which is not less than the highest amount of money, or worth not less than the most valuable merchandise prize, which might otherwise have been won by the punch for which the opportunity to take the second punch was awarded.

(3) No Punch board which offers as a prize the opportunity to take another punch on that board shall be sold or placed out for play unless that particular style and set up board has been approved in advance by the Kalispel Tribal Gaming Board. Each such board must clearly indicate on its face the terms and conditions under which the opportunity to obtain the second, or step-up punch may be obtained and the prizes which may be won by the step-up punch.

(4) All prizes shall be displayed in the immediate vicinity of the Punch board or pulltab game and such prizes shall be in full view of any person prior to that person purchasing the opportunity to play. When a prize is cash, then the money itself shall not be displayed, but a coupon designating the cash

amount represented thereby available to be won shall be substituted therefore in any display which also includes merchandise prizes.

(5) The cash prizes to be awarded in connection with punch boards and pulltabs series in connection with which only cash prizes are awarded shall be clearly and fully described or represented by a coupon displayed upon the prize flare attached to the face or displayed in the immediate vicinity of the pulltab game.

(6) Displayed prizes shall be so arranged that a patron can easily determine which prizes are available from any particular Punch board or pulltab game located upon the premises.

(7) Upon determination of a winner of a merchandise prize, the operator shall immediately remove that prize from any display and present it to the winner.

(8) Immediately upon determining the winner of any cash prize with a retail value of five hundred (500) dollars or more, but prior to award of the prize, the licensee shall conspicuously delete all references to the prize being available to players from any flare, Punch board or pulltab game upon which such reference may appear, and from any other list, sign, or notice which may be posted, in such a manner that all future patrons will know the prize is no longer available. The prize shall then be paid or delivered to the winner forthwith.

(9) No licensee shall offer to pay cash in lieu of merchandise prizes which may be won.

(10) When and if required by the United States Internal Revenue Code, a record shall be made by the licensee of the win. Any required record shall contain:

(A) The full name of the winner;

(B) The current address of the winner;

(C) The date of the win;

(D) A description of the prize won; and

(E) If the prize is merchandise, its retail value.

(11) It shall be the responsibility of the licensee to determine the identity of any winner if required by subsection (10) and the licensee shall require such proof of identification as is necessary to properly establish the winner's identity. The licensee shall not pay out any prize unless and until the winner has fully and accurately furnished to the licensee all information required by this section to be kept upon the records of the licensee.

(12) Every licensee shall keep all necessary records required by subsection (10) and shall display the same to any member of the public, or Board upon demand.

(13) For purposes of this section, the retail value of a merchandise prize shall be the amount actually paid there for by the licensee plus fifty (50) percent of that actual cost.

(14) No operator shall put out for play any Punch board or pulltab game that does not contain the following minimum percentage in prizes:

(A) Punch boards - a minimum of sixty (60) percent respecting each Punch board placed out for public play;

(B) Pulltabs - a minimum of sixty (60) percent respecting each series of pulltabs out for play.

(C) For the purpose of determining the percentage of prizes offered on any Punch board, or in any pulltab series under this section, total merchandise prizes shall be computed at the amount actually paid therefore by the operator plus fifty (50) percent of that actual cost.

(D) Single cash prizes on punch boards/pulltabs shall not exceed:

(i) One thousand (1,000) dollars in cash; or

(ii) A merchandise prize, or combination merchandise prize, for which the licensee has expended more than one thousand (1,000) dollars.

11-13.03 SPECIAL LIMITATIONS ON PULLTABS

(1) No pulltabs shall be placed out for public play unless the total number of pulltabs originally in the series shall be clearly disclosed on the face of the flare advertising the prizes available from that series of pulltabs.

(2) No pulltab shall be added to a series of pulltabs after that series has been received on the reservation.

(3) No pulltab series, or any portion thereof shall be placed in play until any other series of pulltabs previously in play has been played out or permanently removed from public play.

(4) No pulltab once placed out for public play shall be removed from play until the series is permanently removed from public play, except only:

(A) Those pulltabs actually played by customers;

(B) Those pulltabs temporarily removed during necessary repair or maintenance of the gambling facility.

(C) Excepting those pulltabs removed under (2) and (3) above, once a pulltab has been removed from public play it shall not again be put out for public play.

(5) No person shall put out any pulltab series for public play unless the entire series is initially put out for public play.

(6) No pulltab series shall be put out for public play which contains more than twelve thousand (12,000) individual pulltabs.

(7) Pulltabs shall be constructed so that it is impossible to determine the covered or concealed number, symbol, or set of symbols, on the pulltab until it has been dispensed or otherwise sold for consideration to and opened by the player, by any method or device, including the use of a marking, variance in size, variance in paper fiber, or light.

(8) No person with knowledge or in circumstances whereunder he reasonably should have known, shall possess, display, put out for play, sell or otherwise furnish to any other person any pulltab series or pulltab from any series:

(A) In which the winning pulltabs have not been completely and randomly distributed and mixed among all other pulltabs in the series; or

(B) In which the location, or approximate location, or any of the winning pulltabs can be determined in advance of opening the pulltabs in any manner or by any device, including any pattern in the manufacturer, assembly or packaging of the pulltabs, by any marking on the pulltabs or container, or by the use of light, or;

(C) The written record so made is maintained at the offices of the licensee and the offices of the Kalispel Tribal Gaming Board for a period of not less than five (5) years after the series is removed.

11-13.04 FLARES

(1) No person shall place or have out in public view more than one flare advertising the prizes available from the operation of any Punch board or from any series of pulltabs.

(2) The flare advertising prizes available from the operation of any Punch board or any series of pulltabs shall:

(A) Be placed upon the upper face or the top of any such Punch board, directly near the pulltab game, in full view of the patron;

(B) Clearly set out each of the prizes available and the number or symbol which wins prizes;

(C) Set out the winning numbers or symbols for prizes or merchandise valued in amounts specified in previous or letter sections of this Ordinance, in such a manner that each may be easily and clearly deleted or marked off as each prize is won and awarded. For purposes of this subsection, the retail value of a merchandise prize shall be the amount actually paid therefore by the licensee plus fifty (50) percent of the actual cost.

(3) Each flare describing the prizes and winning numbers or symbols for a series of pulltabs in play shall clearly set out the series number assigned to that pulltab series by the manufacturer. The series number will be place upon the flare by the manufacturer prior to the series being sold to an operator.

11-13.05 BUSINESS RESTRICTIONS

(1) No licensee shall buy, receive or otherwise obtain any Punch board, pulltab, related equipment, or merchandise or prizes to be awarded in connection with such activities, except upon the basis of a cash transaction, nor shall any operator license any manufacturer or distributor, or anyone connected therewith, to acquire any interest, including a security interest, in any such equipment or merchandise. A cash transaction shall include payment or payments by check: PROVIDED, that each check is presented for pay into the banking system by the end of the second business day following the day the check is written.

(2) No contract shall be made or entered into whereby an operator agrees to deal in, purchase, or operate any particular brand or brands of gambling equipment to the exclusion of any other brand or brands of gambling equipment.

(3) No manufacturer or distributor, or his employee, shall directly or indirectly solicit, give, offer to, or receive from any licensee or any employee thereof any gifts, discounts, loans of money, premium, rebates, free merchandise of any kind, treats or services of any nature; nor shall any operator or employee thereof directly or indirectly solicit, receive from, or give or offer to any manufacturer or distributor, or his employee any gift, discount, loans of money, premium, rebates, free merchandise of any kind, treats or services of any nature whatsoever: PROVIDED, that nondiscriminatory discounts offered to all parties on the same condition shall be licensed.

(4) No manufacturer, distributor, or distributors representative shall sell to any person upon the reservation, or solicit from any such person, and order for any gambling or related equipment, merchandise, property or service, contingent upon that person or another purchasing or ordering any other gambling or related equipment, merchandise, property or service, shall not vary upon whether or not that person, or another, purchases or orders some other equipment, merchandise, property or service.

(5) No person shall enter an agreement, express or implied, with any other person which requires any person to purchase exclusively from any person.

SECTION 11-14: RECORDS

11-14.01 RECORDS – BINGO AND LOTTERY

The Tribe, or any agency or department of the Tribe, when operating a bingo game, lottery or other gaming activity shall keep and maintain a set of permanent records of all the activities. These records shall be kept by the month and shall include but not necessarily be limited to the following:

(1) The gross receipts from the conduct of each of the activities licensed.

(2) Full details of all the expenses relating to each of the activities.

(3) Total Amount of cash prizes actually paid out and the total of:

(A) The cost of the Tribe or licensee, and

(B) The total estimated retail value of all merchandise prizes actually paid out.

(4) Total amount of the gross receipts from each licensed activity which has been retained by the licensee or Tribe.

(5) Records which clearly show in detail how those proceeds from each activity were used or disbursed by the licensee or Tribe.

(6) All compensation, in whatever form, paid to any person by the licensee or the Tribe for any work connected with the management, promotion, conduct or operation of the licensed activities, including the description of the work performed by each person.

(7) Each of these records shall be maintained for a period consistent with 25 CFR 571.7 and generally accepted accounting principles, for which the records are kept.

11-14.02 CENTRAL ACCOUNTING SYSTEM REQUIRED - ALL OTHER GAMBLING

Each licensee shall establish and maintain a central accounting system in a form prescribed by the Board for all activities conducted in conjunction with gambling. Licensees shall obtain accounting forms which have been approved by the Board or machine copies of such forms. Every licensee is required to keep accurate and detailed records of all receipts from admission, food, merchandise or refreshment consistent with 25 CFR 571.7 and generally accepted accounting principles for which the record is kept. Such system shall contain, but not be limited to, the following items:

(1) There shall be adequate personnel and physical areas to provide for the following minimum separation of duties:

(A) A banker, cashier, or count room to handle the original bankroll, provide coin and/or chips to the games and redeem chips and cash checks for the players;

(B) A runner to transport money, chips and lockboxes between stations.

(C) Pit bosses, each of whom shall supervise the operation of not more than six gambling stations and who shall supervise the transfer of lockboxes and chips/change trays to the count room.

11-14.03 INSPECTION OF PREMISES, RECORDS AND DEVICES

All premises at which a licensed activity takes place, or any premises in any way connected physically or otherwise with a licensed business, including vehicles used in connection therewith, shall at all times by open to inspection by the Board or its authorized representatives.

At any time during which a licensed activity is being operated upon a premises, the Board and any authorized representative of the Board, may enter upon the premises without advance notice and:

(1) Make a count of all moneys received during the operation of the licensed activity located on the premises, inspect all receipts for prizes which have been awarded by the licensee.

(2) Inspect any of the other records of the licensee, or of any member that directly participates in the management, operation or promotion of a licensed activity, or of any employee of the licensee, or of any operator of the licensed activity.

(3) Inspect, including the dismantling of, all pieces of equipment or parts thereof, or devices of any nature, which are being used to conduct the licensed activity.

(4) When the Board or its authorized representative discovers facts that leads it to believe that there is a reasonable probability that Tribal law has been or is being violated by the licensee or its employees or operators, remove to another location or locations for further inspection and investigation, any and all records and any and all equipment, parts thereof, and devices of any

nature located upon the premises related to the operation of the licensed activity.

(5) Monitoring all gaming activities in facilities to ensure compliance with all Tribal, state and federal laws, rules and regulations regarding Indian gaming, through physical and recorded electronic surveillance methods, with sufficient number(s) of onsite personnel. Limited exceptions to monitoring include ensuring recorded surveillance coverage with appropriate documentation while personnel are outside the monitoring room to address an issue while in the same gaming location or a brief emergency situation in which monitoring is maintained through Tribal Police or recorded surveillance with notification to TGA management.

(6) All receipts shall be issued to the licensee of the activity which shall list and describe each record and each piece of equipment, or part thereof, and device which has been removed from the premises. Each such record, piece of equipment, part thereof, and device so removed shall be returned to the premises or to the address of the licensee within seventy-two (72) hours, except Saturdays, Sundays, and Tribal legal holidays after its removal in as good a condition as it was in when removed, unless the Board determines that the record, equipment or device so removed are necessary for an ongoing investigation of possible violation of this Ordinance by the licensee or its employees or operators. The Board shall notify the licensee by certified mail of this determination.

11-14.04 ALL RECORDS SUBJECT TO TRIBAL AUDIT

Any and all records of a licensee, its employees, any of its members that directly participate in the management, operation or promotion of a licensed activity, or any operator of a licensed activity, including but not limited to, those which are required to be kept or which relate in any manner to any requirement of state law or of a rule of the Tribe, shall be subject to an audit by the Board or any of its authorized representatives, without notice:

PROVIDED, that unless otherwise provided elsewhere in these rules, such an audit must be begun between the hours of 8:00 AM and 5:00 PM on a weekday other than a holiday, or during the hours in which the activity is being actually operated, and performed upon the premises of the licensee where the records are located.

In the event of audit by the Board, or any of its authorized representatives, the licensee shall immediately provide all such records, provide a place where such audit may be performed and rendered such reasonable assistance to the Board and its representatives in inspecting such records as may be requested.

SECTION 11-15: MANAGEMENT CONTRACTS

11-15.01 TRIBAL APPROVAL REQUIRED

(1) Any management contract for the operation and management of Class II and Class Ill gaming activity must be submitted to the Tribe for approval, but, before approving such contract, the

Tribe shall require and obtain the following information:

(A) 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

(B) a description of any previous experience that each person listed pursuant to subsection 1(A) 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

(C) a complete financial statement of each person listed pursuant to subsection 1(A).

(2) Any person listed pursuant to subsection 1(A) shall be required to respond to such written or oral questions that the Tribe may propound in accordance with its responsibilities under this section.

(3) For purposes of this Ordinance, any reference to the management contract described in Section 11- 15.01(1) shall be considered to include all collateral agreements to such contract that relate to the gaming activity.

(4) After the Tribe has given its approval of a management contract, the Tribe shall submit such contract to the NIGC for its approval. No such contract shall be valid and operational until the NIGC has approved it.

(5) In making the determination to approve management contracts, when the Tribe has 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 Tribe shall give preference to tribal members and cooperative associations of Tribal members over non- Tribal members. Further, preference will be given to non-member Indians and cooperative associations of non-member Indians over non-Indians.

11-15.02 APPROVAL OF MANAGEMENT CONTRACTS

The Tribe shall approve any management contract only if it determines that such contract is in compliance with the provisions of this Gaming Ordinance, and provides at least:

(1) for adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the Tribe on a monthly basis;

(2) 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;

(3) for a minimum guaranteed payment to the Tribe that has preference over the retirement of development and construction costs;

(4) for an agreed ceiling for the repayment of development and construction costs;

(5) for a contract term not to exceed five years, except that, the Tribe may authorize a contract term that exceeds five years but does not exceed seven years if the Tribe is satisfied that the capital investment required, and the income projections, for the particular gaming activity require additional time;

(6) for grounds and mechanisms for terminating such contract, but actual contract termination shall not require the approval of the Tribe; and

(7) 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 ordinance, if one is in effect.

(8) A designated agent for service of any official determination, order or notice of violations.

11-15.03 PERCENTAGE OF NET REVENUE FEES

(1) 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 Tribe if such percentage fee is reasonable in light of surrounding circumstances. Except as provided in this section, such fee shall not exceed 30 percent of the net revenues.

(2) The Tribe 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 Tribe 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 Ordinance.

11-15.04 CONTRACT DISAPPROVAL

The Tribe shall not approve any contract if it determines that:

(1) Any person listed pursuant to Section 11-15.01(1)(A) who

(A) has been or subsequently is convicted of any felony relating to a gaming offense; or

(B) has knowingly and willfully provided materially important false statements of information to the Tribe or the tribal officials who negotiate such contracts or has refused to respond to questions propounded pursuant to Section 11-15.01(2); or

(C) 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;

(2) 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;

(3) The management contractor has deliberately or substantially failed to comply with the terms of the management contract or the provisions of this Ordinance or any regulations adopted pursuant to this Ordinance of the Indian Gaming Regulatory Act.

11-15.05 MODIFYING OR VOIDING CONTRACT

The Tribe 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 Ordinance have been violated.

11-15.06 CONVEYING INTEREST IN LAND

No management contract for the operation of a gaming activity regulated by this Ordinance 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.

11-15.07 FEE FOR INVESTIGATION COST

The Tribe may require a potential contractor to pay a fee to cover the cost of the investigation necessary to reach a determination required in Section 11-15.04 of this Ordinance.

SECTION 11-16: PATRON DISPUTE RESOLUTION

11-16.01 PATRON DISPUTE RESOLUTION

Patrons with gaming-related complaints against the gaming establishment shall have as their sole remedy the right to file a petition for relief with the Board. Such complaints shall be submitted in writing. This petition for relief is not available to patrons known to be excluded or ejected from the gaming establishment on the date of the incident giving rise to the complaint, nor for the review or appeal of any exclusions or ejections of patrons as referenced under SECTION 11-19 herein. As to all gaming-related complaints, the Board shall hold a hearing within thirty (30) days of receipt of the petitioner's written complaint. The petitioner may have counsel present at the hearing. The petitioner may be allowed to present evidence at the discretion of the Board. After the hearing, the Board shall render a decision in a timely fashion. All such decisions will be final when issued. Any patron complaint must be submitted to the Board within thirty (30) days of the incident giving rise to the complaint. All claims by patrons shall be limited to a maximum recovery of $100.00 per occurrence, and a cumulative limit of $500.00 per patron in any twelve (12) month period, except disputes relating to a patron's entitlement to a game prize, which shall be limited to the amount of such prize. The Board's decision shall constitute the complainant's final remedy.

SECTION 11-17: ENFORCEMENT

11-17.01 ENFORCEMENT

All provisions of this Ordinance, and any regulations that may be developed, shall be enforced by the Kalispel Tribal Police or law enforcement agency so authorized by a joint law agreement between the

agency and the Tribe.

All persons who operate an activity, pursuant to a license issued under this Ordinance shall be subject to inspection of the premises in which the activity takes place and all equipment involved by the Kalispel Tribal Police. Acceptance of the license is hereby deemed to be consent of the licensee to an inspection without notice of his premises and/or equipment without the need of obtaining a Search Warrant. Failure to cooperate with the Kalispel Tribal Police officer or an officer designated through a joint agreement between the Tribe and an outside law enforcement agreement who is engaged in the enforcement of this Ordinance shall be grounds for the revocation of any license issued hereunder. When an authorized law enforcement officer has probable cause to believe that a violation of this Ordinance is taking place or has taken place the police officer shall issue the licensee a citation. If the licensee is not present, the citation shall be issued to the operator or employee present. All citations shall be referred to Tribal Court, and a duplicate copy delivered to the Board.

The Board upon receipt of any citation may act to suspend a licensee pending final action by the Kalispel Tribal Court.

SECTION 11-18: PENALTIES

11-18.01 PENALTIES

Any person, operator, player, employee of any licensee or the Tribe who violates any provision of this Ordinance or regulation adopted hereunder, shall be subject to a fine of $5000 dollars or imprisonment of not to exceed one (1) year, or both as well as cost for prosecution, storage fees, auction and sales fees. Each day that a violation continues shall be considered a separate offense of purposes of this section. All property used or which may be used in activities in each and every separate violation of this Ordinance may become the property of the Tribe. Establishments violating the provisions of this Ordinance or other applicable laws may be forcibly closed, at the discretion of the Board. Issuance, suspension, revocation, limitations, or termination of any license is determined by the Board and such determination is final. Winnings found to have been received in violation of this Ordinance are forfeited and become the property of the Tribe.

SECTION 11-19: EXCLUSION OR EJECTION FROM ESTABLISHMENTS

11-19.01 REGULATIONS REQUIRING EXCLUSION OR EJECTION OF CERTAIN PERSONS FROM LICENSED ESTABLISHMENTS

(1) The exclusion or ejection (also referred to as a “trespass “or “barring”) of certain persons from licensed gaming establishments is necessary to effectuate the policy of this Ordinance, as well as other applicable law, and to maintain effectivelythe strict regulation of licensed gaming.

(2) The Tribal Gaming Authority may establish a list of persons who are to be permanently excluded or ejected from any licensed gaming establishment, as determined by the Kalispel Tribal Council

or Tribal Gaming Authority, to pose a threat to the interests of the Tribe or to licensed gaming, or both.

(3) Individuals who are excluded by the Kalispel Tribal Council under the provision of Chapter 5 of the Kalispel Tribe Law and Order Code ("KLOC"), may petition the Kalispel Tribal Council for review of their exclusions. Agents with the Tribal Gaming Authority shall have the sole authority to eject individuals from licensed gaming establishments. Such ejections shall be permanent subject to review only by the Executive Director of the Tribal Gaming Authority or the Executive Director's Designee. If the decision is made to modify or rescind a permanent ejection, notice shall be provided to the ejected individual by certified mail. There shall be no appeal by any individual of an ejection issued by the Tribal Gaming Authority; said decisions are final and binding.

SECTION 11-20: AMENDMENTS AND SEVERABILITY

11-20.01 AMENDMENTS

All provisions of this Ordinance and any regulations promulgated hereunder are subject to revision, repeal, or amendment by the Tribal Council at any time.

11-20.02 SEVERABILITY

If any provision or application of this Ordinance is determined by review to be invalid, such determination shall not be held to render such provision inapplicable to other persons or circumstances, nor shall such determination render invalid any other provisions of this Ordinance.

CHAPTER 12 - HUNTING AND FISHING CODES

SECTION 12-1: TITLE

12-1.01 TITLE

This section shall be known as the Kalispel Tribe of Indians hunting and fishing code.

SECTION 12-2: PURPOSE

12-2.01 PURPOSE

The Kalispel Tribe of Indians enacts this Chapter and any regulations necessary under this Chapter's authority, as deemed prudent by Kalispel custom or by science, to sustainably protect and preserve for future generations the animals, birds, and fish of the Reservation, as a precious and historical natural resource of the Tribe.

SECTION 12-3: DEFINITIONS

12-3.01 DEFINITIONS

For purposes of this section, the following words and phrases shall have the designated meanings, all other words or phrases shall be construed as defined elsewhere in this Code:

(1) "Closed Area/Closed Water" shall mean the designated areas of the Reservation, or any portion thereof, specified in the hunting and fishing regulations, where hunting, trapping, fishing is prohibited.

(2) "Closed Season" shall mean the designated time-period specified in the hunting and fishing regulations when it shall be unlawful to hunt, trap, or fish the Reservation.

(3) "Community Member" shall mean any Indian person eighteen (18) years of age or older living on the Kalispel Reservation for longer than one (1) year.

(4) "Court" shall mean Kalispel Tribal Court.

(5) "Enforcement Officer" shall mean any government official commissioned with the duty and authority to enforce the regulations of this Chapter, or any other relevant federal or state regulations.

(6) "Firearms" shall mean any weapon, which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive but does not include an antique firearm or any device that expels a projectile by means of compressed air.

(7) "Hunt/Hunting, Trap/Trapping, Fish/Fishing" shall mean an act with the purpose to kill, injure, or in some manner exercise possession or control over the wild undomesticated animals or fish of the Reservation.

(8) "Limit" shall mean the maximum number of any wildlife game or fish of any species a person may kill, catch, control, or possess in a given time period or area, per regulations. Regulations may include additional maximum limits on the sex, size, or age of any species a person may kill, catch, control, or possess.

(9) "Natural Resources Department" shall mean Kalispel Indian Tribe's Natural Resources Department.

(10) "Non-Member" shall mean any person not enrolled as a member of the Kalispel Indian Tribe.

(11) “Open Area/Open Water” shall mean the designated areas of the Reservation, or any portion thereof, specified in hunting and fishing regulations, where hunting, trapping, and fishing is permitted.

(12) “Open Season” shall mean the designated time-period specified in regulations when it is lawful to hunt, trap, or fish on the Reservation.

(13) “Regulations” shall mean any rule, resolution, declaration, order, or ordinance promulgated by the Kalispel Tribal Business Committee.

(14) “Tribal Member” shall mean enrolled member of the Kalispel Indian Tribe.

(15) “Waste” shall mean to render any edible portion of wildlife game or fish unfit for human consumption or to fail to retrieve all reasonably usable and edible portion of wildlife game or fish from the field. All reasonably usable and edible portion shall include at a minimum: unspoiled portions of hind quarters, front quarters, rib, neck, tender loins, and backstraps for applicable game.

(16) “Wildlife Game and Fish” shall mean the wild, undomesticated animals and fish of the Reservation, except feral domesticated mammals.

SECTION 12-4: JURISDICTION

12-4.01 JURISDICTION

The Tribe shall exercise its vested legal right to regulate any and all hunting, trapping, and fishing within the boundaries of the Reservation.

SECTION 12-5: THE KALISPEL FISH AND WILDLIFE ADVISORY BOARD

12-5.01 ESTABLISHMENT AND PURPOSE

The Kalispel Hunting and Fishing Advisory Board (“Board”) is hereby established and authorized by the Kalispel Business Committee to research, investigate, propose, educate, and advise, in keeping with the customs and values of the Kalispel Tribe of Indians, on the regulations promulgated under this Chapter.

12-5.02 APPOINTMENT

Members of the Board shall be appointed by the Tribal Business Committee (“Business Committee”) and are subject to removal at the Business Committee’s sole discretion. Members of the Board will be composed of Kalispel Tribal Members, and Kalispel Natural Resources Department (“KNRD”) shall sit in a non-voting advisory role. The Board will consist of at least seven (7) members. The term will be for three (3) years.

12-5.03 DUTIES

By August 1 of each year, the Board shall submit an official report to the Business Committee detailing the state of wildlife and fish on the Reservation and provide recommendations for that year's season dates, open and closed areas/waters, limits, and other restrictions as necessary. The Board shall also make recommendations on licenses for Non-Members, which are subject to the approval of the Business Committee. Criteria for recommendations on licenses for Non-Members includes, but is not limited to: descendancy status, providing for an Indian family, or hunting on an individual allotment with the written approval of the allotment's owner.

12-5.04 POWERS AND AUTHORITY

The Board recommendations shall require the written approval and action of the Business Committee to become regulations. The Board shall have any other powers as delegated by the Business Committee.

SECTION 12-6: REGULATIONS

12-6.01 REGULATIONS

The Business Committee may promulgate additional hunting and fishing regulations as necessary to govern the health, safety, and welfare of the Reservation.

12-6.02 NOTICE

The KNRD shall keep available for review all additional regulations promulgated under this Chapter and post on its website any regulations for the applicable time the regulation is in effect and enforceable.

12-6.03 TEMPORARY REGULATION EXEMPTIONS

(1) At its sole discretion, the Business Committee may grant an individual an exemption to hunt, trap, or fish outside the terms of current regulations in order to fulfil a resource, community or cultural need.

(2) Board will create a list of authorized cultural hunters that will be established for each hunting season. This list can be modified at any time through the Board. Non-tribal members authorized to hunt culturally will be subject to approval of the Business Committee.

SECTION 12-7: LICENSE

12-7.01 ISSUANCE OF LICENSE

It shall be unlawful to hunt, trap, or fish on the Reservation without a license. Such licenses shall always be in the physical possession of the person while hunting, trapping, or fishing. A Tribal Enrollment Card shall serve as the hunting and fishing license for a hunting, trapping, or fishing Tribal Member. Non-Members or individuals with a regulation exemption must carry with them the documentation, as authorized directly by the Business Committee, allowing the Non-Member to hunt, trap, or fish on the Reservation under the terms granted. An individual's license to hunt is not valid unless the individual has also completed a hunter's education course, either as provided by the Tribe or state, or said individual was born before 1968.

12-7.02 LICENSE NON-TRANSFERABLE

Licenses for hunting, trapping, or fishing purposes shall be non-transferable. It shall be unlawful for any person to hunt, trap or fish on the Reservation using a license other than their own.

12-7.03 LICENSE REVOCABLE

(1) A Tribal Member's license to hunt, trap, or fish on the Reservation may be revoked upon violation of a regulation with a showing of cause at a hearing before the Court. The Tribal Member will be entitled to notice informing them of the right to appear before the Court and will be entitled to show cause as to why their hunting, trapping and fishing permission should not be revoked.

(2) If the Business Committee grants a Non-Member permission to hunt on the Reservation, that grant of permission is revokable, without cause, at any time with notice to the Non-Member, at the sole discretion of Business Committee. The decision of the Business Committee regarding the revocation of a Non-Member's courtesy permission to hunt on the Reservation shall be final and not subject to further review.

SECTION 12-8: FISH AND GAME VIOLATIONS

12-8.01 FISH AND GAME VIOLATIONS

(1) Any person in violation of fish and game regulations adopted and promulgated by the Business Committee, shall be deemed guilty of a civil regulatory violation and upon conviction thereof shall be ordered to pay a fine no less than $100, with the maximum fine being $1000, unless otherwise specified in the fee schedule. All equipment used to illegally obtain such fish and game may be confiscated by the Enforcement Officer to be retained pending the judgment of the Tribal Court.

(2) Any person who shall be in violation of fish and game regulations adopted and promulgated by the Business Committee, may also be subject to federal prosecution.

(3) It is unlawful to hunt while under the influence of drugs and/or alcohol.

(4) It is unlawful to remove governmental signs, damage or misuse property. It is unlawful to vandalize, litter, or set fires while hunting, fishing, or trapping. Contained fires, such as campfires will be excluded from this Code.

(5) It is unlawful to carry, transport, convey, possess, or control a loaded rifle or shotgun in a moving motor vehicle. Loaded means that the firearm contains shells or cartridges in either the chamber or magazine. For the purposes of muzzle loaders, loaded means that the muzzle loader is capped and primed.

(6) It is unlawful to shoot towards, from, on, or across roads, houses, or areas of human activity. Due care must be exercised at all times to ensure the safety of others.

(7) It is unlawful to fish, hunt or trap in any manner which endangers the health, safety, and security of human life.

(8) It is unlawful to fish with explosives or firearms.

(9) It is unlawful to exceed any specified limit for fish or game without prior authorization from the Business Committee. Those limits, if any, will be determined by the Business Committee.

(10) It is unlawful to hunt outside of any specified season without prior authorization from the Business Committee. Those seasons, if any, will be determined by the Business Committee.

SECTION 12-9: ENFORCEMENT OF REGULATIONS

12-9.01 ENFORCEMENT OF REGULATIONS

Enforcement of this Chapter or hunting and fishing regulations shall be the duty of the Enforcement Officer. Tribal employees and the Board will report any fish or game violations to the Enforcement Officer. All individuals are encouraged to report fish or game violations.

12-9.02 SEARCHING POWER OF ENFORCEMENT OFFICERS

The Tribal Court may issue a warrant for the search of the person or property of a suspected violator of hunting and fishing regulations. In the absence of such a warrant, the Enforcement Officer may search any suspected violator of the hunting and fishing regulations in accordance with the provisions of 2-7.04 of the Kalispel Law and Order Code.

12-9.03 REQUEST TO SEE LICENSES

As provided in 12-7 of this code, it is unlawful to hunt, trap or fish without an appropriate license on the Reservation. It is the duty of the Enforcement Officer to allow only licensed individuals to hunt, trap or fish within the boundaries of the Reservation. Accordingly, the Enforcement Officer is empowered to request any person in the act of hunting, trapping, or fishing to show his or her license. Any person hunting, trapping, or fishing without

an appropriate license in his or her physical possession shall be issued a citation immediately. Refusal to show an Enforcement Officer a license is also a violation of this Chapter and subject to citation and revocation of license.

12-9.04 SEIZURE AND FORFEITURE

An Enforcement Officer shall seize animals, birds, or fish killed, injured, or otherwise possessed or controlled by an unlicensed person on the Reservation. An Enforcement Officer shall seize those animals, birds, or fish killed, injured, or otherwise possessed by an individual in excess of the limit set forth in the hunting and fishing regulations. Violators shall be issued a citation by the Enforcement Officer and such animals, birds, or fish seized shall be forfeited by the violator to the Enforcement Officer pending judgment of the Court. Any equipment, tool or great used in furtherance of a violation of this Chapter may be seized.

12-9.05 HUNTING HOURS AND ROAD CLOSURES

Hunting and discharge of firearms shall be restricted to the hours between dawn and dusk, unless otherwise specified in a regulation. Hunting, trapping, and fishing during closed times or in closed areas, shall be a violation of this statute and will also constitute an act of criminal trespass deemed prosecutable in the appropriate court.

12-9.06 WASTING OF GAME AND FISH

An Enforcement Officer shall issue a citation for those in violation of wasting game and fish.

12-9.07 FIREARMS VIOLATIONS

Firearm violations will be regulated under existing state, federal and tribal statutes. Discharging firearms from inside the cabin of a moving motor vehicle is strictly prohibited.

SECTION 12-10: PENALTIES

12-10.01 PENALTIES

Should a defendant plead guilty or be found guilty, the Court may impose any or all of the following:

(1) A general fine not less than $100.00 or more than $1,000.00. Refer to the Infraction Fine Schedule below for specific penalties.

(2) Forfeiture of any equipment or gear seized used in an illegal activity.

(3) Suspension or revocation of Tribal hunting and fishing license.

12-10.02 INFRACTION FINE SCHEDULE FOR SPECIES

(1) Big Game – each violation punishable by a fine not to exceed $2,000.00.

a. Species included in this category: Big Horn Sheep, Black Bear, Cougar, Deer, Elk, Moose, Mountain

Goat, and Wolf.

(2) Small Game – each violation punishable by a fine not to exceed $250.00.

a. Species included in this category: Coyote, Grouse, Pheasant, Rabbit/Hare, Turkey, Quail, and Varmints (included but limited to Badger, Ground Squirrel, Marmot, Porcupine, and Tree Squirrel).

(3) Fur Bearing Animals – each violation punishable by a fine not to exceed $250.00.

a. Species included in this category: Beaver, Bobcat, Ermine, Fisher, Muskrat, Pine Marten, and Weasel.

(4) Fish – each violation punishable by a fine not to exceed $250.00.

a. Species included in this category: Bass, Pike, Trout (outside of the prohibited species listed below), and Walleye.

(5) Federally Listed or Regulated Species – each violation punishable by a fine not to exceed $10,000.00.

a. Species included in this category: Bull Trout, Eagles, Grizzly Bear, Hawks, Lynx, Owls, Wolverine, and Woodland Caribou, and any other federally listed or regulated species.

SECTION 12-11: MIGRATORY BIRD REGULATIONS (RESERVED FOR COUNCIL REVIEW)

CHAPTER 13 - CIVIL REGULATORY INFRACTIONS

SECTION 13-1: GENERAL PROVISIONS

SECTION 13-1.01: PURPOSE

The purpose of this Chapter is to establish civil violations under the Kalispel Law and Order Code (KLOC) as a means for the Tribe to protect the peace, health, safety, environment, welfare, and morals of the Kalispel Reservation, Kalispel Tribal Members, and the Kalispel Community.

SECTION 13-1.02: JURISDICTION

The Kalispel Administrative Court has exclusive jurisdiction to enforce and implement this Chapter to the greatest extent of its jurisdiction as established under KLOC Chapter 21 Administrative Code.

SECTION 13-1.03: DEFINITIONS

"Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substance including all dilutions and mixtures of this substance.

"Beer" means any malt beverage, flavored malt beverage, or malt liquor as these terms are defined in this chapter.

"Court" means the Kalispel Tribal Court.

"Cigarette" means any roll for smoking made wholly or in part of tobacco being flavored, adulterated, or mixed with any other ingredients, where such wrapper is wholly or in the greater part made of paper of any material except where such is wholly or in the greater part made of natural leaf tobacco in its natural state.

"Enforcement Officer" shall mean those designated by the Kalispel Business Committee to enforce Chapter 13 Civil Regulatory Code.

"Liquor" includes the four 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 semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

"Malt Beverage" or "malt liquor" means any beverage such as beer, ale, lager, stout, porter, flavored malt beverages such as wine coolers, or Guinness obtained by the alcoholic fermentation of an infusion

or decoction of pure hops, or the pure extract of hops and pure barley malt or other wholesome grain or

cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. Any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

"Preponderance of the evidence" means evidence that shows that more probably than not, the infraction occurred.

"Residential development" is a planned subdivision or grouping of 5 or more single-family residences, or a multi-family residential development with more than 5 units.

"Service Animal" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition.

"Spirits" means any beverage which contains alcohol obtained by distillation and intended for consumption.

"Tobacco Products" means cigars, cheroots, stogies, granulated, plug cut, crim cut, ready rubbed, and other smoking tobacco, snuff, cavendish, snuff flour, plug and twist tobacco, fine cut and other chewing tobaccos shorts and other kinds and forms of tobacco, prepared in such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for smoking and chewing. Tobacco products shall not include cigarettes.

"Wine" shall mean any alcoholic beverage obtained by fermentation of fruits or other agricultural products containing sugar and containing not more than twenty-four percent alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this chapter "wine coolers" shall not be defined as wine but rather as a "malt beverage."

SECTION 13-2: ENFORCEMENT

SECTION 13-2.01: DUTIES AND AUTHORITY OF ENFORCEMENT OFFICERS

The Kalispel Tribal Police and the Tribal Prosecutor are the enforcement officers for this Chapter, and it shall be their duty to issue Notices of Infractions when reasonable ground exists to believe that a person or persons are in actual violation of the provisions of this Chapter.

Enforcement officers are not required to procure a warrant to enforce the provisions of this Chapter.

Enforcement officers shall follow the procedures outlined in KLOC Chapter 21 Kalispel Administrative Code when issuing Notices of Infractions.

(a): ADDITIONAL ENFORCEMENT AUTHORITY

The Kalispel Fire Department are additional Enforcement Officers for fire related infractions under this Chapter, and it shall be their duty to issue Notices of Infractions under the following Sections 13-5.03

(Throwing Lighted Material From Vehicle), 13-5.04 (Violation of Burning Restrictions or Burn Ban), 15-5.05 (Littering), 13-7.01 (Sale/Distribution of Fireworks without Proper License), 13-7.02 (Sale of Fireworks to Minors), and 13-7.03 (Discharge of Fireworks in Selling Area).

The Kalispel Fire Department are not required to procure a warrant to enforce the provisions of this Chapter and are given all necessary authority under Chapter 13 including, but not limited to, the seizures of Contraband (KLOC 13-2.04). Enforcement officers shall follow the procedures outlined in KLOC Chapter 21 Kalispel Administrative Code when issuing Notices of Infractions.

SECTION 13-2.02: RULES OF PROCEDURE

Procedures for the issuance of Notices of Infractions and for Administrative Hearings shall follow KLOC Chapter 21 Kalispel Administrative Code.

SECTION 13-2.03: BURDEN OF PROOF

The finding of a violation in this Chapter shall be by a preponderance of the evidence.

SECTION 13-2.04: MONETARY PENALTIES

In general, monetary penalties for violations under this Chapter shall not exceed $5000.00. To assist the enforcement officers and the Court, an infraction penalty schedule may be developed by the Court and approved by the Business Committee.

SECTION 13-2.05: REMEDIES

In addition to monetary penalties, the Court is authorized to:

(1) Impose actual or estimated costs incurred by the Tribe associated with the impound, care, and boarding of any animals seized by the Tribe as part of the investigation or prosecution of an infraction under this Chapter.

(2) Impose liquidated damages in the amount of the actual or estimated loss of any timber, minerals or other resources that are unlawfully removed from any property of the Kalispel Tribe of Indians that results in the issuance of a Notice of Infraction under this Chapter.

(3) Impose actual or estimated costs incurred by the Tribe associated with the abatement, mitigation orclean-up of any nuisance, noxious weed infestation or other environmental damage to any propertyof the Kalispel Tribe of Indians that results in the issuance of a Notice of Infraction under this Chapter.

(4) Refer the name and identifying information of a Defendant to the Kalispel Business Committee orTribal Gaming Agency, as appropriate, so that body may consider excluding or banning the

individual from Kalispel Tribal properties.

SECTION 13-2.04: SEIZURE OF CONTRABAND

Enforcement officers are authorized to seize contraband under this Chapter. Such contraband shall be held as evidence until the case is adjudicated. After the underlying case is adjudicated, such contraband shall be destroyed and shall not be released back to the owner or sold.

SECTION 13-2.05: SEIZURE OF ANIMALS

Enforcement officers are authorized to seize animals that are owned or possessed in violation of this Chapter. Enforcement officers shall place seized animals with an appropriate governmental agency or non-governmental organization that will provide humane care and boarding for the animal. Such animals shall be held as evidence until the case is adjudicated. After the underlying case is adjudicated, the animals' disposition shall be whatever is appropriate given the nature of the case and the individual nature of the animal(s).

SECTION 13-2.06: SEIZURE OF TRIBAL RESOURCES

Enforcement officers are authorized to seize unlawfully collected tribal resources and timber under this Chapter. These resources shall be held as evidence until the case is adjudicated. After the underlying case is adjudicated, the resources shall be provided for Tribal use and shall not be released back to the individual who unlawfully collected or possessed the resources.

SECTION 13-3: ALCOHOL, TOBACCO & DRUGS

SECTION 13-3.01: POSSESSION OF ALCOHOL IN RESTRICTED AREA.

It shall be an infraction for any person to use, abuse, possess, or consume alcohol, beer, liquor, malt beverages, spirits or wine at any public activity in any area of Tribal property where such use, possession or consumption is strictly prohibited as indicated by signs, placards or other notification materials. Law enforcement shall strictly enforce the prohibition of the use, abuse, possession and consumption of alcohol at designated "dry" public activities and locations on Tribal property.

SECTION 13-3.02: DISTRIBUTION OF ALCOHOL IN RESTRICTED AREA.

It shall be an infraction for any person to distribute, give, sell, offer for sale or trade alcohol, beer, liquor, malt beverages, spirits or wine at any public activity in any area of Tribal property where such use, possession or consumption is strictly prohibited as indicated by signs, placards or other notification materials. Law enforcement shall strictly enforce the prohibition of the use, abuse, possession and consumption of alcohol at designated "dry" public activities and locations on Tribal property.

SECTION 13-3.03: TOBACCO USE IN PROHIBITED AREA.

It shall be an infraction for any person to use, consume, or smoke any cigar, cigarette, pipe, tobacco product, or e-cigarette:

(1) any area of Tribal property where such use, possession or consumption is strictly prohibited as indicated by signs, placards or other notification materials;

(2) within a presumptively reasonable minimum distance of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area.

SECTION 13-3.04: POSSESSION OF MARIJUANA.

It shall be an infraction for any person over the age of twenty-one (21) to:

(1) use, consume, ingest, inhale or smoke marijuana;

(2) to open a package or possess an open package containing marijuana or a marijuana-infused product; or

(3) to possess one (1) ounce or less of useable marijuana, sixteen (16) ounces or less of solid marijuana-infused product, or seventy-two (72) ounces or less of liquid marijuana-infused product.

SECTION 13-3.05: POSSESSION OF MARIJUANA SMOKING PARAPHERNALIA.

It shall be an infraction for any person to possess, use, give, sell, offer for sale or trade any device or product that directly allows or aids in the use, consumption, ingestion, inhalation or smoking of marijuana in any form and in any amount, including marijuana-infused products.

SECTION 13-3.06: POSSESSION/ABUSE OF INHALANTS OR TOXIC VAPORS.

It shall be an infraction any person to intentionally smell or inhale the fumes of any type of substance or to induce any other person to do so, for the purpose of causing a condition of, or inducing symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or dulling of the senses of the nervous system, or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes.

No person may, for the purpose of violating this section, use, or possess for the purpose of so using, any substance containing a solvent having the property of releasing toxic vapors or fumes.

SECTION 13-4: ANIMAL CONTROL

SECTION 13-4.01: INTERFERING WITH SERVICE ANIMAL.

It shall be an infraction for any person to engage in the following behavior:

(1) Interfering with the use of a service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the service animal user or his or her service animal after one has received notice that his or

her behavior is interfering with the use of a service animal;

(2) Falsely misrepresenting a pet as a service animal in the attempt to circumvent restrictions placed upon animals in a facility; or

(3) Implying, either implicitly or expressly, that an animal is a service animal, as defined by federal law, when its owner knows, or has reason to know that the animal in question does not meet the definition of a service animal:

a. A service animal is a dog or miniature horse that is individually trained to do work or perform tasks for the benefit of an individual with a disability. The work or tasks performed by the service animal must be related to the individual's disability.

b. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing nonviolent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks.

(4) An enforcement officer shall not ask about the nature or extent of a person's disability but may make two inquiries to determine whether an animal qualifies as a service animal. An enforcement officer may ask (1) if the animal is required because of a disability and (2) what work or task the animal has been trained to perform. An enforcement shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal, or require that the service animal demonstrate its task. Generally, an enforcement officer may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for a person with a disability, such as a dog is observed guiding a person who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to a person with an observable mobility disability.

(5) The minimum fine associated with a violation of this Section will be $250.00, but that fine can be escalated to the maximum amount allowable under this Chapter.

SECTION 13-4.02: HARASSMENT OF ANIMALS.

It shall be an infraction for any person to use any motor vehicle, including aircraft and watercraft, dogs, noise-making devices or other mechanical means to harass, molest, tease, disturb or chase:

(1) the livestock of another, without authorization, that is found on or within the Kalispel Reservation; or

(2) any big game, fur-bearing mammals, waterfowl, birds or other wildlife that is found on or within the Kalispel Reservation.

It shall not be a violation of this section to use dogs in legitimate hunting activities as permitted by the Code or as authorized by the Kalispel Business Committee or its designee.

SECTION 13-4.03 AT LARGE DOG.

It shall be an infraction for any person to allow a dog to be at large, which is defined as being physically off the premises of the owner, handler, or keeper of the dog and not secured by a leash that is under the

control of the owner, handler, or keeper and not more than eight (8) feet in length.

This section shall apply in residential developments, as that term is defined in this Chapter, and in commercial areas on or within the Kalispel Reservation.

SECTION 13-4.04: POSSESSION OF A DANGEROUS ANIMAL.

It shall be an infraction for any person to:

(1) permit a dog that has been deemed dangerous by the local animal control authority to be outside the proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under physical restraint of a responsible person;

(2) possess an inherently dangerous animal, defined as a live member of the canidae (dog & wolf), felidae (feline & cat), or ursidae (bear) families, including hybrids thereof, which, due to their inherent nature, may be considered dangerous to humans and is not normally domesticated by humans; or

(3) possess a live member of the class reptilia which is venomous, is known to be dangerous to humans, or is a member of the order crocodilia.

SECTION 13-5: PUBLIC ORDER, HEALTH, SAFETY & WELFARE

SECTION 13-5.01: DISTURBING THE PEACE.

It shall be an infraction for any person to, by loud or unusual noise, or by loud or boisterous voice and behavior, disturb the peace or quiet of a neighborhood or residential building, including an apartment complex or hotel tower, or disturb the dignity or reverential nature of any ceremony or gathering.

SECTION 13-5.02: UNATTENDED CHILD IN A VEHICLE.

It shall be an infraction for any person having the care and custody, whether temporary or permanent, of minor children under the age of twelve years, to leave such children in a parked automobile unattended by an adult while such person enters a casino, bar or other premises where wine, beer, liquor, malt liquor or spirits are dispensed for consumption on the premises.

SECTION 13-5.03: THROWING LIGHTED MATERIAL FROM VEHICLE.

It shall be an infraction for any person to throw, propel or discard any lighted or burning material from a motor vehicle.

SECTION 13-5.04: VIOLATION OF BURNING RESTRICTIONS OR BURN BAN.

It shall be an infraction for any person to violate any burn ban or restriction put into effect by Kalispel Tribal Public Safety, federal agency or government, Washington Department of Natural Resources or

county fire marshal by lighting or setting a fire, maintaining or feeding a fire, using prohibited, restricted or banned fuels, or having or keeping a fire in a manner that is prohibited, restricted or banned.

SECTION 13-5.05: LITTERING.

It shall be an infraction for any person to:

(1) dispose of any garbage, litter or waste anywhere on any property of the Kalispel Tribe of Indians except in designated waste disposal areas;

(2) discard litter of any type from any vehicle whether moving or stationary while on any of the property of the Kalispel Tribe of Indians; or

(3) break any article made of glass by any method within any recreational area, including the shorelines and bottoms of lakes and streams on any property of the Kalispel Tribe of Indians.

SECTION 13-6: ADMINISTRATION OF BUSINESS & GOVERNMENT

SECTION 13-6.01: DOING BUSINESS WITHOUT PROPER LICENSE, PERMIT OR REGISTRATION.

It shall be an infraction for any person, company or corporation and every person representing or pretending to represent such company or corporation as an officer, agent or employee, to transact, solicit or advertise for any business on Tribal property, before such person or entity shall have obtained permission from the Kalispel Tribal Council or its designee.

SECTION 13-6.02: UNAUTHORIZED COLLECTION OF TRIBAL RESOURCES.

It shall be an infraction for any person to collect, gather, harvest or pick any berries, fruit, cones, leaves, roots, bulbs, bark, plant parts or whole plants on any property of the Kalispel Tribe of Indians, without first obtaining authorization from the Kalispel Tribal Council or its designee.

SECTION 13-6.03: UNAUTHORIZED CUTTING OF TRIBAL TIMBER.

It shall be an infraction for any person to cut any standing green timber, including Christmas trees, or to cut and collect firewood on any property of the Kalispel Tribe of Indians, without first obtaining authorization from the Kalispel Tribal Council or its designee.

SECTION 13-6.04: DESECRATION OF GRAVES, BURIAL GROUNDS AND SACRED SITES

It shall be an infraction for any person to injure, damage, deface or destroy or desecrate, in any manner whatsoever, any grave or burial ground or deface, alter, or destroy any Indian painting or marks or remove, alter or destroy any artifacts located on any property of the Kalispel Tribe of Indians.

SECTION 13-7: FIREWORKS VIOLATIONS

SECTION 13-7.01: SALE/DISTRIBUTION OF FIREWORKS WITHOUT PROPER LICENSE.

It shall be an infraction for any person, company or corporation and every person representing or pretending to represent such company or corporation as an officer, agent or employee, to advertise for sale, offer for sale, sale, give away or distribute fireworks on Tribal property, before such person or entity shall have obtained permission from the Kalispel Tribal Council or its designee.

SECTION 13-7.02: SALE OF FIREWORKS TO MINORS.

It shall be an infraction for any person to sell fireworks not designated as "Safe and Sane" by the State of Washington to any person under the age of 18 years of age in violation of KLOC § 18-6.01.

SECTION 13-7.03: DISCHARGE OF FIREWORKS IN SELLING AREA.

It shall be an infraction for any person to discharge any firework(s) in the designated selling area. The designated selling area shall be posted with signs in conformity with KLOC § 18-11.01.

SECTION 13-8: SORNA VIOLATIONS

SECTION 13-8.01: REGISTRATION HINDERANCE.

It shall be an infraction for any person, who does not fall under the criminal jurisdiction of the Kalispel Tribe, to hinder the required registration of an individual who is required to register under KLOC Chapter 9A, Sex Offender Registration and Notification Act by:

(1) Knowingly harbor or knowingly attempt to harbor, or knowingly assist another person in harboringor attempting to harbor a sex offender who is in violation of this chapter;

(2) Knowingly assists a sex offender in the 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, noncompliance with the requirements of this chapter; or

(3) Knowingly provide false information to law enforcement regarding a sex offender.

SECTION 13-8.02: MISUSE OF REGISTRATION INFORMATION.

It shall be an infraction for any person, who does not fall under the criminal jurisdiction of the Kalispel Tribe, to misuse information that is required to be collected under KLOC Chapter 9A, Sex Offender Registration and Notification Act by:

(1) Willfully misuses public record information relating to a sex offender, including information displayed by law enforcement agencies on websites, including but not limited to unlawfully injuring, harassing, or committing a crime against any individual named in the registry;

(2) Willfully alters public record information relating to a sex offender, including information displayed

by law enforcement agencies on websites; or

(3) The sale or exchange of sex offender information for profit.

SECTION 13-8.03: REGISTRATION OFFENSES.

It shall be an infraction for any person, who does not fall under the criminal jurisdiction of the Kalispel Tribe, to violate the registration requirements under KLOC Chapter 9A, Sex Offender Registration and Notification Act by:

(1) Failure to register. Any person required to register under this chapter who fails to register within the timeframes specified herein has committed an offense;

(2) Providing false or misleading registration information. Any person required to register under this chapter who knowingly provides false or misleading information required herein has committed an offense;

(3) Failure to update registration information. Any person required to update their registration information who fails to do so within the required timeframes in violation of this chapter has committed an offense;

(4) Failure to appear for periodic registration. Any person required to appear for periodic in-person verification of their registration information who fails to appear within the timeframes specified herein has committed an offense.

SECTION 14-1: PURPOSE AND JURISDICTION

14-1.01 PURPOSE

It is the legislative intent and purpose of the Kalispel Tribal Business Council in enacting this Chapter:

(1) To promote the health, welfare and peace of the people of the Kalispel Indian Reservation by providing an orderly, efficient and peaceful method of determining the rights of people to be on the lands of the Kalispel Reservation and evicting them when necessary and just to do so.

(2) To provide a judicial remedy for those who claim they are being evicted wrongfully from their lands or homes.

(3) To prevent the wrongful damage and destruction of the real property and buildings of the people of the Kalispel Reservation.

14-1.02 JURISDICTION

The Kalispel 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 Kalispel Reservation, any extensions of the Reservation, and all Kalispel Tribal and allotted Indian lands outside the exterior boundaries of the Kalispel Indian Reservation, as well as those lands that fulfill the definition of "Indian Country" as defined in 18 U.S.C. Section 1151.

SECTION 14-2: DEFINITIONS

14-2.01 DEFINITIONS

For the purpose of this Code, the following words and phrases shall, unless otherwise indicated, have the following meaning:

(1) Forcible entry. 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.

(2) Forcible detainer. 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 three days to surrender the same to such former occupant when ordered to leave.

(3) Unlawful detainer. A tenant of real property, who has less than a life estate, is guilty of unlawful detainer if:

(A) He or she continues in possession of (holds over) real property after the expiration of a lease;

(B) He or she continues in possession of real property even though there is a default in the payment

of rent due and owing, and he or she has been given notice to either pay the rent within three days or vacate the premises during that same period;

(C) He or she continues in possession of the real property after failing to keep or perform a condition of the lease, and fails to cure the defect within three days after notice;

(D) He or she 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 three days notice to vacate the premises;

(E) 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 three days notice.

(4) Occupant. One, who for the five days preceding any unlawful entry, was in the peaceable and undisturbed possession of the real property.

SECTION 14-3: COMMENCEMENT OF ACTION

14-3.01 NOTICE

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 three days nor more than thirty days from the date of service. Service on the defendant shall be accomplished in conformity with Chapter 3 of this Code.

14-3.02 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, stating:

(1) The names of the plaintiff and defendant;

(2) When notice to vacate was given and the failure of the defendant to cure the defect or vacate;

(3) A description of the property and its location;

(4) Facts upon which the action is based, i.e., failure to pay rent, failure to vacate after the expiration of the lease, etc.;

(5) Any allegations of fraud, force, violence, waste, destruction and any damages because of such;

(6) The amount of rent due and owing;

(7) Whether the property is to be restored to the plaintiff.

SECTION 14-4: SUMMONS

14-4.01 SUMMONS

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 Kalispel Tribal Court at a date and time certain which shall

be at least three days, but no more than twenty days after service of summons and complaint upon the other party. 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.

14-4.02 EMERGENCY HEARING

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. 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. 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 five days from the date of the emergency hearing.

SECTION 14-5: SERVICE OF SUMMONS AND COMPLAINT

14-5.01 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 3 of this Code.

SECTION 14-6: ANSWER BY DEFENDANT

14-6.01 ANSWER BY DEFENDANT

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. The defendant may answer in writing any day prior to the hearing, and serve a copy on the plaintiff prior to the hearing.

SECTION 14-7: JUDGMENT

14-7.01 JUDGMENT

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. The judgment shall declare forfeiture of the lease, agreement or tenancy. 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. Any money judgment shall be enforced in conformity with Chapter 3 of the Law and Order Code. 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.

14-8.01 CRIMINAL VIOLATIONS

Any person guilty of forcible entry or forcible detainer may also be subject to the criminal offenses under Chapter 9 of this Code.

SECTION 15-1: PETITION FOR ACQUISITION - CONTENTS

15-1.01 PETITION FOR ACQUISITION - CONTENTS

Whenever anybody representing the Tribe is authorized by the Business Council to acquire any land, or other property, deemed necessary for the public uses of the Tribe, the attorney general shall present to the Tribal Court a petition in which the land, or other property sought to be acquired shall be described with reasonable certainty, and setting forth the name of every owner, who can be ascertained from B.I.A. Realty records, the reason for which the property is to be acquired, and requesting that the court determine the compensation to be made to the owner or owners, for taking the land, or other property.

SECTION 15-2: NOTICE - CONTENTS - SERVICE - PUBLICATION

15-2.01 NOTICE - CONTENTS - SERVICE - PUBLICATION

A notice stating briefly the object of the petition and containing a description of the land, or property sought to be acquired, and stating the time and place when and where the same will be presented to the Tribal Court, shall be served on each and every person named as owner, at least ten (10) days previous to the time designated in the notice for the presentation to the Court of the petition. The service shall be made by delivering a copy of the notice to each of the persons or parties so named, if a resident of the reservation; or, in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode; with some person of more than sixteen years of age. In case of persons under the age of eighteen years, with their guardians, or in case no guardian shall have been appointed, then on the person who has the care and custody of such person; in case of idiots, lunatics or distracted persons, on their guardians, or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. In all cases where the owner or person claiming an interest in such real property is a nonresident of this reservation, or where the residence of such owner or person is unknown, an affidavit of the attorney general shall be filed that such owner or person is a non resident of this reservation or that after diligent inquiry his residence is unknown or cannot be ascertained, service may be made by publication in the tribal newsletter and in any newspaper published in Pend Oreille County for two successive publications. Such publication shall be deemed service upon each nonresident person or persons whose residence is unknown. The notice shall be signed by the attorney general of the Kalispel Tribe. The notice may be served by any competent person eighteen years of age or over. Due proof of the service of such notice by affidavit of the person serving the same, or by the printer's affidavit of publication, shall be filed with the clerk of the Tribal Court before or at the time of the presentation to the Court of such petition. Want of service of such

notice shall render the subsequent proceedings void as to the person not served, but all persons or parties having been served with notice as provided, either by publication or otherwise, shall be bound by the subsequent proceedings.

SECTION 15-3: ADJOURNMENT OF PROCEEDINGS - FURTHER NOTICE

15-3.01 ADJOURNMENT OF PROCEEDINGS - FURTHER NOTICE

The court may upon application of the attorney general or any owner or party interested, for reasonable cause, adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interest may be affected.

SECTION 15-4: HEARING - ORDER ADJUDICATING PUBLIC USE

15-4.01 HEARING - ORDER ADJUDICATING PUBLIC USE

At the time and place for hearing the petition, or to which the hearing may have been adjourned, if the court has satisfactory proof that all parties interested in the lands, or other property described in the petition have been duly served with the notice, and is further satisfied by competent proof that the contemplated use for which the lands, or other property are sought to be acquired is really necessary for the public use of the Tribe, it shall make and enter an order, to be recorded in the minutes of the court, and which order shall be final unless review to the Tribal Court of Appeals is taken within five days after entry thereof, adjudicating that the contemplated use for which lands or other property are sought to be appropriated is really a public use of the Tribe.

SECTION 15-5: ORDER TO DIRECT DETERMINATION OF DAMAGES AND OFFSETTING BENEFITS

15-5.01 ORDER TO DIRECT DETERMINATION OF DAMAGES AND OFFSETTING BENEFITS

The order shall direct that determination be made of the compensation and damages to be paid all parties interested in the land or other property sought to be acquired together with the injury, if any, caused by such taking to the remainder of the lands or other property from which the acquisition is to be taken after offsetting against all such compensation and damages the special benefits, if any, accruing to the remainder by reason of the use by the Tribe of the lands and other property described in the petition. The determination shall be made within thirty days after the entry of the order.

SECTION 15-6: ORDER FOR IMMEDIATE POSSESSION - PAYMENT OF TENDER INTO COURT

15-6.01 ORDER FOR IMMEDIATE POSSESSION - PAYMENT OF TENDER INTO COURT

In case the Tribe shall require immediate possession and use of the property sought to be condemned, and in order of necessity shall have been granted, and no review has been taken therefrom, the attorney general may stipulate with respondents for an order of immediate possession and file with the clerk of

the court a certificate of the Tribe's requirement of immediate possession of the land, which shall state the amount of money and terms offered to the respondents and shall further state that such offer constitutes a continuing tender of such amount. The attorney general shall file a copy of the certificate with the office of financial management, which shall issue and deliver to the clerk of the court a sum sufficient to pay the amount agreed to by the parties or an adequate amount as determined by the Court. The court without further notice to respondent shall enter an order granting to the Tribe the immediate possession of the property described in the order of necessity, which order shall bind the petition to pay the full amount of any final judgment of compensation and damages which may thereafter be awarded for the taking of the lands, or other property described in the petition and for the injury, if any, to the remainder of the lands, or other property from which they are to be taken from, after offsetting against all compensation and damages the special benefits, if any, accruing to the remaining lands. The moneys paid into court may at any time after entry of the order of immediate possession, but withdrawn by respondents, by order of the court, as their interests shall appear.

SECTION 15-7: DETERMINATION OF ADEQUACY OF PAYMENT – COSTS

15-7.01 DETERMINATION OF ADEQUACY OF PAYMENT - COSTS

The amount paid into court shall constitute just compensation paid for the taking of the property: PROVIDED, that respondents may, in the same action, request a trial for the purpose of assessing the amount of compensation to be made and the amount of damages arising from the taking. At the trial, the date of valuation of the property shall be the date of entry of the order granting to the Tribe immediate possession and use of the property. If, pursuant to such hearing, the court awards respondents an amount in excess of the tender, the court shall order the excess paid to respondents with interest thereon from thetime of the entry of the order of immediate possession, and shall charge the costs of the action to the Tribe. If pursuant to the trial, decision of the court awards respondents an amount equal to the tender, thecosts of the action shall be charged to the Tribe, and if the verdict or decision awards an amount less than the amount of the tender, the Tribe shall be taxed for costs.

SECTION 15-8: DEMAND FOR TRIAL - TIME OF TRIAL - DECREE OF ACQUISITION

15-8.01 DEMAND FOR TRIAL - TIME OF TRIAL - DECREE OF ACQUISITION

If any respondent shall elect to demand a trial for the purpose of assessing just compensation and damages arising from the taking, he shall so move within sixty days from the date of entry of the order of immediate possession and use, and the issues shall be brought to trial within one year from the date of such order unless good an sufficient proof shall be offered and it shall appear to the court that the hearing could not have been held within a year. In the event that no such demand be timely made or

brought to trial within the limiting period, the court, upon application of the Tribe shall enter a decree of acquisition for the amount paid into court as the total sum to which respondents are entitled, and such decree shall be final and nonappealable.

SECTION 15-9: ACQUISITION WHEN SEVERAL OWNERSHIPS

15-9.01 ACQUISITION WHEN SEVERAL OWNERSHIPS

Whenever it becomes necessary on behalf of the Tribe to acquire by condemnation more than one tract of land, property, or property rights, and held in different ownerships or interests, the Tribe may consolidate and file a single petition as one action against the several tracts of land, property, or property rights held by said different ownerships or interests, setting forth separately the descriptions of the tracts of land, property, or property rights needed, and the owners, persons, or parties interested therein.

15-9.02 PUBLIC USE

At the time and place appointed for hearing the petition, the court may enter an order adjudicating public use as affecting all tracts of land, property, or property rights as described therein, which order shall be final as to those respondents not seeking a review to the court of appeals within five days after entry thereof.

15-9.03 SEPARATE TRIALS

Thereafter, if requested by the Tribe, the Tribal Court may decide to hear and determine in separate trials, the amount of compensation and damages, if any, that shall be paid for the different tracts, parcels, property, or property rights, as set forth in the petition.

SECTION 15-10: TRIAL - DAMAGES TO BE FOUND

15-10.01 TRIAL - DAMAGES TO BE FOUND

A judge of the Tribal court shall preside at the trial to determine the compensation and damage to be awarded, by reason of the acquisition and use of the lands, or other property sought to be acquired. Upon the trial, witnesses may be examined in behalf of either party to the proceedings as in civil actions; and a witness served with a subpoena in each proceeding shall be punished for failure to appear at such trial, or for perjury, as upon a trial of a civil action.

15-10.02 DAMAGES TO BUILDINGS

If there is a building standing, in whole or in part, upon any land to be taken, the judge shall add to the findings the value of the land taken, and the damages to the building. If the entire building is taken, or if the building is damaged, so that it cannot be readjusted to the premises, then the measure of damages shall be the fair market value of the building. If part of the building is taken or damaged and the building can be readjusted or replaced on the part of the land remaining, the Tribe agrees thereto, then the

measure of damages shall be the cost of readjusting or moving the building, or the part thereof left, together with the depreciation in the market value of the building by reason of such readjustment or moving.

15-10.03 DAMAGES TO BUILDINGS - WHERE BASED ON READJUSTMENT OR MOVING

If damages are based upon readjustment or moving of building or buildings, the court shall order and fix the time in the judgment and decree of acquisition within which any such building must be moved or readjusted. Upon failure to comply with said order, the Tribe may move the building upon respondent's remaining land and recover its costs and expenses incidental thereto. The Tribe shall have a lien upon the building and the remaining land from the date of the judgment and decree of acquisition for the necessary costs and expenses of removal until the order of the court has been complied with. The amount of the lien and satisfaction thereof shall be by application and entry of a supplemental judgment in said proceedings and execution thereon.

SECTION 15-11: JUDGMENT - DECREE OF APPROPRIATION - RECORDING

15-11.01 JUDGMENT - DECREE OF APPROPRIATION - RECORDING

At the time of rendering judgment for damages, whether upon default or trial, the judge shall also enter a judgment or decree of appropriation of the land, real estate or premises sought for acquisition, thereby vesting the legal title to the same in the Kalispel Tribe. Whenever said judgment or decree of acquisition is made, a certified copy of such judgment or decree of acquisition may be filed for record in the Realty office of the Bureau of Indian Affairs, Spokane Agency.

SECTION 15-12: PAYMENT OF DAMAGES - EFFECT - COSTS - APPEAL

15-12.01 PAYMENT OF DAMAGES - EFFECT - COSTS - APPEAL

Upon the entry of judgment upon the decision of the court awarding damages, the Tribe may make payment of the damages and the costs of the proceedings by depositing them with the clerk of the court, to be paid out under the direction of the judge and upon making such payment into court of the damages assessed and allowed for any land, or other property mentioned in the petition, and of the costs, the Tribe shall be released and discharged from any and all further liability therefor, unless upon appeal the owner or party interested recovers a greater amount of damages; and in that case, the Tribe shall be liable only for the amount in excess of the sum paid into court and the costs of appeal.

In the event of an appeal by any party to the proceedings, the moneys paid into the Tribal court by the Tribe pursuant to this section shall remain in the custody of the court until the final determination of the proceedings by the court of appeals.

SECTION 15-13: CLAIMANTS, PAYMENT OF - CONFLICTING CLAIMS

15-13.01 CLAIMANTS, PAYMENT OF - CONFLICTING CLAIMS

Any person, claiming to be entitled to any money paid into court, may apply to the court and upon furnishing evidence satisfactory to the court that he is entitled to the money, the court shall make an order directing the payment to such claimant the portion of such money as he shall be found entitled to; but if, upon application, the judge should decide that the title to the land, or premises specified in the application of such claimant was in such condition as to require that an action be commenced to determine the conflicting claims thereto, he shall refuse such order until such action is commenced and the conflicting claims to such land or premises be determined according to law.

SECTION 15-14: APPEAL

15-14.01 APPEAL

Either party may appeal from the judgment for damages entered in the Tribal court, to the court of appeals of the Tribe, within thirty days after the entry of judgment as aforesaid, and such appeal shall bring before the court of appeals the propriety and justness of the amount of damages in respect to the parties to the appeal: PROVIDED, HOWEVER, That upon such appeal no bond shall be required: AND PROVIDED FURTHER, That if the owner of land, or premises accepts the sum awarded by the court, he shall be deemed thereby to have waived conclusively an appeal to the court of appeals, and final judgment by default may be rendered in the Tribal court as in other cases: PROVIDED FURTHER, Thatno appeal shall operate so as to prevent the Tribe from taking possession of such property pending such appeal after the amount of said award shall have been paid into court.

SECTION 15-15: AWARD, HOW PAID INTO COURT

15-15.01 AWARD, HOW PAID INTO COURT

Whenever the attorney general shall file with the financial manager a certificate setting forth the amount of any award found against the Tribe under these provisions, together with the costs of said proceedings, and a description of the lands and premises sought to be acquired, and the title of the action or proceeding in which said award is rendered, it shall be the duty of the office of financial management to forthwith issue a check upon the Tribal Treasury to the clerk of court in money the amount of said award and costs.

CHAPTER 16 - HOUSING IMPROVEMENT PROGRAM RULES AND PROCEDURES

SECTION 16-1: INTRODUCTION

16-1.01 INTRODUCTION

The Kalispel Tribe has contracted with the Federal Government to administer the Housing Improvement Program for Kalispel Indians. The program shall be administered pursuant to federal regulations and the procedures established hereby. The federal regulations governing this program are set forth in 25 C.F.R. 256 et. seq. and incorporated herein by reference. Future changes in the federal regulations also are adopted here by reference.

SECTION 16-2: PURPOSE

16-2.01 PURPOSE

The purpose of the Housing Improvement Program is to provide grant assistance to tribal members to improve their housing situations and to give them the opportunity for a decent home and a suitable living environment.

SECTION 16-3: ELIGIBILITY

16-3.01 ELIGIBILITY

Only those Indian families who live on the reservation and tribal members living in the immediate vicinity of the reservation will be considered for assistance under this program. Priority will be given to families with the greatest need as determined under federal regulations and paragraph 10 herein; with the exception of category "D" as specified in paragraph 8. Applicants must reside in the dwelling for which the assistance is sought. The applicant must have inadequate income and inadequate resources to finance the repair, or in the case of down payments, to meet the full cost of the loan.

SECTION 16-4: CATEGORIES

16-4.01 CATEGORIES

Grants will be made, subject to the availability of funds, in the following categories:

-- Category "A": for repairs to housing that will remain substandard;

-- Category "B": for repairs to housing that will become standard;

-- Category "C": for down payment;

-- Category "D": for new housing.

No applicant may receive more than one grant in categories "B", "C", and "D" and up to a maximum of $2,500.00 in Category "A". The specific rules for grants under each category are set forth fully in 25 C.F.R. 256.4. Key federal rules and procedures and additional tribal requirements are set forth below.

16-4.02: CATEGORY "A"

The purpose of Category "A" assistance is to finance repairs and additions to substandard housing to make it safer, more sanitary and more livable until such time as standard housing is available.

Grants shall not exceed $2,500.00 for any one dwelling. If the dwelling is leased, the applicant must provide assurances from the landlord that no rent increase will result from the repair and that the applicant will be able to continue to lease the dwelling for at least two additional years following completion of the repairs.

16-4.03 CATEGORY "B"

The purpose of Category "B" assistance is to finance repairs and/or additions that will improve housing to "standard" condition as defined in 25 C.F.R. 256.2(I).

Grants may not exceed $20,000.00 for any one dwelling. No applicant may receive more than one grant in this category.

In general, these grants are for tribal members who own or are buying homes. Tribal members who rent from Indian owners may apply if they can provide assurances that they can remain in the dwelling for five additional years. The applicant must be able to show that no rent increase will result from the repair. The landlord must also agree in writing that, if the original applicant moves out, he will give preference in renting to another tribal member eligible under this program and will notify the Housing Coordinator of any vacancy and give the Housing Authority two months to locate another eligible tribal member to occupy the dwelling.

16-4.04 CATEGORY "C"

The purpose of Category "C" is to provide down payment assistance to tribal members to help make them eligible for tribal, federal, or other housing loan programs (including bank loans or mortgages). Grants under this category will not be made unless the financing for the mortgage is provided by federal, state or tribal government or a reputable lending institution insured under federal law.

The applicant must show that he has adequate income and other resources to meet the full cost of the mortgage loan, that he is purchasing a standard dwelling as defined in 25 C.F.R. 256.2(I) and does not presently own or is not presently buying any other dwelling.

No grant may be made for more than the amount necessary to secure the loan plus closing costs or $5,000.00 whichever is less. No applicant may receive more than one grant under this category.

The applicant must provide evidence from the lending institution that the loan will be granted and give assurances that the funds will be used for the purpose intended. The lending institution must also agree in writing to notify the Housing Coordinator of any anticipated default of a tribal member and to allow the Housing Authority a reasonable time to locate a qualified tribal member to assume the loan prior to

any foreclosure.

16-4.05 CATEGORY "D"

The purpose of Category "D" assistance will provide the financing of the construction of new standard housing when it is established that there is no reasonable prospect that standard housing can be financed from sources other than the Housing Improvement Program.

Grants may not exceed $45,000.00 for a dwelling and equipment. No applicant may receive more than one grant under this category.

Consideration for assistance under this category is hereby limited to elderly, handicapped, or members who are victims of disaster. In the event no applicant meets this clause, then selection for assistance under Category "D" will be based on low-income, relative to family size, with consideration given for current living conditions.

All contractor built homes must contain a one-year warranty against defects, materials, and workmanship.

The applicant must have ownership of the land on which the house is built, or have a minimum 25 year lease agreement with the owner. The applicant must agree in writing that if the house is sold within the first 10 years of ownership, the grant is voided and the full amount repaid to the B.I.A. Subsequent to 10 years he/she may retain 10% of the original grant amount for each successive year beginning with the 11th year. The remaining pro-rated share must be repaid to the B.I.A. After 20 years, no payment will be due to the B.I.A.

SECTION 16-5: APPLICATION

16-5.01 APPLICATION

An application must be an Indian living in the tribe's service area and shall submit a Home Improvement Program Grant Application and provide any other information determined necessary by the Housing Coordinator or Housing Authority.

16-5.02 APPLICATION REVIEW

Applications will be reviewed and ranked by the Housing Coordinator within each category under a system developed by the Housing Authority. Factors which shall be considered in ranking applications shall include, but are not limited to the following: Age, Income/household size, Handicap, Basic need. A point system has been developed to insure that those most in need will be the first to receive program assistance. A copy of the system is attached.

To be considered eligible, applicant's household income must not exceed the maximums set forth in the 5 point column under the income/household size component of the assistance selection criteria. (Attach Y)

The Housing Coordinator shall be responsible for gathering information necessary for completion of the ranking process. Upon completion of the ranking process, the Housing Coordinator shall present the list of ranked applications to the Housing Authority which shall make the final decision.

16-5.03 ONE-TIME ONLY

Applicants may receive assistance only one time in Categories "B", "C", and "D" and up to a maximum of $2,500.00 in Category "A". After initial determination, categories cannot be changed.

SECTION 16-6: FUNDING

16-6.01 FUNDING

Assistance is limited by funds available. The Housing Authority makes no guarantee that funds will be granted or that successful applicants will receive the maximum amount under a category.

SECTION 16-7: HOUSING AUTHORITY

16-7.01 HOUSING AUTHORITY

The Housing Authority shall consist of three persons to be appointed by the Tribal Council. The Housing Authority shall meet as necessary to review ranked applications submitted by the Housing Coordinator and make decisions thereon. The Housing Authority shall ensure compliance with requirements of these rules and procedures and the applicable federal regulations.

SECTION 16-8: APPEALS

16-8.01 APPEALS

Appeals from decisions of the Housing Authority may be made to the Tribal Council under the rules and procedures established thereby. The appeals procedure established under 25 C.F.R. 256.7 may be followed after tribal remedies have been exhausted.

SECTION 16-9: IMPLEMENTATION

16-9.01 IMPLEMENTATION

Successful applicants may choose contractors to submit bids from the current list of contractors kept on hand by the Housing Coordinator. The applicants may request the Housing Authority to make selection, if the applicant is not familiar with bonafide area contractors. Successful applicants may not be paid to work on their own dwellings from grants hereunder.

SECTION 16-10: CONFLICT OF INTEREST

16-10.01 CONFLICT OF INTEREST

The Tribal Council and all potential Housing Authority Members must recognize that each Member to be appointed must be able to accomplish all organization dealings in a manner above reproach; free from

any indiscretions, gratuities, or favors that might cast suspicion on themselves, on the Tribal Council or on the administration. Each Member must refrain from using their official positions unethically to advance personal interests or the interests of their family and friends.

In the awarding of HIP grants and contracts, a Member must abstain (with no vote) from the decision making process if the Member or an immediate family member is a candidate for selection. An immediate family member is: grandfather, grandmother, father, mother, spouse, brother, sister, son, daughter, grandchildren, or any other person recognized as filling one of these relationships in a titular manner.

CHAPTER 16A - KALISPEL TRIBALLY DETERMINED PREVAILING WAGE RATE UNDER THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT

SECTION 16A-1: GENERAL PROVISIONS

16A-1.01 PURPOSE

(1) The Kalispel Tribe desires to establish a Tribally determined Prevailing Wage Rate (PWR) for laborers, mechanics, architects, technical engineers, draftsmen, technicians, and other positions which may be designated by the Tribe as necessary to fulfilling contracts or agreements for assistance, sale, construction, or lease under the Native American Housing Assistance and Self-Determination Act (NAHASDA), as it applies to Indian Housing Block Grants (IHBG).

(2) Notwithstanding any other provision of Tribal law to the contrary, the Tribally determined PWR established under this Chapter is intended to supersede all federal wage determinations otherwise applicable to NAHASDA/IHBG contracts or agreements to the greatest extent allowed under federal law and to the fullest legal authority under Tribal law.

16A-1.02 APPLICABILITY

(1) This Chapter shall apply to contracts or agreements for assistance, sale, construction, or lease undertaken by the Tribe pursuant to NAHASDA/IHBG. This includes contracts or agreements with any employer, contractor, or subcontractor, including the Tribe and any of its departments, entities, and instrumentalities (including but not limited to the Kalispel Tribe Housing Office (KTHO)), whenperforming services funded through or otherwise managed through agreements under NAHASDA/IHBG.

(2) This Chapter does not apply to volunteers, interns, or anyone who receives no compensation or paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered. No individual currently employed under an agreement for the same or similar services on a project shall be considered a volunteer on the same project.

(3) To avoid wage disparities between contracted employees funded pursuant to NAHASDA/IHBG and other Tribal employees in the same job descriptions, the Tribally determined PWR shall not exceed the starting quartile the Tribe's wage schedule. Those already employed under the Tribe's wage schedule shall not have their wages reduced as a result of this provision.

(4) The Kalispel Business Committee, at its discretion, may use the established Tribally determined PWR in circumstances other than as outlined above in 16A-1.02(1) – (3).

16A-1.03 DEFINITIONS

The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Agreement" means any contract or agreement for assistance, sale, construction, or lease funded under NAHASDA/IHBG.

(2) "IHBG" means the Indian Housing Block Grant program under NAHASDA.

(3) "KTHO" means the Kalispel Tribe Housing Office, the Kalispel Tribe's designated housing entity.

(4) "NAHASDA" means the Native American Housing Assistance and Self-Determination Act of 1996, as amended, Pub. L. 104-330, 25 U.S.C. 4101 et seq.

(5) "Prevailing wage rate" or PWR means the wage as determined by the Tribe pursuant to this ordinance as the wage prevailing on the Tribe's Reservation and within the Tribe's and the KTHO's area of operations for each category of employee including, but not limited to, architect, technical engineer, draftsman, technician, laborer, and mechanic.

(6) "Tribe" means the Kalispel Tribe of Indians.

16A-2: TRIBALLY DETERMINED PREVAILING WAGE RATE

16A-2.01 DETERMINATION OF TRIBAL PREVAILING WAGE.

(1) The Tribe shall establish a Tribally determined PWR. Notwithstanding any other provision of Tribal law to the contrary, the Tribally determined PWR shall apply only to contracts or agreements for assistance, sale, construction, or lease under NAHASDA, as it applies to IHBG.

(2) The Tribe shall arrange for a wage survey to be conducted on a regular basis in order to determineand establish the Tribally determined PWR. The Kalispel Business Committee shall review the results of the survey, and, if the survey results and methodology are acceptable, the Business Committee shall approve such results. This approval shall establish the Tribally determined PWRschedule.

(3) The Tribe may delegate its authority to conduct surveys and/or to establish the Tribally determined PWR under this chapter to a Department in the Tribe. The Kalispel Business Committee retains the right to review and approve the schedule of the Tribally determined PWR.

16A-2.02 NOTIFICATION OF TRIBALLY DETERMINED PWR REQUIRED

(1) The Tribe shall provide every employer, contractor, or subcontractor at the time bids or proposals are solicited with a copy of the currently effective schedule of the Tribally determined PWR.

(2) At all times while performing under an agreement or contract subject to this Chapter, each employer, contractor, or subcontractor shall post at the job site and in its principal office a copy of the schedule of the Tribally determined PWR.

16A-3: PAYMENT AND RECORD KEEPING REQUIREMENTS

16A-3.01 PAYMENT OF TRIBALLY DETERMINED PWR AND RECORD KEEPING REQUIRED

(1) Any contract or agreement pursuant to NAHASDA/IHBG for assistance, sale, construction, or lease shall contain a provision requiring not less than the Tribally determined PWR shall be paid by the employer, contractor, or subcontractor.

(2) Each employer, contractor, or subcontractor when performing under an agreement or contract pursuant to NAHASDA/IHBG shall maintain certified payroll records reporting the hourly rates paid each employee. These certified payroll records shall be available for inspection and copying by the employee and KTHO during regular business hours.

(3) Unless otherwise indicated in an agreement or contract, payroll records shall be submitted by the employer, contractor, or subcontractor to the KTHO within 30 days of the end of the agreement orcontract.

(4) Employers, contractors, and subcontractors shall keep payroll records for a minimum of three years after the date of completion of the agreement or contract. These records shall be available for inspection, review, transcription, or copying by KTHO during regular business hours, or as specified by KTHO.

(5) In addition to the remedies available under this Chapter, the Tribe has the authority to withhold payment to employers, contractors, or subcontractors if the Tribe, in good faith, believes that a employer, contractor, or subcontractor is not complying with any provision of this ordinance.

16A-4: ENFORCEMENT

16A-4.01 ENFORCEMENT OF REQUIRED PAYMENT AND RECORD KEEPING

KTHO has the authority to enforce all payment and record-keeping requirements outlined in this Chapter through compliance monitoring, investigations, and issuing notices of violations. No action under this Chapter shall be filed or allowed more than two years after the date such wages became due and payable under the agreement or contract.

16A-4.02 NOTICE OF VIOLATION

(1) In the event that an employer, contractor, or subcontractor, other than the Tribe or a Tribal entity, fails to pay the Tribally determined PWR or fails to maintain or provide records as required by thisChapter, the KTHO shall issue a Notice of Violation to the employer, contractor, or subcontractor.

(2) The Notice of Violation shall include a statement regarding what actions are required to remedy the violation, a date by which the violation must be remedied, and an explanation of applicable penalties imposed for failure to correct the violation by a specific date.

(3) The Notice of Violation shall also include a statement explaining the employer's, contractor's, or

subcontractor's appeal rights under this Chapter.

16A-4.03 REMEDIES AND PENALTIES

(1) Any covered agreement or contract may contain a provision stating the remedies for failure to pay the Tribally determined PWR or for failing to maintain or provide access to records.

(2) If a covered agreement or contract does not outline remedies and the employee has been underpaid, the employer, contractor, or subcontractor may be ordered to pay the difference in the wage paid to the employee and the Tribally determined PWR.

(3) Monetary penalties of up to $200 per day, per contract may be issued by KTHO for violations of this Chapter, not to exceed $10,000.

16A-4.04 APPEALS TO THE KALISPEL HOUSING BOARD

(1) The Kalispel Business Committee shall appoint a hearing board to hear disputes that employers, contractors, or subcontractors, other than the Tribe or a Tribal entity, may have regarding Notices ofViolation. This board may be the same as the Kalispel Housing Board, and for the purposes of this Chapter, this hearing board shall be referred to as the Kalispel Housing Board.

(2) An appeal to the Kalispel Housing Board is the exclusive remedy for an employer, contractor, or subcontractor to dispute any part of the Notice of Violation.

(3) The employer, contractor, or subcontractor, other than the Tribe or a Tribal entity, cited for a violation may appeal the Notice of Violation by filing a written notice of appeal to the Kalispel Housing Board within 30 calendar days of service of the violation. The notice of appeal must include the appellant's name and contact information, a copy of the Notice of Violation, and a statement regarding the basis for the appeal.

(4) The Kalispel Housing Board may request documentation from the appellant, KTHO, or any entities which may have pertinent information.

(5) The Kalispel Housing Board will hold a hearing within 30 calendar days after receiving all requested documentation.

(6) The time to hold a hearing may be extended if necessary, but may not exceed 60 calendar days.

(7) Notice of the hearing shall be given to the appellant and KTHO no less than five business days prior to the hearing. Notice of the hearing to the appellant shall be via personal service (as outlined in the Kalispel Law and Order Code (KLOC) Chapter 3) or certified mail, return receipt requested, to the address provided by the appellant.

(8) The appellant must appear and present his or her case at the hearing. In order to prevail, the appellant must show a preponderance of evidence that the Tribe's decision was not in accordance with, or was in violation of this Chapter. Attorneys are not allowed at hearings with the Kalispel Housing Board.

(9) The Kalispel Housing Board may allow testimony from witnesses and cross-examination by parties.

(10) All hearings shall be recorded via audio recorder or stenographic means.

(11) The Kalispel Housing Board shall issue a written decision within 30 calendar days of the conclusion of the hearing. The Kalispel Housing Board may reverse, affirm (wholly or partly), or modify a notice of violation and/or the penalties issued. The Kalispel Housing Board may not award damages separate from those identified in this Chapter, including but not limited to attorney fees. The written decision shall be mailed to the appellant and the KTHO by certified mail, return receipt requested.

16A-4.05 TRIBAL COURT ACTION

(1) Any decision made by the Kalispel Housing Board should be considered a final and conclusive decision, unless a party with standing appeals the decision to the Kalispel Tribal Court.

(2) Appeals from a Kalispel Housing Board final decision shall be heard by the Kalispel Tribal Courtunder the laws of the Kalispel Tribe.

(3) Appellate procedures shall follow the provisions in KLOC Chapter 1, unless otherwise specified in this Chapter.

(4) A party must file a written notice of appeal to the Tribal Court within 30 calendar days of the Kalispel Housing Board ruling.

(5) Notice shall be mailed by certified mail return receipt requested to the Kalispel Housing Board, Secretary of the Business Committee, the Kalispel Tribe Legal Office, and the Kalispel Tribe Housing Program Manager.

(6) Appeals shall be limited to a review of the evidence before the Kalispel Housing Board. De novo trial by the Tribal Court is not permitted. The Tribal Court shall set aside the decision of the Kalispel Housing Board only if it finds the decision to be: a) unsupported by evidence; b) arbitrary and capricious; or c) an abuse of discretion by the Kalispel Housing Board.

(7) The Tribal Court may not award damages separate from those identified in this Chapter, including but not limited to attorneys fees.

16A-5: SOVEREIGN IMMUNITY

16A-5.01 SOVEREIGN IMMUNITY

This ordinance does not grant jurisdiction or authority to bring suit against the Kalispel Tribe of Indians. Nothing in this ordinance shall be deemed a waiver of the sovereign immunity from suit of the Tribe or its agents, entities, instrumentalities, or officials, which immunity is hereby held to extend to the Tribe

and its officers and employees acting for the Tribe within the scope of their Tribal authority.

SECTION 17-1: TRIBAL GOVERNMENTAL ENTERPRISES

17-1.01 TRIBAL GOVERNMENTAL ENTERPRISES

This chapter shall be known as the Tribal Governmental Enterprises chapter. Enterprises organized and created under this Chapter shall be agencies and instrumentalities of the Kalispel Tribe of Indians and subject to Kalispel Tribal law.

17-1.02 PURPOSE, CONSTITUTIONAL AUTHORITY

(1) Indian tribes have been consistently recognized throughout the history of the United States as retaining governmental powers, where consistent with the trusteeship of the United States, including all powers necessary to commercially utilize their undivided resources for the economic benefit of the Tribe. 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 Indian resources. There is now a need and an opportunity to develop Tribal resources to provide a standard of living and education through a holistic approach to all Tribal members to a standard the members will set for themselves.

(2) This Chapter creates an agency of the Kalispel Tribal government, separate from other branches of the Tribal government but accountable to the Tribe's governing body, with the authority to exercise and implement Tribal governmental and proprietary powers over development, construction, operation, management, promotion, financing, regulation and licensing of any and all governmental enterprises owned by the Tribe. These powers are hereby declared by the Tribe to be of the same nature as all other Tribal powers, pursuant to the Constitution of the Tribe. The Tribe adopts this Chapter in order to meet the following independent goals:

(A) to carry out a constitutional mandate;

(B) to develop tribal resources to obtain the highest value possible for those resources;

(C) to provided a means to raise the standard of living and improve both physical and spiritual health and increase education for all Tribal members; and

(D) to enter into and take advantage of other business and commercial opportunities available to the Tribe.

17-1.03 PRIVILEGES AND IMMUNITIES

The Kalispel Tribal Economic Authority and all Enterprises chartered 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. Such enterprises, their officers and

employees shall be entitled to all of the privileges and immunities enjoyed by the Tribe, including but not limited to, immunities from suit in Federal, Tribal and State courts, and Federal and State taxation, or regulation, except as specifically set out in the enterprise charters granted pursuant to this Chapter.

17-1.04 TRIBAL TAXATION

The Kalispel Tribal Economic Authority shall have the power to tax all activities of enterprises created under this Chapter on behalf of and for the benefit of the Tribe.

SECTION 17-2: KALISPEL TRIBAL ECONOMIC AUTHORITY

17-2.01 ESTABLISHMENT

The Kalispel Tribal Economic Authority ("Authority") is hereby established and authorized by the Kalispel Business Committee to exercise all governmental and proprietary powers of the Tribe over development, construction, operation, management, promotion, financing, regulation and licensing of any and all governmental enterprises owned by the Tribe. The Authority hereby assumes all obligations, responsibilities and duties of the Tribe with respect to current Tribally-owned enterprises existing at the date of enactment of this Chapter, as previously established under the Kalispel Business Enterprise Chapter of the Kalispel Law and Order Code.

17-2.02 NAME, LOCATION AND PLACE OF BUSINESS

(1) The official name of the Authority is the "Kalispel Tribal Economic Authority."
(2) The principal place of business and the office of the Authority is on Tribal reservation lands in Usk, Washington.
(3) The Authority may also have offices at such other place or places the Authority may from time to time direct, or as the operation of the Authority may require.

17-2.03 PURPOSE

The purposes for which the Authority is organized are as follows:

(1) To develop Tribal resources in a commercially reasonable manner on balance with the Tribe's economic development goals, culture and traditions;
(2) To provide for centralized management of the Tribe's governmental enterprises through an Authority separate from the other branches of the Tribal government but accountable to the Tribe's governing body;
(3) To develop, operate, manage, maintain, promote, construct, and regulate all Tribally-owned enterprises and associated development on lands owned by the Tribe, and to have custody of, inventory, and to hold all assets of those enterprises and associated development on behalf of the Tribe.

(4) To provide opportunities for investing Tribal resources in future enterprises based on viability,feasibility, efficiency, and profitability;

(5) To carry out the purposes of and intent of applicable law, including but not limited to, the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq., and the Kalispel Tribal GamingOrdinance;

(6) To generate surplus revenue inuring to the benefit of the Tribe, which surplus revenues may be used to provide necessary governmental services and other direct benefits to Tribal members;

(7) To negotiate with state and local governments and private entities, and to enter into and implement contracts in furtherance of the development, operation, management, maintenance, promotion, construction, and regulation of the government enterprises and associated development;

(8) To provide a fair return to the Tribe on its investment consistent with any development and operation of legal and profitable governmental enterprises, and where practical, with the employment of members of the Tribe in the operation of the government enterprises;

(9) To do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes for which the Authority is established as set forth herein, and to do all things incidental thereto or connected therewith.

17-2.04 POWERS

Subject to applicable federal and Tribal laws and regulations, the Authority shall exercise the following powers:

(1) **Authority over all governmental enterprises.** The Authority is hereby delegated to exercise all governmental and proprietary powers of the Tribe over development, construction, operation, management, promotion, financing, regulation and licensing of any and all governmental enterprises owned by the Tribe. The Authority may create and dissolve enterprises pursuant to sections 17-5 and 17-6, infra. Further, the Authority assumes all obligations, responsibilities and duties of the Tribe with respect to current Tribally-owned enterprises existing at the date of enactment of this chapter. However, the Authority shall not have the power, authority or responsibility to exercise regulatory and licensing functions as they relate to gaming pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq., and the Kalispel Tribal Gaming Ordinance.

(2) **Authorization of Kalispel Business Committee.** The Authority is authorized to implement the policies and purposes set out in this chapter, and to exercise the enumerated powers set forth herein, without further authorization or subsequent approval by the Kalispel Business Committee. All parties dealing with the Authority shall have the right to rely upon any action taken by the Authority on behalf of the Tribe.

(3) **Facilities.** The Authority shall have the full authority of the Tribe with respect to the development,

construction, operation, management, promotion, and financing of all property owned by the Tribe, including such expansion and enlargements thereof; and for the planning, construction and operation of additional enterprise facilities including the negotiation and execution of development and construction contracts and for the taking of any and all usual, necessary actions incident thereto, including the borrowing of funds, and the making of contracts or commitments necessary to the functioning of the organization.

(4) **Appoint Officers and Agents.** The Authority shall have the full authority to select agents, auditors, employees, staff, and such professional consultants as in the opinion of the Authority may be needed from time to time, and to define their duties and fix their compensation.

(5) **Act As Agent.** The Authority shall have the full authority to act in any state, territory, district, or possession of the United States, or in any foreign country for and on behalf of the Tribe's governmental enterprises.

(6) **Deal in Real Property.** The Authority is authorized to acquire (by purchase, exchange, lease, hire or otherwise), hold, own, convey, manage, operate, mortgage, encumber, pledge, hypothecate, exchange, sell, deal in and dispose of, either alone or in conjunction with others, real estate of every kind, character and description and any interest therein, and may exercise the Tribe's inherent power of eminent domain as necessary or incidental to the purposes set forth in this chapter, except as prohibited by Tribal or federal law.

(7) **Deal in Personal Property, Generally.** The Authority is authorized to acquire (by purchase, exchange, lease, hire or otherwise), hold, own, convey, manage, operate, mortgage, encumber, pledge, hypothecate, exchange, sell, deal in and dispose of, either alone or in conjunction with others, personal property, and interests therein and commodities of every kind, character and description necessary or incidental to the purposes set forth herein.

(8) **Deal in Inventions, Copyrights, and Trademarks.** The Authority is authorized to acquire (by application, assignment, purchase, exchange, lease, hire, or otherwise), hold, own, convey, use, license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letter patent and applications therefore, licenses, formulas, privileges, processes, copyrights and applications therefor, trademarks and applications therefor, and trade names, and that title of all such acquisitions shall be taken in thename of the Kalispel Tribe of Indians.

(9) **Depository.** The Authority is authorized to designate and approve all depositories used for the deposit of funds of the governmental enterprises.

(10) **Make Contracts.** The Authority is authorized to enter into, make, perform and carry out or cancel

and rescind contracts for any lawful purpose pertaining to its business necessary or incidental to the purposes set forth herein, including the negotiation of contracts subject to approval of the Secretary of the Interior or the Chairman of the National Indian Gaming Commission.

(11) **Approve Budgets.** The Authority may give initial approval to its annual government enterprisebudgets subject to the approval of the Kalispel Business Committee.

(12) **Borrow Funds.** The Authority shall have full authority to borrow, pledge security, mortgage property and enter agreements necessary for borrowing funds to carry out its purposes for the development, operation, management, promotion, and construction of a government enterprise, and any and all associated development.

(13) Limited Waiver of Sovereign Immunity.

The Authority and its officers, agents, auditors, employees, staff, and any professional consultants are not authorized to grant limited waivers of sovereign immunity without specific delegation through a Resolution from the Kalispel Business Committee. Any delegated waiver authority shall be limited to the amount of a contract or agreement in which the waiver is incorporated, not to exceed the Tribal liability insurance policies in effect at the time of the waiver, unless otherwise explicitly authorized in the Resolution from the Kalispel Business Committee. Those delegated with limited waiver authority shall not be authorized to pledge Tribal trust lands or proceeds from those lands to be a part of a judgment.

Unless otherwise specified in a contract or agreement, all suits under this waiver shall be brought in Kalispel Tribal Court and Kalispel Tribal law shall be applied; if there is no applicable Kalispel Tribal Law, then the Court shall apply the applicable law as outlined in KLOC Chapter 3.

However, nothing contained in the preceding sentences shall be construed as a general waiver of the sovereign immunity of the Tribe or the Tribe's other entities or political subdivisions, or of its officers, agents or employees of the Tribe without a Resolution by the Kalispel Business Committee other than as specifically authorized herein.

(14) **Judgment Stipulation.** The Authority is authorized to stipulate to judgment.

(15) **Delegate Responsibility.** The Authority may delegate or assign any or all of its authority and responsibility for the development, construction, operation, management, promotion, financing, regulation or licensing of a government enterprise and any and all associated development to a manager or committee pursuant to a charter or other written agreement.

(16) **Ancillary Powers.** The Authority shall have and exercise all powers necessary or convenient to

achieve any or all of the purposes for which the Authority is organized.

17-2.05 OWNERSHIP

The Authority shall be established and wholly owned by the Tribe.

17-2.06 IMMUNITIES

The Authority shall possess all immunities from suit and other proceedings as are possessed by the Tribe, except to the extent that such immunities are waived pursuant to section 17-2.04(13) of this chapter; provided, however, nothing contained in this chapter shall limit the power of the Kalispel Business Committee to waive the sovereign immunity of the Tribe.

SECTION 17-3: DEFINITIONS

17-3.01 DEFINITIONS

[RESERVED]

SECTION 17-4: AUTHORITY MEMBERS; DUTIES, POWERS AND INTERNAL GOVERNANCE

17-4.01 MEMBERS

(1) Authority Membership. The duties and powers of the Authority set forth herein shall be carried out by at least three (3), but no more than five (5), voting Authority Members who are members of and appointed by the Kalispel Business Committee. In addition, there shall be no more than three (3) ex-officio non-voting Member(s) chosen by the Kalispel Business Committee that serve at the pleasure of the Kalispel Business Committee.

(2) Vacancy. In the event of a vacancy on the Authority, the Kalispel Business Committee shall select a Member to fill the vacancy by resolution of a majority of the Kalispel Business Committee.

(3) Duties of the Members. Three of the voting Members of the Authority shall be appointed to thepositions of Chair, Vice-Chair, and Secretary of the Authority by majority vote of the KalispelBusiness Committee. The Authority shall define the duties of these positions in its bylaws.

(4) Authority Officers. The Authority shall appoint officers of the Authority. The Officers shall consist of the Tribal Chief Executive Officer, Chief Operating Officer, and other officers as appointed from time to time. The powers and authorities of the officers shall be as stated in the Authority's Bylaws.

17-4.02 PROCEDURES AND INTERNAL GOVERNANCE

(1) The Authority shall exercise its powers in the best interests of the Tribe within the limits of responsible business judgment.

(2) The Authority shall adopt such rules and bylaws as it may determine necessary for the orderly conduct of its business.

(3) The Authority Secretary shall keep minutes of each Authority meeting and make the minutes

available promptly after each meeting to the Kalispel Business Committee and to such other officials as may be designated from time to time.

(4) Members shall be reimbursed for expenses incurred in attending meetings or in furtherance of business objectives, and the Authority may, at its discretion, propose a fee to be paid to its members (subject to approval by the Kalispel Business Committee) on a per-meeting attended or annual basis.

(5) The Chair of the Authority shall make a formal report to the Kalispel Business Committee not less often than each quarter, and in each annual report shall include a summary of the budget which the Authority has approved for the coming fiscal year.

(6) No member of the Authority may vote on any matter before the Authority in which such member has a financial interest directly or indirectly which is specific and peculiar to that member.

(7) The Authority may from time to time establish an Executive Committee and delegate authority toconduct business of the Authority.

(8) The Authority may from time to time establish Enterprise Advisory Committee(s); provided, the Enterprise Advisory Committee(s) may only serve in an advisory capacity on issues assigned to it bythe Authority or its designee(s).

17-4.03 INDEMNIFICATION OF OFFICERS, EMPLOYEES AND MEMBERS OF THE ENTERPRISE AUTHORITY

The Authority shall indemnify any officer, employee or member of the Authority, or former officer, employee or Member of the Authority, or any person who may have served at its request as an officer, employee or member of the Authority, against reasonable expenses actually and necessarily incurred by that person in connection with the defense of any action, suit, or proceeding in which that person is made a party by reason of being, or having been such officer, employee or Member of the Authority, except in relation to matters as to which that person shall be adjudged in such action, suit, or proceeding to be liable for gross negligence or willful misconduct in the performance of duty; or except in relation to matters in which such employee was acting beyond the scope of his duties. The Authority shall also reimburse any officer, employee or Member of the Authority reasonable costs of settlements of any such action, suit or proceeding if it shall be found by a majority of the Authority Members other than Members involved in the matter of controversy (whether or not a quorum exists), that it is in the best interest of the Tribe and Authority that such settlement be made and that such officer, employee or Member was not guilty of gross negligence or willful misconduct, or acting beyond the scope of his employment. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such officer, employee, or Member may be entitled to receive.

17-4.04 AUTHORITY MEETINGS

(1) Annual Meeting. An annual meeting of the Authority shall be held at the principal place of business, or at such other place as the Authority shall fix, commencing with 2007.

(2) Regular Meetings. The Authority shall establish regular meetings upon notice fixing the time andplace.

(3) Special Meetings. Special Meetings of the Authority may be called by the Chair as stated in the Bylaws, whereby action may be taken upon proper notice, by unanimous vote of the Authority inlieu of notice, or by unanimous written consent in lieu of notice.

17-4.05 REMOVAL FOR CAUSE

(1) For Cause Removal. Voting Authority members may be removed for cause from the Authority byresolution of the Authority or by the Kalispel Business Committee.

(2) Ex-Officio Non-Voting Members. Ex-officio non-voting Authority members may be removed from the Authority at the pleasure of the Kalispel Business Committee.

(3) Cause. Cause for removal includes, but is not limited to, negligently or willfully engaging in misconduct in the performance of his or her duties; acting with self interest to the detriment of the Tribe; and engaging in criminal acts. Inactivity shall also be considered sufficient cause for removal.

SECTION 17-5: ENTERPRISE CHARTER

17-5.01 ENTERPRISE CHARTER

The Authority is authorized to create new governmental enterprises as it deems necessary and proper. The Authority shall prepare an Enterprise Charter for every enterprise chartered under this chapter, which shall be kept on file by the Authority and set forth:

(1) The name of the enterprise;

(2) The period of duration, which may be perpetual;

(3) The purpose or purposes for which the enterprise is organized which may be stated to be, or to include, the transaction of any or all lawful business for which enterprises may be established under this chapter;

(4) The powers of such enterprise;

(5) Any provision, consistent with law, which the Authority may elect to set forth in the charter for the regulation of the internal affairs of the enterprise.

(6) The address and name of its registered agent which shall be:

Kalispel Tribal Economic Authority

P.O. Box 39

Usk, Washington 99180.

SECTION 17-6: DISSOLUTION

17-6.01 DISSOLUTION OF THE KALISPEL TRIBAL ECONOMIC AUTHORITY

The Authority may only be dissolved by resolution of the Kalispel Business Committee.

17-6.02 DISSOLUTION OF GOVERNMENTAL ENTERPRISES

(1) The Kalispel Business Committee may recommend the dissolution of any governmental enterprise to the Authority.

(2) The Authority may dissolve an enterprise chartered under this chapter if the Authority finds that the enterprise is not operating sufficiently to justify its continued existence, and that dissolution is in the best interest of the Tribe and will further the purposes of the Authority as set forth in this Chapter.

SECTION 17-7: INSURANCE

17-7.01 INSURANCE

Insurance, including liability, adequate and sufficient to protect the interests of the United States and the Tribe from losses by fire or other disaster shall be carried on all property of the Authority.

SECTION 17-8: LIABILITY

17-8.01 TRIBE

The Tribe does hereby pledge to any person, firm or corporation, or any federal, Tribal or state agency, entering contracts or obligations with the Authority that the Tribe shall not limit or alter the rights or powers vested in the Authority in a manner that would compromise the rights of any party until the Authority's obligations to that party are fully performed, met, paid or discharged, except as may be allowed by any referendum as provided in the Tribal Constitution.

17-8.02 AUTHORITY

The Authority does hereby pledge to any person, firm or corporation, or any federal, Tribal or state agency, entering contracts or obligations with any Enterprise that the Authority shall not limit or alter the rights or powers vested in an Enterprise in a manner that would compromise the rights of any party until the Enterprise's obligations to that party are fully performed, met, paid or discharged, except as may be allowed by any referendum as provided in the Tribal Constitution.

CHAPTER 17A - KALISPEL COMMUNITY DEVELOPMENT AUTHORITY

SECTION 17A-1: GENERAL PROVISIONS

17A-1.01 ESTABLISHMENT

The Kalispel Business Committee hereby establishes a public body known as the Kalispel Community Development Authority ("KCDA") to promote and undertake community development activities on a not-for-profit basis on Reservation lands and in the communities surrounding the Reservation, with particular attention to the needs of persons of low and moderate income.

In any suit, action or proceeding involving the validity or enforcement of or relating to any of its contracts, KCDA shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this Chapter.

17A-1.02 NAME, LOCATION AND PLACE OF BUSINESS

(1) The official name of KCDA is the "Kalispel Community Development Authority."

(2) The principal place of business and the office of KCDA is on the Kalispel Reservation lands.

(3) KCDA may also have offices at such other place or places KCDA may from time to time direct, or as the operation of KCDA may require.

17A-1.03 DECLARATION OF NEED

It is hereby declared that:

(1) There exists on the Kalispel Reservation and the Reservation's surrounding communities a shortageof safe and adequate housing at rents or prices which persons of low and moderate income can afford.

(2) There exists on the Kalispel Reservation and the Reservation's surrounding communities a shortageof diverse economic opportunities.

(3) Tribal Members residing on the Reservation or in the Reservation's surrounding communities have difficulty qualifying for credit and capital to renovate or purchase housing, or for entrepreneurial or economic opportunities.

(4) The shortage of adequate housing and economic opportunity cannot be relieved through private enterprises alone.

(5) Increasing housing and economic development, as authorized under this Chapter, will create greaterself-sufficiency, economic and health stability, and a higher standard of living on the Reservation and in the surrounding communities.

17A-1.04 PURPOSE

The purpose for which KCDA is organized is to improve the physical, economic, or social environment

of the Kalispel Reservation and the Reservation's surrounding communities by addressing the area's housing and economic needs, with particular attention to persons of low and moderate income.

17A-1.05 DECLARATION OF ENVIRONMENTAL POLICY

The environmental protection of the Reservation and the Reservation's surrounding communities is of utmost importance to the Kalispel Tribe. As such, the KCDA shall strive to utilize energy efficient, sustainable, and environmentally friendly practices in all housing and economic projects, including but not limited to pursuing industry-recognized green building standard and certification for green building, incorporating renewable energy technologies into the project, or mitigating housing-related health hazards in renovation projects.

17A-1.06 MISCELLANEOUS

(1) Each project developed or operated with federal financial assistance shall be developed and operated in compliance with all applicable federal legislation and with all legally valid regulations and requirements prescribed, from time to time, by the federal government in connection with such assistance.

(2) KCDA shall not construct or operate any project for profit.

(3) The property of the KCDA is declared to be public property used for essential public and governmental purposes. Such property and KCDA are exempt from all taxes and special assessments of the Tribe.

(4) All property, including funds acquired or held by KCDA pursuant to this Chapter, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against KCDA be a charge or lien upon such property. However, the provisions of this Section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by KCDA on its rents, fees or revenues or the right of the federal government to pursue any remedies conferred upon it pursuant to the provisions of this Chapter or the right of KCDA to bring court actions in accordance with this Chapter and the Kalispel Law and Order Code.

17A-1.07 IMMUNITIES

The KCDA shall possess all immunities from suit and other proceedings as are possessed by the Tribe, except to the extent that such immunities are waived pursuant to Section 17A-3 of this Chapter; provided, however, nothing contained in this Chapter shall limit the power of the Kalispel Business Committee to waive the sovereign immunity of the Tribe.

17A-1.08 SEVERABILITY

If any provision of this Chapter or the application thereof to any person or circumstances is held invalid,

such invalidity shall not affect the other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.

SECTION 17A-2: DEFINITIONS

17A-2.01 DEFINITIONS

Unless otherwise indicated, the meaning of the terms used in this Chapter shall be as follows:

(1) "Board" means the Kalispel Community Development Authority's Board.

(2) "Kalispel Tribal Council" or "Tribal Council" means the Kalispel Tribe's Business Committee.

(3) "Reservation" means all lands owned by the Kalispel Tribe of Indians, as defined in the Kalispel Law and Order Code Section 1-2.03.

SECTION 17A-3: THE KALISPEL COMMUNITY DEVELOPMENT AUTHORITY

17A-3.01 POWERS OF THE KALISPEL COMMUNITY DEVELOPMENT AUTHORITY

Subject to applicable Tribal and federal laws and regulations, KCDA shall exercise the following powers:

(1) Area of Operation

The primary area of operation of KCDA shall include the Kalispel Reservation and the Reservation's surrounding communities.

(2) Succession of Corporate Name

The KCDA shall have perpetual succession in its corporate name.

(3) Authorization by Kalispel Business Committee.

KCDA is authorized to implement the policies and purposes set out in this Chapter, and to exercise the enumerated powers set forth herein, without further authorization or subsequent approval by the Kalispel Business Committee.

(4) Limited Waivers of Sovereign Immunity

The Kalispel Tribe delegates a limited authority to waive their sovereign immunity for specific purposes as necessary to carry out the purposes of KCDA's business agreements or their breach. The limited waiver authority is delegated to the KCDA Board, which may allow limited waivers of sovereign immunity through affirmative and express written Resolution. Any waiver shall be limited to the amount of a contract or agreement in which the waiver is incorporated, not to exceed the Tribal liability insurance policies in effect at the time of the waiver. The KCDA Board is not authorized to pledge Tribal trust lands or proceeds from those lands to be a part of a judgment. Unless otherwise specified in a contract or agreement, all suits under this limited waiver shall be

brought in Kalispel Tribal Court and Kalispel Tribal law shall be applied; if there is no applicable Kalispel Tribal Law, then the Court shall apply the applicable law as outlined in Kalispel Law and Order Code Chapter 3.

However, nothing contained in the preceding sentences shall be construed as a general waiver of the sovereign immunity of the Tribe or the Tribe's other entities or political subdivisions, or of its officers, agents or employees of the Tribe without a Resolution by the Kalispel Business Committee other than as specifically authorized herein.

(5) Other Powers

KCDA shall have the following powers, which it may exercise consistent with the purposes for which it was established:

(A) To adopt and use a corporate seal.

(B) To develop housing and housing-related services, including but not limited to the acquisition, construction, reconstruction, or rehabilitation of housing or land (or both); housing counseling and education; and all other related activities. Acquisition of housing and land shall include leasing, purchasing in full, or purchasing interests in such property, or to take the same by gift.

(C) To develop diverse economic opportunities that will revitalize the Reservation and surrounding communities, including but not limited to projects that will create new jobs, or job training and educational opportunities.

(D) To enter into agreements, contracts and understandings for any KCDA purpose with individuals, associations, partnerships, corporations, or governments (tribal, international, federal, state, or local) or any agency or department thereof.

(E) To seek public and private funding to be used to achieve the goals and purpose of the KCDA, including seeking all charitable donations, and applicable tribal, federal, state, municipal, and private grants.

(F) To receive, administer, and execute tribal, federal, state, municipal, and private grants and programs relating to housing and economic development on the Reservation and in the surrounding communities, as well as receive private donations and bequests to be used toward achieving the purposes for which KCDA is established.

(G) To obligate itself in any contract with the Federal government, to convey to the Federal government possession of or title to any project to which such contract relates upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which KCDA is subject, and such contract may further provide that in case of such conveyance, the Federal government may complete, operate, manage, lease, convey or otherwise

deal with the project and funds in accordance with the terms of such contract. Provided, the contract requires that, as soon as practicable after the Federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the Federal government shall reconvey to KCDA the project as then constituted.

(H) To borrow money, apply for and receive loans, and to establish bank accounts as may be necessary.

(I) To purchase insurance or participate in a risk management pool from any stock or mutual company for any property or against any risk or hazards.

(J) To employ an executive director; administrative, technical, and maintenance personnel; and such other officers and employees, permanent or temporary, as KCDA may require; and to delegate to such officers and employees such powers or duties as the Board shall deem proper.

(K) To possess and exercise all powers necessary or convenient to achieve any or all of the purposes for which KCDA is organized.

17A-3.02 COOPERATION IN CONNECTION WITH PROJECTS

(1) For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of projects, the Tribe hereby agrees that:

(A) It will not levy or impose any real or personal property taxes or special assessments upon KCDA or any project of KCDA.

(B) It will furnish or cause to be furnished to KCDA and the occupants of projects all services and facilities of the same character and to the same extent as the Tribe furnishes from time to time without cost or charge to other dwellings and inhabitants.

(C) Insofar as it may lawfully do so, it will grant such deviations from any present or future building or housing codes of the Tribe as are reasonable and necessary to promote economy and efficiency in the development and operation of any project, and at the same time safeguard health and safety, and make such changes in any zoning of the site and surrounding territory of any project as are reasonable and necessary for the development of such project, and the surrounding territory.

(D) It will do any and all things, within its lawful powers, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of projects.

(E) If a project is receiving federal grant funds under the direction of the KCDA as a Community Based Development Organization (CBDO) and the CBDO is dissolved for any reason, the

KCDA is not subject to any requirement that its assets revert to the grantee upon dissolution.[2]

(F) The powers of the Tribal Government shall be vigorously utilized to address contract violations including action through the appropriate courts.

(2) The provisions of this Chapter shall remain in effect with respect to any federally assisted project, and said provisions shall not be abrogated, changed or modified without the consent of the Department of Housing and Urban Development, so long as (a) the federally assisted project is owned by a public body or governmental agency and is used for low income housing purposes, (b) any contract between KCDA and the Department of Housing and Urban Development for loans or annual contributions, or both, in connection with such project, remains in force and effect, or (c) any obligations issued in connection with such project or any monies due to the Department of Housing and Urban Development in connection with such project remain unpaid, whichever period ends the latest. If at any time title to, or possession of, any project is held by any public body or governmental agency authorized by law to engage in the development or operation of low income housing including the Federal Government, the provisions of this section shall inure to the benefit of and be enforced by such public body or governmental agency.

(3) Except as specifically amended, the provisions of this Chapter shall remain in full force and effect. The provisions of this Chapter shall become effective immediately upon adoption by the Council, and shall apply to any contract, claim, or suit whether arising or filed before or after the adoption of this Chapter.

SECTION 17A-4: KALISPEL COMMUNITY DEVELOPMENT AUTHORITY BOARD

17A-4.01 KALISPEL COMMUNITY DEVELOPMENT AUTHORITY BOARD

(1) Appointments

(A) The affairs of the KCDA shall be managed by the Kalispel Community Development Authority Board, composed of five members.

(B) The Board members shall be appointed, and may be reappointed, by the Kalispel Tribal Council. A certificate from the Secretary of the Tribal Council as to the appointment or reappointment of any Board member shall be conclusive evidence of the due and proper appointment of the Board member.

(C) At least three of the five Board members shall be residents of the Reservation or the Reservation's surrounding communities. All Board members shall be Kalispel Tribal Members or direct descendents.

(D) No person shall be barred from serving on the Board because he or she receiving assistance from

2 CBDO related provision; see 24 CFR 1003.204(c)(1)(vii).

the KCDA. Such Board member shall be entitled to fully participate in all meetings concerning matters that affect all recipients of assistance from the KCDA, even though such matters affect him or her as well. However, no such Board member shall be entitled or permitted to participate in or be present at any meeting (except in his or her capacity as a recipient of assistance) or to be counted or treated as a member of the Board, concerning any matter involving his or her individual rights, obligations or status as a recipient of assistance.

(2) Term of office

The term of office shall be three years and staggered. When the Board is first established, two Members' term shall be designed to expire in one year, another to expire in two years, and a third to expire in three years. Thereafter, all appointments shall be for three years, except that in the case of a prior vacancy, an appointment shall be only for the length of the unexpired term. Each Member of the Board shall hold office until his successor has been appointed and has qualified.

(3) Resignations

Any Board member may resign at any time by delivering a written resignation to the Secretary of the Tribal Council. Such resignation shall be effective on the date stated in the resignation, or effective immediately, if no date is given.

(4) Officers

The Kalispel Business Committee, by majority vote, shall appoint Board members to the positions of Chair, Vice-Chair, and Secretary of the Board. The Board shall define the duties of these positions in its bylaws.

(5) Removal From Office

Board members may be removed for cause by resolution of the Board or by the Kalispel Business Committee. Cause for removal includes, but is not limited to, negligently or willfully engaging in misconduct in the performance of his or her duties; acting with self interest to the detriment of the Tribe; and engaging in criminal acts. Inactivity shall also be considered sufficient cause for removal.

(6) Compensation

Board members shall be reimbursed for expenses incurred in attending meetings or in furtherance of business objectives, and the Board may, at its discretion, propose a fee to be paid to its members (subject to approval by the Kalispel Business Committee) on a per-meeting attended or annual basis.

(7) Voting quorum

A majority of the full Board (regardless of the existence of vacancies) shall constitute a quorum for the transaction of business, and no Board action shall be taken by a vote of less than a majority of such full Board. No member of the Board may vote on any matter in which such member has a

financial interest directly or indirectly which is specific and peculiar to that member.

(8) Recordkeeping

The Secretary shall keep minutes of each Board meeting and make the minutes available promptly after each meeting to the Kalispel Business Committee and to such other officials as may be designated from time to time.

(9) Financial Records and Reports to the Kalispel Business Committee

The KCDA shall ensure that full and accurate financial records are kept, and shall make periodic reports to the Board or the Tribe. The Board Chairman shall make a formal report to the Kalispel Business Committee not less than once per year and in each report shall include a summary of the budget which KCDA has approved for the coming fiscal year.

(10) Meetings

An annual meeting of the Board shall be held at the principal place of business, or at such other place as the Board shall fix. The Board shall establish regular meetings upon notice fixing the time and place. Special Meetings of the Board may be called by the Chair as stated in the Bylaws, whereby action may be taken upon by unanimous vote of the Board in lieu of notice, or by unanimous written consent in lieu of notice.

(11) Bylaws

Board members shall adopt such bylaws as the Board deems necessary and appropriate.

SECTION 17A-5: CONFLICTS OF INTERESTS

17A-5.01 CONFLICTS OF INTEREST

(1) Except as otherwise required by applicable law, during his or her tenure and for one year thereafter, no Board member, officer or employee of KCDA, or any member of any governing body of the Tribe or any other public official who exercises any responsibilities or functions with regard to the project, shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project or in any contract or proposed contract relating to any project, unless prior to such acquisition, he or she discloses the interest in writing to KCDA and such disclosure is entered upon the minutes of the KCDA Board, and the person shall not participatein any action by KCDA relating to the property or contract in which he or she has any such interest.

(2) If any Board member, officer or employee of KCDA involuntarily acquires any such interest, or voluntarily or involuntarily acquired any such interest prior to appointment or employment as a Board member, officer or employee, Board member, officer or employee, in any such event, shall immediately disclose his or her interest in writing to the KCDA, and such disclosure shall be entered

upon the minutes of the Board, and the Board member, officer or employee shall not participate in any action by the KCDA relating to the property or contract in which he or she has any such interest.

(3) Any violation of the foregoing provisions of this Section shall constitute misconduct in office and/or employment.

(4) This Section shall not be applicable to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project, or to act as trustee under any trust indenture, or to utility services, the rates for which are fixed or controlled by a governmental agency, or to membership on the Board as provided in this Chapter.

CHAPTER 17B - KALISPEL TRIBAL UTILITY

SECTION 17B-1: GENERAL PROVISIONS

17B-1.01 ESTABLISHMENT

The Kalispel Business Committee establishes a Tribally-chartered public body to be named the Kalispel Tribal Utility ("Utility"). The Utility shall be operated on a not-for-profit basis and any and all Utility earnings and income shall be reinvested into the Utility to further its operations and purposes.

17B-1.02 SCOPE AND DURATION OF UTILITY SERVICES

Except as prescribed by the Kalispel Business Committee, the Utility may establish the effective date or the termination of its provision of any of the "Utility Services" that are defined in Chapter 36 KALISPEL UTILITY CODE of the Kalispel Law and Order Code (KLOC). The Utility may establish Utility Service for any geographical area within the Reservation, as defined in KLOC Section 1-2.03. Such Utility Service shall be proposed by the Utility and approved pursuant to KLOC Chapter 36.

17B-1.03 AGENT

The registered agent shall be the Kalispel Tribal Utility, P.O. Box 39, Usk, Washington 99180.

17B-1.04 SOVEREIGN IMMUNITY

The Utility shall possess all immunities from suit and other proceedings as are possessed by the Kalispel Tribe, except to the extent that such immunities are waived pursuant to KLOC Chapter 35 SOVEREIGN IMMUNITY.

The Kalispel Tribe, pursuant to KLOC Chapter 35, may authorize the Utility to grant limited waivers of sovereign immunity for specific purposes as necessary to carry out the purposes of the Utility. However, nothing contained in this Charter shall be construed as a general waiver of the sovereign immunity of the Tribe, including but not limited to the Tribe's other entities or political subdivisions, or of its officers, agents or employees, and the Utility cannot waive the rights and immunities of the Tribe unless specifically authorized pursuant to KLOC Chapter 35.

17B-1.05 SEVERABILITY

If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.

SECTION 17B-2: PURPOSE AND POWERS

17B-2.01 PURPOSE

The purpose for which the Utility is organized is to provide an entity through which the Kalispel Tribe

may exercise business and utility functions for the benefit of the Kalispel Tribe and its members.

17B-2.02 POWERS

The Utility shall have the following powers:

(1) Upon prior consent of the Kalispel Business Committee, to sue in the name of the Utility and to permit suit against itself in the name of the Utility in courts of competent jurisdiction, preserving theprivileges and immunities it enjoys by virtue of its status as a Tribal instrumentality, provided, that the Utility may only waive the defense of sovereign immunity in suit in accordance with the applicable procedures of Tribal law and provided further that no judgment lien, garnishment or attachment may be made upon any property or income of the Utility other than that property or income belonging to the Utility and specifically mortgaged, pledged or assigned as collateral for its corporate debts or liabilities in writing approved by the General Manager.

(2) To engage in any lawful act necessary to fulfill the purposes set forth in Section 17B-2.01 herein.

(3) Subject to the approval of the Kalispel Business Committee, to buy, sell, lease, and otherwise acquire and own and maintain personal property and interests in real property.

(4) To provide Utility Services within the exterior boundaries of the Reservation, as defined in KLOC Section 1-2.03.

(5) On behalf of the Utility, to purchase, take by gift or bequest, hold, assign, mortgage, pledge, sell and dispose of any bonds, securities, or evidence of indebtedness created on behalf of the Utility by any other corporation, utility or organization that is in existence under the laws of the United States, any state, Indian tribe, nation, government, or country and to exercise all the rights, privileges and powers of such ownership.

(6) To enter into and make contracts of every kind and nature on behalf of the Utility with any person, firm, association, utility, corporation, municipality, nation, Indian tribe, state, body politic or other entity.

(7) To incur debts, borrow, and secure the payment of any capital on behalf of the Utility in any lawful manner, including the sale or other disposal of bonds, indentures, obligations, negotiable and transferable instruments and evidence of indebtedness of all kinds held by the Utility.

(8) To apply for, register, or otherwise acquire, and use any trademark, trade name, patent, invention, or process used in connection with or secured under letters patent, and to grant, sell and give licenses in respect thereto.

(9) To apply for, purchase or acquire by assignment, transfer or otherwise, and to exercise, carry out and enjoy any license, power authority franchise, concession, right or privilege which any government or authority, or any corporation or other public body may be empowered to enact, make or grant to the

Utility.

(10) To employ or appoint employees, agents, or contractors and to define their duties and fix their compensation.

(11) To sell, convey, mortgage, pledge, lease, exchange, transfer or otherwise dispose of business property or assets, on behalf of the Utility in the usual or regular course of its business to the extent not conflicting with applicable law.

(12) To adopt by-laws and other policies for the regulation of the internal affairs of the Utility consistent with this Chapter.

(13) To apply for and administer grants consistent with the Utility purposes.

17B-2.03 LIMITATIONS ON UTILITY POWERS

The Utility shall have no power:

(1) To expressly or by implication enter into any agreement of any kind on behalf of the Tribe.

(2) To pledge the credit of the Tribe.

(3) To dispose, pledge, or otherwise encumber real or personal property of the Tribe, except as explicitly authorized in properly executed and approved lease or other agreements between the Utility and the Tribe.

(4) To waive any right, privilege, or immunity of the Tribe or to release any obligation owed to the Tribe.

17B-2.04 SPECIAL UTILITY RESPONSIBILITIES

In exercising its utility function within the boundaries of the Reservation, the Utility shall adhere to the following principles:

(1) Any service provided to the general public shall be provided in a manner that is nondiscriminatory and based on publicly available criteria except that the Utility may provide preference to members of the Tribe.

(2) All rates for services shall be reasonable and consistent with sound business principles and consistent with tribal law.

(3) All rates for standard services shall be publicly available to customers.

(4) Except in emergency situations, the Utility shall use reasonable efforts to include its users within theboundaries of the Reservation in the decision making processes which it undertakes for decisions directly affecting services within the Reservation.

(5) All powers of the Utility shall be exercised in good faith and in a manner that is believed to be in the best interests of the Tribe and Utility customers.

SECTION 17B-3: CONTROL OF OPERATIONS

17B-3.01 CONTROL OF OPERATIONS

Authority and responsibility for the management and operation of the Utility shall rest with a General Manager.

The Utility shall be subject to the regulation of the Kalispel Utility Regulatory Commission pursuant to KLOC Chapter 36.

SECTION 17B-4: GENERAL MANAGER

17B-4.01 GENERAL MANAGER

The General Manager of the Utility shall be appointed by Kalispel Business Committee and have the following duties and powers:

(1) To be the active, operating executive of the Utility and to prepare plans and budgets, and make suggestions as to policies and proposals for improvements.

(2) To have the full authority and control over all employees of the Utility.

(3) To present to the Kalispel Business Committee for approval all policies and procedures of the Utility, and

(4) To provide general supervision of the performance of staff in respect to all such matter in conformance to approved budgets, standards, program inspection, cost control, employee relations and in-service training.

(5) To be reimbursed for any personal expenses within budget limits, which he or she may incur carrying out his or her responsibilities.

(6) To organize the operation of the Utility into departments, each with its own specific duties and responsibilities and to employ competent departmental heads for the usual functional responsibilities for each department.

(7) To effectuate the powers of the Utility as set forth in Section 17B-2.02, subject to approval of, or as set forth by, the Kalispel Business Committee.

SECTION 17B-5: FUNDS AND ACCOUNTING

17B-5.01 ASSETS

Subject to the contractual rights of others, including the Kalispel Tribe of Indians, the Utility shall have as its assets:

(1) All property of the Tribe transferred to the Utility subject to any conditions set out in the Kalispel Business Committee's Resolution authorizing the transfer of such properties.

(2) All real or personal property whether of a tangible or intangible nature otherwise acquired by the Utility.

(3) Funds acquired by grant, gift, loan, or by other means on behalf of the Utility.

(4) All earnings, interest, dividends, accumulations, contract rights, claims and other proceeds arising from the above listed assets.

17B-5.02 FUNDS AND ACCOUNTING

(1) All cash assets shall be deposited, invested, re-invested, or paid out pursuant to the contractual obligations of the Utility and in accordance with the standards of prudent business practices so as to ensure the continued existence, integrity and viability of the Utility. Assets of each of the different utility functions shall be segregated for banking and accounting purposes.

(2) An accounting system shall be established and used by the Utility in conformity with generally accepted accounting principles. The accounting system shall insure the availability of information as may be necessary to comply with common utility standards.

(3) The General Manager shall, at least every 6 months, report in writing to the Kalispel Business Committee on the financial and operating status of the Utility.

(4) The Utility shall, within 120 days following the close of the Utility's fiscal year, submit to the Kalispel Business Committee an audited financial statement showing the status of the Utility as of the last day of the Utility's fiscal year, unless waived in writing by the Kalispel Business Committee.

SECTION 17B-6: CHOICE OF LAW

17B-6.01 CHOICE OF LAW

The laws of the Tribe, and federal law where applicable, shall govern this code and activities of the Utility.

SECTION 17B-7: DISSOLUTION OF UTILITY

17B-7.01 DISSOLUTION OF UTILITY

The Kalispel Business Committee may dissolve the Utility if it is found that dissolution is in the best interest of the Tribe.

CHAPTER 18 - FIREWORKS

SECTION 18-1: JURISDICTION

18-1.01 JURISDICTION

This portion of the Tribal Code applies to all areas lying within the exterior boundaries of the Reservation.

SECTION 18-2: ELIGIBILITY FOR A FIREWORKS LICENSE

18-2.01 ELIGIBILITY FOR A FIREWORKS LICENSE

Licenses shall be issued by the Tribal Council or its designated agent for the sale of fireworks within the exterior boundaries of the Reservation. The sale of such fireworks must be made upon Indian Trust land.

SECTION 18-3: LICENSE NON-TRANSFERABLE

18-3.01 LICENSE NON-TRANSFERABLE

The fireworks license issued shall be non-transferable. The license cannot be sold, assigned, leased or transferred in any manner whatsoever.

SECTION 18-4: DURATION OF LICENSE

18-4.01 DURATION OF LICENSE

A licensee must apply for a license to sell fireworks each calendar year. The license shall permit the sale of fireworks to the general public for 2 time periods (1) no sooner that the second Friday of June, and no later than July 5 of that calendar year. Further, the licensee shall remove all unsold fireworks from his or her shop or store premises not later than July 8 of that calendar year, and (2) no sooner than the third Friday of December, and no later than January 4 of the following calendar year. Further, the licensee shall remove all unsold fireworks from his or her shop or store premises not later than January 7 of the following calendar year. The Business Committee may modify the duration of the sale period by Resolution.

SECTION 18-5: EMPLOYEES OF LICENSEE

18-5.01 EMPLOYEES OF LICENSEE

Tribal member holding license for a licensed fireworks operation ("Operation") shall ensure that they and all employees are aware of and agree to follow all rules and regulations relating to Fireworks including but not limited to this Chapter and the entire Code. A minor can assist with the Operation while under the supervision of an adult employee of the Operation and with permission of the minor's parent(s) or guardian(s).

SECTION 18-6 SALE TO MINORS

18-6.01 SALE TO MINORS

Fireworks will not be sold to anyone under the age of eighteen (18), unless such fireworks are of a nature that have been designated as "safe and sane" fireworks by the State of Washington. "Safe and Sane" fireworks defined by the State of Washington may be sold to all individuals regardless of age.

SECTION 18-7: LOCATION OF LICENSED OPERATION

18-7.01 LOCATION OF LICENSED OPERATION

The licensed fireworks outlet may be maintained and operated by the licensee only upon his or her own allotted or trust land or Tribal trust land.

SECTION 18-8: OPERATOR'S RECORD

18-8.01 OPERATOR'S RECORD

The original or copies of all sales slips, invoices, canceled checks, or any other memoranda covering the purchases of all fireworks by the operator shall be kept on file by the operator. Such shall be preserved and made available to the Tribal Council upon request.

SECTION 18-9: PERMITTED FIREWORKS - CONFORMITY WITH FEDERAL LAW

18-9.01 PERMITTED FIREWORKS - CONFORMITY WITH FEDERAL LAW

The operator shall conform in all respects to the laws of the United States, pertaining to the sales of fireworks. The operator shall not stock or sell any fireworks which are in violation of the Hazardous Substance Act of the United States Code as cited in 15 U.S. Code Section 1261 et seq.

SECTION 18-10: FIRE EXTINGUISHERS

18-10.01 FIRE EXTINGUISHERS

The operator shall have at least one fire extinguisher in the seller area. The extinguisher shall be two pound dry chemical or better.

SECTION 18-11: DISCHARGE IN SELLING AREA

18-11.01 DISCHARGE IN SELLING AREA

The license holder shall display the following warning in the selling area:

NOTICE - IT IS UNLAWFUL TO DISCHARGE FIREWORKS WITHIN THE SELLING AREA. VIOLATORS WILL BE PROSECUTED.

SECTION 18-12: LIABILITY DISCLAIMER

18-12.01 LIABILITY DISCLAIMER

The licensee shall display the following information clearly, in the selling area:

NOTICE - THE PURCHASER, BY PURCHASING FIREWORKS THROUGH THIS OUTLET, WAIVES ANY CLAIM AGAINST THE KALISPEL TRIBE OF INDIANS OR THE SELLER, FOR INJURY OCCURRING AS A RESULT OF THE USE OF SUCH FIREWORKS AND THE PURCHASER RELEASES THE KALISPEL TRIBE AND THE OPERATOR OF THIS OUTLET OF SUCH LIABILITY.

SECTION 18-13: VIOLATION-PENALTIES-FORFEITURE

18-13.01 VIOLATION - PENALTIES - FORFEITURE

A Licensee violating this Chapter shall be guilty of a misdemeanor and subject to the fine and imprisonment as enumerated in this Tribal Code. Further, any enforcement officer including but not limited to Kalispel Tribal Police and Kalispel Tribal Fire Department, or other Tribally commissioned peace officer, shall be empowered to seize and forfeit the fireworks products of a violating operator. The Tribal Court shall have the authority and jurisdiction to dispose of such forfeited products.

SECTION 18-14: PENALTY

18-14.01 PENALTY

A violation of Chapter 14 - fireworks is punishable by a fine not to exceed $500 and/or a jail term of not more than five (5) days.

CHAPTER 19 - EVICTION PROCEDURES

SECTION 19-1: TITLE AND JURISDICTION

19-1.01 TITLE

This section shall be known as Eviction Procedures of the Kalispel Indian Reservation.

19-1.02 JURISDICTION

This provision of this Title shall apply to ALL persons and property subject to the governing authority of the Tribe as established by the Tribal Constitution and Bylaws.

SECTION 19-2: DEFINITIONS

19-2.01 DEFINITIONS

(1) Tribe shall refer to the Kalispel Indian Tribe of the Kalispel Indian Reservation as defined in the Tribal Constitution.

(2) Tribal Court shall mean 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.

(3) Lessor shall refer to the Tribe, Indian Housing Authority or to any other person or entity who shall have an interest in real property which is limited time has been leased or rented to another; and the term lessor shall include an Indian Housing Authority which has leased real property under a Mutual Help and Occupancy Agreement, Rental Lease Agreement or other similar arrangement whereby the tenant may, on certain conditions, obtain ownership of the occupied property at the end of occupancy under the agreement.

(4) Secretary shall mean the Secretary of the United States Department of Housing and Urban Development (HUD) or his or her designee, attorney or agent, or assignee of the Secretary.

(5) Tenant shall mean any person who occupies real property under a lease, rental agreement or other agreement with a lessor as defined in this section.

(6) Unlawful detainer action shall be a suit brought before the Tribal Court to terminate a tenant's interest in real property and/or to evict any person from occupancy of real property.

(7) Writ of Restitution is an order of the Tribal Court:

(A) Restoring an owner or lessor or the Secretary to possession of real property and

(B) Evicting a tenant or other occupant there from.

(8) Nuisance is the maintenance of real property of a condition which:

(A) Unreasonably threatens the health or safety of the public or neighboring land users; or

(B) Unreasonably and substantially interferes with the ability of neighboring property users to enjoy

the reasonable use and occupancy of their property.

(9) Waste is spoil or destruction by a tenant of land, buildings, gardens, trees or other improvements which result in substantial injury to the lessor's interest in the property.

(10) Gender (singular or plural). Reference to persons by terms denoting one sex shall be taken as referring to either sex. Reference to persons by a term denoting the singular shall include the plural.

(11) Public Lodging Establishment shall mean a place where overnight accommodations are regularly provided to the transient, traveling, or vacationing public, including but not limited to hotels, motels, inns, bed and breakfasts, recreational vehicle resorts, and campsites.

SECTION 19-3: UNLAWFUL DETAINER

19-3.01 UNLAWFUL DETAINER

A tenant or other occupier of land shall be guilty of unlawful detainer if such person shall continue in occupancy of real property under any of the following situations:

(1) Without the requirement of any notice:

(A) After the expiration of the term of the lease or other agreement; or

(B) If such person has entered onto or remains on the real property of another without permission of the owner and without having any substantial claim of a lease or to title of the property; or

(C) After an Indian Housing Authority or other Public Housing Authority has terminated such person's tenancy pursuant to procedures provided such person a hearing before the Housing Authority involved; or

(D) After the interest of such person in a lease has been foreclosed in a leasehold mortgage foreclosure proceeding in the Tribal Court.

(2) After having received 30 days notice, the tenant or occupier shall remain in possession of the property contrary to the terms of the notice, as follows:

(A) When such person has received notice:

(i) That he is in default in the payment of rent; and

(ii) requiring him, in the alternative, to pay the rent or surrender possession of the occupied property; and such person has remained in possession after receipt of such notice without either surrendering the possession of the property or paying the rent; or

(B) When the lease of the property is for an indefinite time, with rent to be paid monthly or by some other period, and the lessor has given notice of termination of the tenancy at least 30 days period to the end of such month or period; or

(C) When such person shall continue to fail to keep or perform any condition or covenant of the lease or agreement under which the property is held after he has been given notice to either perform such condition or covenant or to surrender the property; or

when such person continues to commit or to permit waste upon or maintain a nuisance upon the occupied property after having been given notice, in the alternative, either to cease such waste or maintenance of nuisance or to surrender the property.

SECTION 19-4: SERVICE OF NOTICE

19-4.01 PROCEDURE FOR SERVICE OF NOTICE

Notices required or authorized in the immediately preceding section shall be given in writing by either:

(1) Delivering a copy personally to the tenant or occupier or to any adult member of his family residing on the premises; or

(2) Posting said notice in a conspicuous place near the entrance to said premises, and by sending an additional copy to the tenant or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.

Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of 1 of 2 methods of service.

SECTION 19-5: COMPLAINT AND SUMMONS

19-5.01 COMPLAINT AND SUMMONS

The owner of real property or lessor or the Secretary shall commence an action for unlawful detainer by filing with the court, in writing, the following documents:

(1) A complaint, signed by the owner, lessor, the Secretary, an agent, or attorney, stating:

(A) The facts on which he seeks to recover.

(B) Describing the property so that it can be identified with reasonable certainty; and

(C) Any claim for damages or compensation due from the persons to be evicted; and

(2) A summons issued as in other cases requiring the defendants to appear for a trial upon the complainton a date and time specified in the summons. The trial date specified in the summons shall be not less than six (6) nor more than thirty (30) days from the date of service of the summons and complaint. The summons must notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file with the court an answer and appear for trial at the time, date and place specified in the summons.

19-5.02 SERVICE OF SUMMONS AND COMPLAINT

A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Tribal Court rules for service of process in civil matters. In the absence of such Tribal Court rules, the summons and complaint shall be served by one of the methods authorized in Section 19-4.01 above.

SECTION 19-6: POWER OF THE TRIBAL COURT

19-6.01 POWER OF THE TRIBAL COURT

The Tribal Court shall enter a Writ of Restitution if:

(1) Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided in this Title; and

(2) The Tribal Court shall find that the occupier of the real property is guilty of an act of unlawfuldetainer.

Upon issuance of a Writ of Restitution, the Tribal Court shall have authority to enter against the defendants a judgment for the following: back rent; unpaid utilities; charges due the Tribe, Indian Housing Authority, or landowner under any lease or occupancy agreement (not including under a leasehold mortgage); and for damages caused by the defendants to the property other than ordinary wear and tear. The Tribal Court shall have authority to award to the prevailing party his costs and reasonable attorney's fees in bringing suit.

SECTION 19-7: CONTINUANCES INVOLVING THE SECRETARY

19-7.01 CONTINUANCES IN CASES INVOLVING THE SECRETARY

Except by agreement of all parties, there shall be no continuances in cases involving the Secretary which will interfere with the requirement in Section 19-8 that the Writ of Restitution in a case involving the Secretary be enforced not later than 60 days from the date of service of the summons and complaint.

SECTION 19-8: ENFORCEMENT

19-8.01 ENFORCEMENT

Upon the issuance of a Writ of Restitution by the Tribal Court, tribal law enforcement officers shall enforce the Writ of Restitution by evicting the defendants and their property from the premises which are unlawfully occupied. In all cases involving the Secretary, the Writ of Restitution shall be enforced not later than 60 days after the date of service of the summons and complaint.

19-8.02 ALTERNATIVE REMEDIES

In those cases in which the persons are subject to the jurisdiction of the courts of the State of Washington or the United States, the remedies and procedures provided by this Section are in the alternative to the remedies and procedures provided by the laws of the State of Washington or the United States.

19-9.01 PUBLIC LODGING ESTABLISHMENT

No guest of a public lodging establishment owned, wholly or in part, by the Kalispel Tribe of Indians shall acquire any leasehold interest in the real property of the Tribe or associated tenancy rights,

regardless of the length or nature of stay of the guest in the public lodging establishment, without the explicit authorization of the Kalispel Business Committee in writing, granting a leasehold interest, pursuant to Chapter 32 of this Code.

CHAPTER 20 - LEASEHOLD MORTGAGES

SECTION 20-1: PURPOSE

20-1.01 PURPOSE

The purpose of this Title is to avail the Kalispel Tribe and its members (and other Indians) of financing for the construction and/or purchase of family residences on trust and otherwise restricted lands within the jurisdiction of the Kalispel Indian Tribe by prescribing procedures for the recording, priority and foreclosure of leasehold mortgages given to secure loans insured under Section 248 of the National Housing Act.

SECTION 20-2: DEFINITIONS

20-2.01 DEFINITIONS

(1) Tribe shall refer to the Kalispel Indian Tribe of the Kalispel Indian Reservation as defined in the Tribal Constitution.

(2) Business Committee shall mean the Business Committee of the Kalispel Indian Tribe as defined in the Tribal Constitution.

(3) Tribal Recording Clerk shall mean the person designated by the Business Committee to perform the recording functions under this Title or any deputy or designee of such person.

(4) Tribal Secretary shall mean the secretary of the Kalispel Indian Tribe as defined in the Tribal Constitution.

(5) Tribal Court shall mean 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.

(6) Secretary shall mean the Secretary of the United States Department of Housing and Urban Development (HUD) or his or her designee, attorney or agent.

(7) Section 248 shall mean Section 248 of the National Housing Act, 12 U.S.C. 1715z-13.

(8) Lease shall mean the lease of trust or otherwise restricted property for which a Leasehold Mortgage, as defined in this Title, has been or will be given.

(9) Lessor shall mean the beneficial or equitable owner of trust or otherwise restricted property under a Lease for which a Mortgage, as defined in this Title, has been given, or the heir(s), successor(s), executor(s), administrator(s) or assign(s) of such Lessor.

(10) Leasehold Mortgage shall mean the mortgage of a lease of trust or otherwise restricted property given to secure a loan insured under Section 248.

(11) Mortgagor shall mean the Tribe or any Indian(s) who has executed a Leasehold Mortgage as defined

in this Title, or any heir(s), successor(s), executor(s), administrator(s) or assign(s) of the Tribe or such Indian(s).

(12) Mortgagee shall mean the mortgagee under any Leasehold Mortgage as defined in this Title or the successor(s) in interest of any mortgagee, including the Secretary as defined in this Title, or the Secretary's assignee under any such mortgage.

(13) Subordinate Lienholder shall mean the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Leasehold Mortgage under this Title (except the Tribe with respect to a claim for a tribal leasehold tax).

(14) Leasehold Mortgage Foreclosure Proceeding shall mean a proceeding in the Tribal Court:

(A) To foreclose the interest of the Mortgagor(s), and each person or entity claiming through the Mortgagor(s), in a Lease for which a Mortgage has been given under Section 248; and

(B) To assign such Lease to the Secretary or the Secretary's assignee.

SECTION 20-3: PRIORITY

20-3.01 PRIORITY

A Leasehold Mortgage recorded in accordance with the recording procedures set forth in this Title 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. Nothing in this Title 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 20-4: RECORDING

20-4.01 RECORDING

(1) The Business Committee shall from time to time designate by law or resolution a Tribal Recording Clerk and such additional deputy tribal recording clerks as it deems property to perform the recording functions under this Title. If approved by resolution of the Business Committee, the Tribal Recording Clerk may designate one or more designees to perform the recording functions under this Title.

(2) The Tribal Recording Clerk shall maintain in the Tribal Court a system for the recording of Leasehold Mortgages and such other documents as the Business Committee may designate by law or resolution.

(3) The Tribal Recording Clerk shall endorse upon any Leasehold Mortgage or any other document received for recording:

(A) The date and time of receipt of the Leasehold Mortgage or other document;

(B) 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

(C) The name of the Tribal Recording Clerk receiving the Leasehold Mortgage or document.

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:

KALISPEL INDIAN TRIBE)
)
KALISPEL INDIAN RESERVATION)

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this_____day of_____,_____.

(SEAL)

_____ (Signature)

_____
(Title)

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.

(4) The Tribal Recording Clerk shall also maintain a log of each Leasehold Mortgage or other documentrecorded in which there shall be entered:

(A) The name(s) of the Mortgagor(s) of each Leasehold Mortgage, identified as such;

(B) The name(s) of the Mortgagee(s) of each Leasehold Mortgage, identified as such;

(C) The name(s) of the grantor(s), grantee(s), or other designation of each party named in the other documents;

(D) The date and time of receipt;

(E) The filing number assigned by the Tribal Recording Clerk; and

(F) 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.

(5) 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 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)

(6) The recording procedures set forth in this Title for Leasehold Mortgages shall also apply to anyassignment of a Leasehold Mortgage.

(7) The Business Committee 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 Title.

SECTION 20-5: LEASEHOLD MORTGAGE FORECLOSURE

20-5.01 LEASEHOLD MORTGAGE FORECLOSURE PROCEEDINGS

Upon the default of the Mortgagor(s) under a Leasehold Mortgage, the Secretary may commence a Leasehold Mortgage foreclosure proceeding in the Tribal Court by filing:

(1) A verified complaint:

(A) Naming the Mortgagor(s) and each person or entity claiming through the Mortgagor(s) subsequent to the recording of the Leasehold Mortgage, including such Subordinate Lienholder

(except the Tribe with respect to a claim for a tribal leasehold tax).

(B) Describing the property;

(C) 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;

(D) Having appended as exhibits true and correct copies of each promissory note, Lease, Leasehold Mortgage, or assignment thereof relating to the property; and

(E) Including an allegation that all relevant requirements and conditions prescribed in (I) Section 248, (ii) the regulations promulgated thereunder by the Secretary, and (iii) the provisions of theLease, have been complied with by the Secretary.

(2) 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. The trial date specified in the summons shall be not less than twenty (20) nor more than forty-five (45) days from the date of service of the summons and complaint. 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.

20-5.02 SERVICE OF PROCESS AND PROCEDURE

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 Title.

20-5.03 ALTERNATE SERVICE

It appears by affidavit filed in the Tribal Court, that if a party to a Leasehold Mortgage Foreclosure Proceeding cannot be located, then service of process may be had upon such party by:

(1) Posting a copy of the summons and complaint in a conspicuous place on the property which is the subject of the Lease within 5 days after the issuance of the summons, but not less than 20 days prior to the date set for trial; and

(2) Mailing a copy of the summons and complaint by certified mail, return receipt requested, to such party at the last known address of such party and in care of the superintendent of the Spokane Agency of the Bureau of Indian Affairs within 5 days after the issuance of the summons, but not lessthan 20 days prior to the date set for trial.

20-5.04 CERTIFIED MAILING TO TRIBE AND LESSOR

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. 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 Spokane Agency of the Bureau of Indian Affairs.

20-5.05 INTERVENTION

The Tribe or any Lessor may petition the Tribal Court to intervene in any Leasehold Mortgage Foreclosure Proceeding under this Title. 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.

20-5.06 CURE OF DEFAULT BY SUBORDINATE LIENHOLDER

Prior to the entry of a judgment of foreclosure, any Mortgagor or any Subordinate Lienholder may cure the default(s) under the Leasehold Mortgage. Any Subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the Leasehold Mortgage.

SECTION 20-6: POWER OF THE TRIBAL COURT

20-6.01 POWER OF THE TRIBAL COURT

If the alleged default(s) have not been cured, and if the Tribal Court should find for the Secretary, the Tribal Court shall enter judgment:

(1) 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 Lienholder; and

(2) Assigning such Lease to the Secretary or the Secretary's assignee.

SECTION 20-7: NO REDEMPTION

20-7.01 NO REDEMPTION

There shall be no right of redemption in any Leasehold Mortgage Foreclosure Proceeding.

SECTION 20-8: NO DEFICIENCY JUDGMENT

20-8.01 NO DEFICIENCY JUDGMENT

No deficiency judgment shall be entered in any Leasehold Mortgage Foreclosure Proceeding.

SECTION 20-9: REMEDIES EXCLUSIVE

20-9.01 REMEDIES EXCLUSIVE

The remedies provided under this Title are exclusive.

SECTION 20-10: NO MERGER

20-10.01 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 20-11: LIMITED WAIVER OF IMMUNITY

20-11.01 LIMITED WAIVER OF IMMUNITY

In any case where the Tribe is a Mortgagor under a Leasehold Mortgage, the Tribe may be sued as a defendant in such capacity only and only under this Title: provided, that there shall be no award of attorney fees or costs against the Tribe in any proceeding involving the Tribe, except where prior written consent to such an award have been given by the Tribe.

SECTION 21-1: FINDINGS

21-1.01 FINDINGS

The Kalispel Tribe of Indians have a primary interest in assuring that the administrative procedures carried out by the Tribe, and implemented through its subordinate administrative bodies pursuant to Tribal law, are consistent with the basic principles of common sense, justice and fairness.

The Kalispel Tribe of Indians has jurisdiction to enforce the Kalispel Administrative Code and to insure that all persons, whether residing upon the Kalispel Indian Reservation or conducting business or other activities within geographical areas under the authority of the Kalispel Tribe are provided with due process by law.

SECTION 21-2: DEFINITIONS

21-2.01 DEFINITIONS

For the purposes of this Code:

(1) Agency means any tribal board, commission, department or officer, authorized to propose rules for adoption by the Business Committee, except that the term "agency" shall not include either the Business Committee or any Tribal Court.

(2) Business Committee means the Business Committee of the Kalispel Tribe of Indians.

(3) Citing Officer means a tribal law enforcement officer or other official authorized by law to issue a notice of infraction.

(4) Court means the Administrative Court branch of the Kalispel Tribal Court.

(5) Defendant means a person named in a notice of infraction.

(6) Infraction means noncriminal violations as defined by the Kalispel Law and Order Code.

(7) Infraction case means a proceeding initiated in the Kalispel Administrative Court pursuant to theLaw and Order Code that authorizes offenses to be punished as infractions.

(8) Judge means an Administrative Court Judge for the Kalispel Tribal Court.

(9) Judgment means any final decision in an infraction case, including, but not limited to, a finding entered after a hearing governed by this Administrative Code or after payment of a monetary penaltyin lieu of a hearing.

(10) Notice of Infraction means a document initiating an infraction case when issued and filed pursuant to the Kalispel Tribal Law and Order Code.

(11) Person means any individual; association of individuals; partnership; private, public, tribal or municipal corporation; tribal enterprise; company; business enterprise; any county, tribal, federal,

state, or local government; or any governmental entity.

(12) Plaintiff means the agency of the Kalispel Tribe of Indians issuing the notice of infraction.

(13) Reservation means all areas, land and water, within the exterior boundaries of the Kalispel Indian Reservation, including waterways, roadways, all Rights of Way, public lands, lakes and streams.

(14) Rule means any order, directive or regulation of general applicability enacted into law by theBusiness Committee:

(A) the violation of which subjects a person to a civil fine, civil penalty or other civil administrative sanction;

(B) which establishes, alters and revokes any procedure, practice or requirement relating to administrative hearings;

(C) which establishes, alters or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law;

(D) which establishes, alters or revokes any qualifications or standards for the issuance, suspension or revocation of licenses to pursue any commercial activity.

The term includes the amendment or repeal of a prior rule, but does not include:

(i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or

(ii) declaratory rulings issued pursuant to this Code as now or hereafter amended.

(15) Service means posting in the United States mail, properly addressed, postage prepaid, or personal service. Service by mail is complete upon deposit in the United States mail.

(16) Tribe means the Kalispel Tribe of Indians.

SECTION 21-3: ADMINISTRATIVE LAW JUDGE

21-3.01 JURISDICTION

This Administrative Code shall be enforced by the Administrative Court, a branch of the Kalispel Tribal Court, which is hereby created. Jurisdiction of the Administrative Court shall include all areas of regulatory authority under the control of the Kalispel Business Committee which the Business Committee, by resolution, places under the jurisdiction of the Administrative Court. This jurisdiction shall extend over Indians and Non-Indians to the full extent allowed by Federal and Tribal Law.

21-3.02 NUMBER OF JUDGES

The Administrative Court shall consist of one (1) individual that presides over administrative hearings.

21-3.03 ELIGIBILITY OF ADMINISTRATIVE JUDGE

To be eligible to serve as an Administrative Law Judge, an individual must:

(1) be over 21 years of age;

(2) never have been convicted or found guilty of a felony, or within one year convicted of a misdemeanor involving moral turpitude;

(3) be of high moral character; and

(4) satisfy the Business Committee that he or she is familiar with the Constitution of the Kalispel Tribe, all Tribal ordinances, and laws of the United States applicable to the Reservation.

21-3.04 DISQUALIFICATION OF ADMINISTRATIVE LAW JUDGE

No Administrative Law Judge shall be qualified to act as such in any action or proceeding wherein he or she is a party or has any interest which may be prejudicial. Conflicts of interest existing in any proceeding shall be determined by the Administrative Law Judge, wherein the judge may recuse him or herself from the proceeding.

21-3.05 REMOVAL OF THE ADMINISTRATIVE LAW JUDGE

During tenure in office, an Administrative Law Judge may be suspended, dismissed or removed by a vote of the Business Committee. Copies of a written statement setting forth the facts and the reasons for such proposed action must be delivered to the Administrative Law Judge and to members of the Business Committee at least ten (10) days before the meeting of the Business Committee before which he or she is to appear. A hearing shall then be held by the Business Committee wherein the accused Administrative Law Judge shall be given an adequate opportunity to answer all charges. Causes judged sufficient for removal shall include, but are not limited to: excessive use of intoxicants, immoral behavior, conviction of any offense other than a minor traffic violation, use of official position for personal gain, desertion of office, or failure to perform duties. The decision of the Business Committee shall be final.

SECTION 21-4: RULE-MAKING

21-4.01 RULE-MAKING

It shall be the responsibility and duty of the Kalispel Business Committee to promulgate rules and regulations relevant and applicable to areas of civil regulatory authority of the Kalispel Tribe of Indians. Such rules and regulations shall be adopted by the Business Committee after the tribal agency involved has had an adequate opportunity to provide input and expertise to the Business Committee relative to the regulatory area involved. Such rules and regulations adopted by the Business Committee shall be posted in the Tribal Office and Tribal Court for public viewing and notification.

SECTION 21-5: REPRESENTATION

21-5.01 REPRESENTATION

A party to an adjudicative proceeding may participate or, if the party is a corporation or other artificial

person, by a duly authorized representative.

Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, if permitted by provision of law, other representative.

SECTION 21-6: INFRACTIONS

21-6.01 NOTICE OF INFRACTION

An administrative proceeding shall be commenced upon the filing of a Notice of Infraction by an enforcement officer authorized as such under the laws of the Kalispel Tribe of Indians. The Notice of Infraction shall contain the following information:

(1) The name, address, and phone number of the Kalispel Administrative Court;

(2) The name, address, date of birth, sex, physical characteristics, and, for traffic infractions, the operator's license number of the defendant;

(3) For traffic infractions, the vehicle make, year, model, style, license number, and state in whichlicensed;

(4) The infraction which the defendant is alleged to have committed and the accompanying Code provision, the date, time, and place the infraction occurred, the date the notice of infraction was issued, and the name and, if applicable, the number of the citing officer;

(5) A statement that the defendant must respond to the notice of infraction within fourteen (14) days ofissuance;

(6) A space for the defendant to sign a promise to respond to the notice of infraction within thetime required;

(7) A space for entry of the monetary penalty which defendant may pay in lieu of appearing in court;and

(8) Any additional information determined by the Kalispel Business Committee or Kalispel Tribal Court to be necessary.

21-6.02 SERVICE

A notice of infraction may be served either by:

(1) The citing officer serving the notice of infraction on the person named in the notice of infraction at the time of issuance; or

(2) The citing officer or the prosecuting attorney, if applicable, filing the notice of infraction with the court, in which case the court shall have the notice served either personally or by mail, postage prepaid, on the person named in the notice of infraction at his or her address. If a notice of infraction served by mail is returned to the court as undeliverable, the court shall issue a summons.

21-6.03 FILING OF NOTICE OF INFRACTION

When a notice of infraction has been issued, the notice shall be filed with the Kalispel Administrative Court. The notice must be filed within 48 hours after issuance of the notice, excluding Saturdays, Sundays, and holidays. A notice of infraction not filed within the time limits may be dismissed without prejudice.

21-6.04 RESPONSES TO NOTICE OF INFRACTION

The defendant must respond to the notice within 14 days if personally served or within 18 days if served by mail. The defendant may respond in the following ways:

(1) Paying the amount of the monetary penalty as shown on the notice of infraction, in which case the court shall enter a judgment that the defendant has committed the infraction; or

(2) Appear at the time stated in the notice of infraction to explain mitigating circumstances surrounding the commission of the infraction;

21-6.05 FAILURE TO RESPOND

If the defendant fails to respond to a notice of infraction, the court shall enter an order finding that the defendant has committed the infraction, shall assess any monetary penalties provided in this Code, and, in the case of a traffic infraction, shall notify the Department of Licensing for the State of Washington of the defendant's failure to respond.

SECTION 21-7: PROCEDURE AT HEARINGS

21-7.01 HEARING ON MITIGATING CIRCUMSTANCES

(1) Procedure at hearing

The court shall hold an informal hearing which shall not be governed by the Federal Rules of Evidence. All relevant evidence is admissible which, in the opinion of the judge, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. The defendant may present witnesses but they may not be compelled to attend.

(2) Disposition

The court shall determine whether the defendant's explanation of the events justifies reduction of the monetary penalty. The court shall enter an order finding the defendant committed the infraction and may assess a monetary penalty. The court may not impose a penalty in excess of the monetary penalty provided for the infraction. The court may waive or suspend a portion of the monetary penalty, or provide for time payments, or in lieu of monetary payment provide for the performance of community service. The court has continuing jurisdiction and authority to supervise disposition for not more than 1 year.

21-7.02 EX PARTE COMMUNICATIONS

An Administrative Law Judge may not communicate, directly or indirectly, regarding any issue in the proceeding other than communications necessary to procedural aspects of maintaining an orderly process, with any person employed by the agency, or with any person not employed by the agency who has a direct or indirect interest in the outcome of the proceeding, without notice and opportunity for all parties to participate, except as provided in this section:

(1) Any Administrative Law Judge may receive aid from legal counsel, or from staff assistants who aresubject to the Administrative Law Judge's supervision; and

(2) Administrative Law Judges may communicate with other employees or consultants of the agency who have not participated in the proceeding in any manner, and who are not engaged in any investigative or procedural functions in the same or a factually related case.

(3) This section does not apply to communications required for the disposition of ex parte matters specifically authorized by this Code.

An Administrative Law Judge who received an ex parte communication in violation of this section shall place on the record of the pending matter all written communication received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the Administrative Law Judge received an ex parte communication. The Administrative Law Judge shall advise all parties that these matter have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record.

If necessary to eliminate the effect of an ex parte communication received in violation of this section, an Administrative Law Judge who receives the communication may be disqualified, and the portions of the record pertaining to the communication may be sealed by protective order.

21-7.03 ADJUDICATORY RECORD

The Administrative Court shall maintain an official record of each proceeding under this chapter, which shall include:

(1) Notices of all proceedings;

(2) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings;

(3) Evidence received or considered;

(4) Proffers of proof and objections and rulings thereon;

(5) The recording prepared for the Administrative Law Judge, together with any transcript of all orpart of the hearing considered before final disposition of the proceeding;

(6) Any order of the court;

(7) Staff memoranda or data submitted to the Administrative Law Judge, unless prepared and submittedby personal assistants; and

(8) Matters placed on the record after an ex parte communication.

SECTION 21-8: SEVERABILITY

21-8.01 SEVERABILITY

If any provision of this Code or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable.

SECTION 21-9: EFFECTIVE DATE

21-9.01 EFFECTIVE DATE

This Administrative Code shall take effect thirty (30) days after the date of its enactment by the Kalispel Business Committee.

Nothing in the Kalispel Administrative Code shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency is granted all authority necessary to comply with the requirements of the Administrative Code. No subsequent Tribal laws shall be held to supersede or modify the provisions of the Code or its applicability to any agency except to the extent that such Tribal law shall do so expressly.

SECTION 21-10: APPLICABILITY

21-10.01 APPLICABILITY

This Administrative Code shall apply to the following Chapters of the Kalispel Law and Order Code upon adoption: Chapter 4, Traffic Infractions; Chapter 10, Kalispel Tobacco and Liquor Regulations; Chapter 11, Kalispel Tribe Gaming Ordinance; Chapter 12, Hunting and Fishing Codes; Chapter 18, Fireworks. Additional chapters of the Kalispel Law and Order Code may be brought under the purview of the Administrative Code upon resolution of the Business Committee.

CHAPTER 22 - ARBITRATION CODE

SECTION 22-1: SCOPE OF CODE

22-1.01 SCOPE OF CODE

This Code applies to any written contract, agreement or other instrument entered into by the Kalispel Tribe (the "Tribe"), or any other person in a transaction that is subject to the jurisdiction of the Tribe, in which the parties thereto agree to settle by arbitration any claim, dispute or controversy arising out of such contract, agreement or other instrument. Any prior legislation or other Tribal laws which are inconsistent with the purpose and procedures established by this Code are hereby repealed to the extent of any such inconsistency, except as provided in Section 2 of this Arbitration Code.

SECTION 22-2: AGREEMENTS TO ARBITRATE ARE ENFORCEABLE

22-2.01 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 claim, dispute or controversy thereafter arising out of such contract, agreement or other instrument, or any other transaction contemplated thereunder, including the failure or refusal to perform the whole or any part thereof, or a written agreement existing between them at the time of the agreement, shall be valid, irrevocable and enforceable.

SECTION 22-3: LAW TO BE APPLIED

22-3.01 LAW TO BE APPLIED

In any contract, agreement or instrument described in Section 22-1.01 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 claim, dispute or controversy. Such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties thereto, provided that the subject matter of the contract, agreement, instrument or claim, dispute or controversy, or at least one of the parties thereto, shall have some contract with the jurisdiction so selected.

(1) In any proceeding under this Code, whenever the contract, agreement or other instrument sets forth a choice of law provision, the Kalispel Tribal Court shall apply the procedural rules of the Tribal Court and the substantive law of the jurisdiction selected in such choice of law provision; provided that no procedural rule of the Tribal Court shall bar, delay or impair any action, proceeding or remedy wheresuch 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.

(2) In any proceeding under this Code, whenever the contract, agreement or other instrument does not set forth a choice of law provision, the Tribal Court shall first apply the substantive law of the Tribe, 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.

SECTION 22-4: STAY OF PROCEEDINGS AND ORDER TO PROCEED WITH ARBITRATION

22-4.01 STAY OF PROCEEDINGS AND ORDER TO PROCEED WITH ARBITRATION

(1) 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 22-1.01 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.

(2) A party to any contract, agreement or instrument described in Section 22-1.01 of this Code claiming the neglect or refusal of another party thereto to proceed with an arbitration thereunder may make application to the Tribal Court for an order directing the parties to proceed with the arbitration in compliance with their agreement. In such event, the Tribal Court shall order the parties to arbitrationin accordance with the provisions of the contract; agreement or instrument and the question of whether an obligation arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

SECTION 22-5: ADVICE OF THE COURT

22-5.01 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 Tribal Court for advice on any question of tribal or state law arising in the course of the arbitration so long as such parties 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.

SECTION 22-6: TIME WITHIN WHICH AWARD SHALL BE RENDERED

22-6.01 TIME WITHIN WHICH AWARD SHALL BE RENDERED

(1) 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 thirty days from the date the arbitration has been completed. The parties may expressly agree to extend the time in which the award may be made by an extension or ratification thereof in writing.

(2) An arbitration award shall be in writing and signed by the arbitrator(s). The arbitrator(s) shall provide written notice of the award to each party by certified or registered mail, return receipt

requested.

SECTION 22-7: APPLICATION FOR ORDER CONFIRMING AWARD, RECORD TO BE FILED WITH CLERK OF COURT, EFFECT AND ENFORCEMENT OF JUDGMENT

22-7.01 APPLICATION FOR ORDER CONFIRMING AWARD, RECORD TO BE FILED WITH CLERK OF COURT, EFFECT AND ENFORCEMENT OF JUDGMENT

(1) At any time within one year after an arbitration award has been rendered and the parties thereto notified thereof, any party to the arbitration may make application to the Tribal Court for an orderconfirming the award.

(2) Any party applying for an order confirming an arbitration award shall, at the time the order is filed with the Clerk of the Tribal Court for entry of judgment thereon, file the following papers with the Clerk:

(A) The agreement to arbitrate;

(B) The selection or appointment, if any, of the arbitrator(s);

(C) Any written agreement requiring the reference of any question as provided in Section 22-5;

(D) Each written extension of the time, if any, within which to make the award;

(E) The award;

(F) Each notice and other paper used upon an application to confirm; and

(G) A copy of each order of the Tribal Court upon such an application.

(3) An arbitration award shall not be subject to review or modification by the Tribal Court, but shall beconfirmed strictly as provided by the arbitrator(s); provided, however, that the Tribal Court shall decline to enforce any arbitration award if it finds:

(A) The award was procured by corruption, fraud or other undue means;

(B) There was evident partiality of an arbitrator appointed as a neutral;

(C) The arbitrator(s) exceeded their powers; or

(D) The arbitrators refused to hear evidence material to the controversy or otherwise conducted the hearing so as to substantially prejudice the rights of one party.

The judgment confirming an award shall be docketed as if it were rendered in a civil action. 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. 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.

SECTION 22-8: ARBITRATION AWARD NOT APPEALABLE

22-8.01 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.

SECTION 22-9: JURISDICTION OF THE TRIBAL COURT IN ACTIONS TO WHICH THE TRIBE IS A PARTY

22-9.01 JURISDICTION OF THE TRIBAL COURT IN ACTIONS TO WHICH THE TRIBE IS A PARTY

(1) The Tribal Court shall have 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 22-1.01 of this Code to which the Tribe is a party; provided that in any such actions brought against the Tribe, the Tribal Council (the "Council") shall have explicitly waived the defense of tribal sovereign immunity in the contract, agreement or other instrument; and provided further that such contract, agreement, or other instrument does not expressly prohibit the Tribal Court from exercising jurisdiction thereunder.

(2) To the extent allowed by federal law, the jurisdiction of the Tribal Court under this Code shall be concurrent with the jurisdiction of any state or federal court to the jurisdiction of which the Council shall explicitly consented in such contract, agreement or other instrument. Any consent to the jurisdiction of a state or federal court contained in a contract, agreement or other instrument described in Section 22-1.01 of this Code to which the Tribe is a party shall be valid and enforceablein accordance with its terms.

SECTION 22-10: SEVERABILITY

22-10.01 SEVERABILITY

If any section or part thereof of this Code or the application thereof to any party shall be held invalid for any reason whatsoever by a court of competent jurisdiction or by federal legislative action, the remainder of the relevant section or part of this Code shall not be affected thereby and shall remain in full force and effect.

SECTION 22-11: NO WAIVER OF SOVEREIGN IMMUNITY

22-11.01 NO WAIVER OF SOVEREIGN IMMUNITY

Nothing in this Code shall be interpreted to provide a waiver of the sovereign immunity of the Tribe or any of its officers, employees or agents acting within the scope of their authority.

CHAPTER 23 - WORKERS PROTECTION CODE

SECTION 23-1: GENERAL PROVISIONS

23-1.01 Citation and Purpose

This Code shall be known and cited as the “Workers Protection Code” and shall be administered by the Tribal Workers Protection Advisory Council (“TWPAC”), or its successor. The purpose of this Code is to establish the rights and benefits of covered workers of the Tribe for on-the-job bodily injuries due to accidents or occupational disease as set forth herein.

23-1.02 Sovereign Immunity

The Kalispel Tribe of Indians ("Tribe") hereby provides a limited waiver of the sovereign immunity of the Tribe and its Tribal agencies and enterprises only to the extent necessary to enforce this Code and for no other purposes purportedly expressed or implied.

23-1.03 Insurance Requirement

The Tribe, agencies & enterprises must insure for the benefits provided under this Code, but are allowed Self-Insured Retention levels in accordance with the rules of the TWPAC. Any insurance company issuing a policy insuring benefits hereunder shall: (1) require a loss prevention/control program sufficient to enable the Tribe to provide a safe workplace for all tribal workers; (2) assist the employer in reducing hazards in the workplace and in the implementation of continued safety policies and procedures.

23-1.04 Definitions

A. Pronouns of the masculine gender used in this Code shall apply to both sexes. Unless stated otherwise in specific sections of the Code, time limits shall be calculated using calendar days.

B. Unless the context otherwise requires, the definitions which follow govern the construction and meaning of the terms used in this Code:

1. “Administrator” or Workers Protection Benefit System Claim Administrator” shall mean eitherthe Insurance Company providing coverage hereunder any subcontractor appointed by said Insurance Company, or subcontractor selected by the TWPAC, but shall not mean the TWPACwho shall administer the System.
2. “Attending Physician” shall mean the Physician, or other medical care provider that is responsible for the planning, provision and oversight of medical treatment to a covered worker who sustains a covered injury.
3. “Average Weekly Wage” shall be as follows:

For covered worker hired to regular full or part-time position expected to last at least 13 weeks, the average weekly wage shall be calculated based on the preceding thirteen (13) weeks of the covered worker's actual wage earnings from a covered employer. In the case of a worker who has not worked for a covered employer within the immediate preceding thirteen (13) weeks, the average weekly wage shall be calculated based on the salary level the worker was hired at or is currently receiving.

For covered worker hired on a temporary, emergency or special projects basis who has continuously worked for a minimum of 13 weeks, the average weekly wage shall be calculated as provided in subparagraph 1, above.

For covered worker hired on a temporary, emergency or special projects basis who has not continually worked for the preceding 13 weeks, the average weekly wage shall be calculated by taking the expected total gross wages and divide by the expected number of work weeks.

For covered workers serving as volunteers, the wage benefit will be $250.00 per week.

For purposes of this definition, the work week shall be as defined by the personnel manual or policy applicable to the covered worker at the time of injury.

4. “Benefits” shall mean the indemnity and medical payments provided by this Code. “Indemnity” shall mean total disability and partial disability income benefits and impairment payments; and “Medical” shall mean medical expense, mileage and other expenses associated with medical treatment.
5. “Tribe” and "Tribal" mean or refer to the Kalispel Tribe of Indians, a federally recognized American Indian tribe, and its agencies, and any Tribal corporations and enterprises.
6. “Claimant” means the injured covered worker or, in the event of death of the covered worker, dependents of the deceased.
7. “Consulting Physician” shall mean the Physician, other health care provider or other health care expert that is retained by the Administrator to assist the Administrator in carrying out his duties and responsibilities under this Code. Such activities may include, but are not limited to, determination of the validity of a claim; review of an attending physician’s diagnosis and treatment plans; determination of MMI; determination of impairment rating. At the discretion and expense of the Administrator, an injured worker may be required to be seen by the consulting physician to assist in making any required recommendations to the Administrator.
8. “Course and Scope of Employment” shall mean the employer’s employment of the covered worker at the time the injury occurred. An injury must arise out of and be in the course and scope of employment, and the worker must be acting in the furtherance of the employer’s interest

at the time of the incident and/or accident, in order for a claim to be compensable.

9. "Covered Employer" and "Employer" shall mean the Tribe, and its agencies, and any Tribal corporations or enterprises.
10. "Covered Worker" and "Worker" means every person who has entered into the employment of or performs work for an employer, works under employment agreement express or implied, or apprenticeship, for an employer, every executive officer elected or appointed and empowered under and in accordance with the charter and bylaws of a corporation, including a person holding an official position, or standing in a representative capacity of the employer, including officials (elders) elected or appointed by the Tribe, compensated monetarily or otherwise, except as hereinafter specified. The terms covered worker and worker shall not include an independent contractor working under contract for an employer, whether that contract be express or implied. Covered workers shall include all persons employed by the employer regardless of where they work. Covered workers shall include authorized volunteers or other persons providing work for an employer who do so without receiving compensation. Covered workers shall include persons serving in the Tribal Police Department Reserve Program or volunteer firefighters working for the Tribal Fire Department, or other volunteer positions covered by a tribal accident insurance policy.
11. "Death" is any fatality of the covered worker proximately and directly caused by work injury or occupational disease.
12. "Dependents" are the following persons, and they shall be deemed to be the only recognizable dependents under the provisions of this Code:

    The widow or widower, if legally married and living with the deceased at the time of deceased's death and legally entitled to be supported by the deceased as a dependent defined by the most recent federally filed 1040 tax return. For purposes of this Code, a covered worker may, in a written self-declaration to be provided by the employer, designate a person as their dependent domestic partner which person shall be treated as a dependent widow(er) if the person was living with the deceased covered worker at the time of his/her death and listed on the most recently federally filed 1040 tax return.

    A child, natural or adopted, under 18 years of age, or incapable of self-support and unmarried; or a child under 25 years of age enrolled as a full-time student in an accredited education institution at the time of the covered worker's death;
13. "Disability" means the inability of the covered worker to obtain and/or retain wages equivalent to the pre-injury wage rate as a result of a direct loss of functional capacity compromising that individual's ability to perform the necessary duties of the job. This functional loss must be

directly and materially attributable to a compensable work-related injury and/or occupational disease and must be supported by the worker's attending physician and, if requested by the Administrator, the consulting physician. "Partial Disability" is distinguished as any incapacity less than 100% inability as defined above.

14. "Idiopathic Injury" means an injury which is either peculiar to the individual or arising spontaneously from an obscure or unknown cause. This includes epileptic attacks, diabetic seizures, heart disease, cardiovascular or respiratory conditions, heart attack, the failure or occlusion of any coronary blood vessels, stroke, thrombosis, allergic disorders, auto-immune diseases, *etc*.
15. "Impairment" means any anatomic or functional abnormality or loss existing after Maximum Medical Improvement (MMI) as defined herein that results from a compensable injury and/or occupational disease and is reasonably presumed to be permanent based on reasonable medical probability.
16. "Injury" shall mean any physical impairment, including, without limitation, death and/or occupational disease as further herein defined. "Arising out of and in the course of employment" excludes an injury sustained while a covered worker is at home or preparing for work unless the activity was undertaken at the direction of the employer. "Injury" excludes any injury resulting primarily from the natural aging process, or normal daily activities, or an injury sustained during voluntary recreational or social activities.
17. "Intoxication" means blood alcohol content in excess of .02 percent or conviction of the offense of driving while intoxicated (or words to that effect) by any jurisdiction, or loss of the normal use of one's mental and/or physical faculties resulting from the voluntary introduction into the body of (1) an alcoholic beverage; (2) a controlled substance; (3) a mind-altering drug and/or hallucinogenic; (4) an abusable glue or aerosol (5) the intentional abuse of prescribed drugs.
18. "Maximum Medical Improvement" (MMI) means the earlier of:
    The point after which further material recovery from or last improvement to an injury can no longer reasonably be anticipated, based on the reasonable medical probability; or
    The expiration of 36 months from the date Incapacity Income Benefits begin to accrue.
    MMI can be determined without regard to subjective complaints of pain by the patient. Once the date of MMI has been determined (except cases in which a covered worker is medically unable to continue working) no further determinations of other dates of MMI for that personal injury are permitted. A determination of MMI is not rendered ineffective by the worsening of the covered worker's medical condition and recovery thereafter. This restriction will not apply to undiscovered injuries or injuries that were caused by the initial covered injury.
19. "Occupational Disease" shall be only those diseases which arise out of and in the course and

scope of the worker's employment. Such diseases shall have a direct causal connection with the employment and must have followed as a natural incident thereto from injurious exposure occasioned by the nature of the employment. Such disease must be incidental to the character of the business, occupation, or process in which the worker was employed and not independent of the employment. Such disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have resulted from that source as an incident and rational consequence. A disease which follows from a hazard to which a worker has or would have been equally exposed outside of said occupation is not compensable as an occupational disease.

20. "Policy" shall mean any Tribal Workers Benefit Policy of Insurance issued to the Tribe, or other employer.
21. "Scheduled Weeks" means 156 weeks and is the maximum number of weeks that a covered worker shall be entitled to Functional Impairment Benefits under this Code.
22. "Settlement" shall mean the date the release of all claims is executed and the monetary terms ofthe agreement met.
23. "Tribal Court" shall mean the Kalispel Tribe of Indians Tribal Court.
24. "Tribal Workers Protection Advisory Council" (TWPAC), or its successor, shall mean the entity organized to administer the Workers Protection Code in accordance with section 1.03 and section 2.
25. "Workers Protection Benefit System" shall mean this Code, any and all rules and regulations promulgated hereunder, as well as the functions of the Administrator, the TWPAC, and the arbitrator selected to adjudicate disputes under section 9 of this Workers Protection Code.
26. "Third Party" – Any party other than the covered employer, its representatives, workers, agents, insurer or surety.

23-1.05 Acknowledgment of Code

A. All covered workers and persons asserting a claim shall be conclusively presumed to have elected to take workers benefits in accordance with the tenets, conditions, and provisions of this Code by virtue of employment with the Tribe or other employers as defined herein. All covered workers and/or persons asserting a claim for workers benefits acknowledge that the Tribe is a federally recognized American Indian tribe and is exercising its inherent sovereign authority in providing workers benefits under this Code.
B. The employer shall be responsible for and shall have posted in a conspicuous location a notice as follows:

NOTICE TO TRIBAL GOVERNMENT AND ENTERPRISE EMPLOYEES AS EMPLOYEES OF THE TRIBE OR ITS ENTERPRISES, YOUR ARE INSURED FOR ON-THE-JOB INJURIES UNDER THE TRIBAL WORKERS PROTECTION CODE
If you are injured or sustain an occupational disease while at work, you may be entitled to benefits as provided by the Tribal Workers Protection Code. NOTIFY YOUR EMPLOYER IMMEDIATELY OF ANY INJURIES, NO MATTER HOW SLIGHT. If you fail to do so, you may lose your benefits under the Tribal Workers Benefits System. In no event shall benefits be paid to a worker who failed to notify their employer no later than the first business day after sustaining such work-related injury, excepting cases where an extraordinary reason prevented the worker from reporting the injury or occupational disease to the employer in a timely manner. It is your responsibility to file a claim for benefits under the Code with the Administrator of the System. You are required to file a claim for any injuries or occupational disease no more than fifteen (15) business days after you have knowledge thereof. It is your responsibility to obtain any necessary forms from the Tribal Workers Protection System Claim Administrator at:
Your exclusive remedy for any work connected injury or disease is through the Tribal Workers Protection System. The State's Worker Compensation System has no authority to accept a claim from you under the Tribal Workers Protection Code as you are employed by the Tribe, a sovereign Indian nation employer, which is exclusively under the jurisdiction of its own Tribal Workers Protection System.

23-1.06 Notification to Employer of Injury by Worker

A. Any covered worker and/or person claiming benefits under this Code must notify his supervisor, department director or the human resources director/designee of any and all injuries immediately, and in no event later than next business days from the date of occurrence. Failure to report such on-the-job injury shall result in the worker's forfeiture of benefits under this Code, unless the claimant can demonstrate and extraordinary reason that prevented the reporting of the injury or occupational disease in a timely manner.

B. The supervisor/department director/human resources director receiving the report of the incident or accident shall submit the report to the Administrator within seven (7) business days of receipt from the covered worker. In addition, the supervisor/department director/human resources director receiving the report shall prepare, or have prepared by the covered worker's direct supervisor, and submit an incident report on the circumstances surrounding the on-the-job injury, including the identification of those who may have witnessed the incident or accident.

23-1.07 Time Limit for Reporting of Incidents and Filing of Claims

A. Claims for injury shall be made by the covered worker to the Administrator within five (5)business days of the date of occurrence. For purposes of this Code, a covered worker filing a claim for benefits under this Code with the human resources office shall constitute filing a claim with the

Administrator.

B. Claims for occupational disease shall be made by the covered worker to the Administrator within fifteen (15) business days from date of first notice to the claimant by a physician or from the date of manifestation of symptoms, whichever is earliest, but in no event longer than 90 business days from the date worker terminates his employment with the Tribe.

C. Failure to give notice of injury to the employer as required by section 1.06, or to file a claim with the Administrator, within the time limit set forth in this section shall constitute a forfeiture by the covered worker, or his representatives in case of death, of all benefits available and payable under this Code.

23-1.08 Burden of Proof

The burden of proof shall rest upon the covered worker, or his dependents in the case of death, to prove by a preponderance of the evidence:

A. That the injury complained of was a result of an incident, accident or occupational disease;

B. That it arose out of the covered worker's employment;

C. That it arose while in the course and scope of employment and arose proximately out of covered employment; and

D. That it arose while in the furtherance of the employer's interests.

23-1.09 Right to Waive Defenses

The Administrator and/or Insurer shall have the right and power to waive any and all defenses affecting the compensability of a covered injury under this Code.

23-1.10 Guardian for Minor or Incompetent

Any person who is mentally incompetent and/or under the age of 18 and is entitled to receive compensation under this Code, shall be appointed a guardian or other representative by the Tribal Court if a guardian has not been appointed in a prior action.

SECTION 23-2: TRIBAL Workers Protection ADVISORY COUNCIL

23-2.01 Establishment

There is hereby established a Tribal Workers Protection Advisory Council (TWPAC) whose purpose is to administer the Tribal Workers Protection System by promulgating rules and procedures of operations and to cooperate for the prevention of injuries and occupational diseases to workers and, in the event of injury or occupational disease, their rehabilitation or restoration to health and vocational opportunity.

23-2.02 Membership

A. The TWPAC shall be comprised of five (5) persons holding the following positions:
    1. The Human Resources Director for the government of the Tribe, or designee.
    2. The Tribal Administrator or designee.
    3. The Tribal Director of Finance or designee.
    4. Member of Tribal Council or designee
    5. The Vice President of Finance or designee.
B. A person shall serve on the TWPAC so long as that person holds the position qualifying the employee to serve on the TWPAC

23-2.03 Powers of TWPAC

The TWPAC shall have the following duties and powers:

A. To meet on a regular basis to carry out the duties and powers of the TWPAC.
B. To promulgate rules and regulations for the implementation and administration of this Code.
C. To periodically review the benefits provided under this Code and to make recommendations to the Kalispel Tribal Business Committee for amendments to benefit levels or any other needed revisions to this Code deemed advisable by the TWPAC .
D. To develop programs and to cooperate with the Administrator for the preparation and presentation of information and educational programs designed to prevent injuries and occupational diseases to covered workers.
E. To take any and all other actions deemed reasonable and necessary for the implementation of this Code including, but not limited to, setting rates and establishing adequate reserve levels.
F. To retain consultants deemed necessary by TWPAC to carry out its duties as provided herein.
G. To select the Administrator.
H. To act as the Mediator to adjudicate the disputes regarding benefits provided under this Code as set forth in section 9 below.
I. To select the insurance company to provide the workers benefits that are set forth in this Code.

SECTION 23-3: ADMINISTRATIVE DUTIES AND POWERS

23-3.01 Custodian Duties

The Administrator or its designee shall be the payor of the workers benefits and all authorized disbursements there from shall be paid by the Administrator or a representative with its stated authority, and shall be the custodian of all claim files and related documents.

23-3.02 Payment and Distribution of Benefits

The Administrator shall administer this Code in accordance with the terms and conditions described herein, and any rules promulgated by the, TWPAC and remit payment for all matters of benefit claims as provided for in this Code. Further, the Administrator shall have the authority to determine the distribution of benefit checks.

23-3.03 Tribal WORKERS PROTECTION Administrator Powers and Duties

A. The Administrator for the Tribal Workers Protection Program shall be empowered to request medical reports, police reports, autopsy reports, and special investigations, engage the services of adjusters and consultants, and perform other activities as required to process any claim for benefits or recommend Code revisions.
B. In the case of death of a covered worker, the Administrator shall have the right to request the performance of an autopsy on the decedent from an appropriate official licensed to perform autopsies, and further the Administrator shall have the right to request any and all reports made from such autopsies. If requested, the legal beneficiaries of the deceased worker are entitled to have a representative present at any autopsy ordered by the Administrator.
C. Retain a consulting physician for purposes of assisting the Administrator to carry out the duties and powers in this Code.
D. Complete and accurate administrative records and claim files shall be maintained on all activities relating to the claims made under the Policy. All closed files shall be preserved for not less than Six (6) Years.

23-3.04 Acceptance/Denial of Claim

Upon receiving a claim for benefits from an injured worker, the Administrator shall promptly investigate the claim and begin payment of compensation within 21 days of a valid claim or the Administrator shall send the claimant written notice, within 21 days, that further investigation is needed and the reasons for further investigation. The Administrator shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant in writing that the claim is denied.

SECTION 23-4: COVERAGE AND COMPENSABILITY

23-4.01 Entitlement to Benefit

A. An Injured Worker seeking benefits under this Code shall be responsible for filing their claim with the human resources department.-
B. Coverage exists under this Code for a covered worker's injury without regard to fault or negligence

if the injury arises out of and in the course and scope of employment and if the worker was acting in furtherance of the employer's interest at the time of the injury and/or incident, including, without limitation, any covered worker whose work at the time of injury was subject to the Longshore and Harbor Workers Compensation Act (33 U.S.C. §§ 901-950), the Jones Act (46 U.S.A. appx. § 688), or any other Federal Workers Compensation Acts. If an injury is an occupational disease as defined herein, the employer in whose employ the worker was last injuriously exposed to the hazards of the disease is considered to be the employer of the worker for purposes of obtaining benefits under this Code.

23-4.02 Disclosure of Pre-Existing Disabilities

A. At the time of hire or transfer covered employers shall ensure that employees sign off on the job description stating they can physically and mentally perform the job without limitation.
B. Any claim resulting from an employment-related aggravation of a pre-existing condition which was not disclosed as required under this Code shall be declined by the Administrator under this Code if the claimant had knowledge of the pre-existing condition and failed to disclose such condition pursuant to section 4.02(A).
C. A covered worker with a disclosed and/or approved pre-existing condition as set forth in this §4.02is not entitled to compensation for a subsequent injury.
D. "Pre-existing condition" is defined as an injury, disease, congenital abnormality, personality disorder, or similar condition that contributes or predisposes a worker to disability or need for treatment.

23-4.03 Mental Trauma Injuries

A. Mental traumas, disorders, and/or conditions, even if manifested in physical symptoms and/or related to stress, are not compensable injuries under this Code, except that mental trauma is only recoverable if resulting from accidental injury traceable to a definite time, place, and cause.
B. Regardless of section 4.03(A), a mental trauma or emotional injury that arises principally from a personnel action, including, without limitation, a transfer, promotion, demotion, work performance evaluation, or voluntary or involuntary termination is not a compensable injury under this Code.
C. Treatment for mental injury determined compensable under this Code shall be limited to six monthsafter the covered worker's physical injury has healed to maximum medical improvement.

23-4.04 Going to and Returning from Work

A. An accident and/or incident occurring to a worker while on the way to or from work, is not within the course and scope of employment except when such traveling is directly connected with the worker's

work and in furtherance of the employer's interest. This exception will not apply if the worker deviates from a reasonably direct route of travel and/or is not acting in the interests of the employer.

B. Injuries which occur 15 minutes before and after a covered worker's work hours would be compensable if they occur on an employer's approved premises or on a parking lot owned or controlled by the employer.

23-4.05 Benefits Precluded by Neglect and/or Refusal of Worker to Submit to Treatment

A. No benefits shall be payable for the death and/or disability of a worker if the worker's death is caused by, or the worker's disability aggravated, caused or continued by, an unreasonable refusal and/or neglect to submit to and/or follow any competent or reasonable surgical or medical treatment, medical aid, or advice. A worker who has refused and/or neglected to submit to medical and/or therapeutic treatment, or to take medications as prescribed, will be deemed to have reached Maximum Medical Improvement as defined herein. Any such existence of a disability that could have been reasonably treated to success with reasonable medical probability will be discounted in determining the appropriate incapacity rating as prescribed herein.

B. Any covered worker entitled to benefits under this Code shall be presumed to have reached Maximum Medical Improvement if such claimant has refused and/or neglected to seek appropriate medical treatment within three (3) months from the date of occurrence or from the last date of prior treatment.

C. If an injured covered worker undertakes activities on or off the job which exceed recommendations of the treating physician, and cause the condition to worsen, the covered worker may not receive benefits for the aggravation. However, the covered worker may receive compensation for the aggravated condition if the employer directed the covered worker to do things in excess of the treatment recommendations.

23-4.06 Injury or Death by Consumption and/or Application of Drugs and/or Chemicals

No benefits of any nature shall be payable for injury and/or death caused or contributed to by any drug, including narcotics and hallucinogens, whether organic or chemical in nature, or any gas, vapors, and/or fumes taken and/or inhaled voluntarily, or by voluntarily poisoning, except those drugs prescribed by a physician or other practitioner licensed to prescribe such medication. However, no benefits under this Code shall be payable in the event the claimant's injury or death was caused by the intentional abuse of prescribed drugs.

All workers accepting employment with an employer and under this Code, agree to submit to post-incident/post-accident drug and alcohol screening as authorized in the applicable Tribal personnel policies, and agree to waive any privilege associated with the results of said tests.

23-4.07 Intoxication

No benefits of any nature shall be payable for any covered worker injured or killed while intoxicated as defined in section 1.04(B)(18), regardless of whether or not the intoxicated condition was the proximate cause of the injury or death, or if the covered worker has any controlled substance in their body at the time of injury. It is only necessary to prove that the covered worker was intoxicated at the time of the incident or accident to deny benefits under this Code.

23-4.08 False Statement or Representation to Obtain Compensation; PENALTY and Forfeiture

If, in order to obtain any benefits under the provisions of this Code, any person willfully makes a false statement or representation, they shall forfeit all rights to compensation, benefits, or payment upon proof that the offense was committed. Any claim resulting from an employment-related aggravation of a pre-existing condition which was not disclosed as required under this Code may be declined by the Administrator. The employer shall be entitled to take any action permitted by applicable law to recover any payment or benefits paid under this Code to a covered worker where the payment or benefit was based upon the fraudulent or false statements or misrepresentation by the covered worker.

23-4.09 Injuries Resulting from Self-Inflicted Injuries, Willful Misconduct, "Horseplay" or safety violation

A. No benefits of any nature shall be payable for any covered worker's injury or death caused by a covered worker's willful intention to injure themselves. An injury sustained during "horseplay" is not incurred in the course and scope of the employment, and thus such an injury under this Code is not compensable.
B. The willful disregard of a safety order from the employer to the worker to wear or use a safety device and/or to perform work in a certain manner may cause such person to forfeit all rights to compensation or benefit. A covered worker's willful disabling of safety devices on equipment constitutes a willful intention to injure himself thereby precluding eligibility for benefits under thisCode.

23-4.10 Injuries Resulting from NATURAL CAUSES or idopathic claims

Injury or death which results from natural causes, i.e., heart attack, stroke or other natural function failure, which does not arise out of the course and scope of employment while the worker was acting in the furtherance of the employer's interest, shall not be compensable unless the work being performed is the sole cause for the injury.

23-4.11 Recreational, Social or Athletic Activities

A. No benefits of any nature shall be payable for any covered worker injured or killed if the injury or accident occurred as a result of the worker's voluntary participation in a, recreational, social, or

athletic activity not constituting part of the worker's work-related duties.

B. No benefits under this Code shall be payable to any covered worker if the injury, disease, or death arises from participation in voluntary physical fitness activities during the regular work day, regardless of whether the covered worker is or is not compensated for the time in which the physical fitness activities take place.

23-4.12 Injuries Caused by Third Parties

No benefits of any nature shall be payable for any covered worker injured or killed as the result of an act of a third party, including co-workers, who intended to injure the worker because of reasons personal to that worker and not directed at the worker for reasons related/relevant to his employment.

23-4.13 Secondhand Smoke Claims

No benefits under this Code shall be payable to or on behalf of any covered worker injured or killed as a result of exposure to or injury by secondhand smoke.

23-4.14 REPETITIVE MOTION/SOFT TISSUE

Benefits will only be paid up to 12 visits for physical therapy, chiropractic or any other treatment caused by repetitive motion or any other condition that does not have a physical manifestation. This includes but is not limited to soft tissue damage, carpal tunnel syndrome, tennis elbow and lower back pain.

SECTION 23-5: BENEFITS - GENERAL PROVISIONS

23-5.01 Right to Compensation and Medical Treatment Benefits

Every covered worker coming within the provisions of this Code who is injured, and in the event of a worker's death, the dependents of every such covered worker, arising out of and in the course and scope of employment and while acting in the furtherance of the employer's interest at the time of the incident and/or accident, unless the injury is otherwise limited or excluded by the terms and conditions of this Code, shall be entitled to receive, and shall be paid, for loss sustained on account of the injury, death and/or occupational disease, such benefits as provided under this Code.

23-5.02 Workers Benefit as Exclusive Remedy

The rights and remedies provided by the provisions of this Code for a worker on account of injury or occupational disease for which benefits under this Code are recoverable, shall be the exclusive and only rights and remedies of such worker, the worker's personal or legal representative, dependents, or next of kin, at common law or otherwise, on account of such injury and/or occupational disease against the employer, the employer's representative, insurer, guarantor or surety, for any matter relating to the

occurrence of or payment for any injury or death covered under this Code. To that end, all civil causes of action against the covered employer and its employees, arising from said injuries or death, and the jurisdiction of all courts over such causes of action are hereby abolished and barred, except as specifically provided by this Code.

23-5.03 Effect of Compensation Paid in Other Jurisdictions or Third Party Recovery

An injured worker who pursues and recovers compensation under laws of another jurisdiction or from a third party shall notify the Administrator. The injured worker forfeits compensation under this Code in proportion to their recoveries from the other jurisdiction or third party.

23-5.04 Liability of Third Parties - Subrogation

A. The employer and/or their representative, insurer, guarantor, or surety shall be subrogated to the common law rights of the worker to pursue any claims for compensation against any third party that is liable for the death of, or injuries to, said worker arising out of and in the course and scope of employment and while the worker was acting in the furtherance of the employer's interest to the extent of the benefits bestowed upon the said worker.

B. In case of recovery, the Administrator selected under section 9 of this Workers Protection Code shall enter judgment for distribution of the proceeds thereof as follows:

   1. A sum sufficient to repay the employer and/or the Administrator for the amount of compensation actually paid to the worker under this Code up to that time;
   2. A sum sufficient to pay the employer the present worth, computed at the current legal interest rate for court judgments and decrees, of the future payments of compensation for which the employer is liable, but the sum is not the final adjudication of the future payments which the worker is entitled to receive and if the sum received by the employer is in excess of the amount required to pay the compensation, the excess shall be paid to the worker.
   3. The balance, if any, shall be paid over to the worker.

C. For subrogation purposes hereunder, any payment made to a covered worker, his guardian, parent, next of kin, or legal representative, by or on behalf of any third party, his or its principal or agent liable for, connected with, or involved in causing an injury to such worker shall be considered as having been so paid as damages resulting from and because said injury was under circumstances creating a legal liability against said third party, whether such payment be made under a covenant not to sue, compromise settlement, denial of liability, or otherwise.

23-5.05 Assignability of Benefits - Attachment of Liens

Benefits received under this Code are not assignable., Income from death benefits are subject only to

the following liens or claims, to the extent of any income or death benefits that are unpaid on the date the Administrator receives written notice of the lien, judgment, or claim in the following order of priority:

A. Court-ordered child support issued or recognized by the Tribal Court;

B. A subrogation interest established under this Code; and

C. Debts owed to the Tribe.

23-5.06 Aggravation of Pre-Existing Disease or Condition

If a covered worker is suffering from a pre-existing disease and/or injury at the time an occupational incident, accident and/or disease occurs or arises in the course and scope of employment and while the worker was acting in furtherance of the employer's interest at the time of the injury and/or incident, and the pre-existing disease and/or injury is aggravated thereby, the aggravation of the disease or injury is, subject to provisions herein, compensable under this Code. The amount of the award for that disability as set forth in this Code may be reduced or denied in its entirety by the Administrator in consideration ofthe following:

A. A prior settlement from any source for the same impairment;

B. The difference between the degree of impairment of the worker before the covered accident and/or occupational disease and the degree of impairment after the covered accident or occupational disease; or.

C. The benefits to be paid for impairments and/or disabilities would be in excess of 100% of the whole person. For purposes of this subsection, benefits include those benefits or payments made under this Code, benefits from the worker's compensation laws of any other jurisdiction or payments from third parties.

23-5.07 Termination of Benefits Upon Death

Where a worker is entitled to compensation under this Code for an injury sustained, and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability for such compensation thereafter shall terminate.

23-6.01 Vocational Rehabilitation

Vocational rehabilitation benefits or training are not mandatory under this Code, but may, in the discretion of the Administrator, be ordered pursuant to his authority established herein, or as required under rules promulgated by the TWBAC.

23-6.02 Waiting Period

An initial waiting period of seven (7) consecutive calendar days is to accrue before the covered worker shall be entitled to benefits under this Code.

23-6.03 Total Disability and Partial Disability Income Benefits

A. When the worker is disabled from work duty as determined by the consulting physician, or in the Administrator's discretion, the attending physician, by reason of a compensable injury or occupational disease, benefits shall be payable as follows:
   1. If the covered worker is 100% disabled, benefits are payable at 70% of the worker's pre-injury average weekly wage.
   2. If the covered worker is less than 100% disabled, benefits are payable at 100% of the difference between a worker's pre-injury average weekly wage and the wage the covered worker is earning or capable of earning in his partially disabled condition.

B. Except as provided herein, such benefits will continue to be paid in accordance with the terms of this Code until which time the earliest of the following occurs:
   1. The expiration of 36 months from the date of the occurrence, or in the case of an occupational disease, 36 months from the earliest of the first manifestation of the symptoms or notification from a physician that the illness is inherent or related to the worker's occupation;
   2. The consulting physician, or in the discretion of the Administrator, the attending physician, declares that the worker has reached Maximum Medical Improvement;
   3. A full, unrestricted release is provided by the attending physician;
   4. A modified or light duty release is provided by the attending physician and a bona fide job offerof suitable work consistent with the worker's disability is rejected;
   5. A new or intervening incident is the proximate cause of disability;
   6. Benefits are refused by the worker;
   7. Presumption of MMI or abandonment of medical treatment as defined by section 4.05 of this Code;
   8. Suspension of benefits by the Administrator for reasons authorized in this Code or by the

authority of the arbitrator selected under section 9 of this Workers Protection Code.

9. The worker's earning capacity is reduced for reasons other than the disability from the work-related injury.
10. The covered worker dies from any cause not resulting from the injury for which he was entitled to compensation under this section.

23-6.04 Impairment Benefits

A. At the expiration of 36 months from the date of the incident, accident and/or occupational disease, the worker is presumed to have reached MMI regardless of disability and/or current medical status. The attending physician is to provide an impairment rating in accordance with the most current edition of the American Medical Association (AMA) based on reasonable medical probability. In addition, at this time the attending physician is required to provide a treatment plan for reasonable and necessary future medical needs. The attending physician's impairment rating and treatment may be subject to review and revision by the consulting physician at the discretion of the Administrator.

B. The impairment ratings are to be converted to the covered worker as a whole. Those ratings assigned to a specific body part are to be converted in accordance with the AMA guidelines.

C. A rating may not be issued prior to the declaration of Maximum Medical Improvement. The Administrator may reserve issuance of payment under the following conditions:

1. Contribution for prior impairment ratings;
2. Clarification by the Administrator of this Code as to the validity of the date for MMI;
3. Similar rating or Maximum Medical Improvement issues to be resolved by the consulting physician or, if necessary, TWPAC.

D. The rating recognized by TWPAC is binding. The rating will not be retroactively paid for weeks accrued in resolving the rating issue subsequent to the date of Maximum Medical Improvement. Such benefits will become effective the date of the ruling and commence at that time. Benefits will not be withheld beyond a reasonable time period in clarification of the rating and MMI date.

E. Benefits will be payable based on the impairment rating issued to the covered worker multiplied by $300,000 and divided by the total number of scheduled weeks (156). Benefits payable under this section are limited to a total of $300,000 regardless of the impairment rating issued and regardless of the number of body parts involved.

F. A Lump Sum Settlement for Impairments will be given for those covered workers who receive a rating of 15% of the covered worker as a whole or less. Notwithstanding provisions herein, the Administrator shall retain the right and discretion to request Lump Sum Settlements in those cases with a rating of greater than 15% of the covered worker as a whole.

23-6.05 Benefit Issuance Period

Except as provided herein:

A. All benefits under this chapter are to be issued weekly.

B. There shall be no acceleration of benefits under this Code.

C. Any settlement issued on behalf of a covered worker shall be executed by signed memorandum only.

23-6.06 Not to Exceed Pre-Injury Average Weekly Wage

In no event may the worker's incapacity income benefits, or other income sources supplement the loss income exceed 100% of the worker's pre-injury average weekly wage, as may be increased by a Tribally approved cost of living adjustment.

23-6.07 Benefit Offsets

The Administrator is entitled to reduce benefits payable to covered workers under this Code in an amount equal to covered worker payments paid for by the employer for any pecuniary wages paid in the form of social security, long-term and short-term disability, employer elected salary contribution, vacation or sick leave, except for sick or paid administrative leave in the first seven (7) calendar days after an accident or onset of an occupational disease, or any other entitlement of a similar nature paid in whole or in part by the employer. Further, if any overpayment is made under this chapter to the covered worker of any disability income benefits as set forth in section 6.03 of this Code, such shall be deducted from any benefits payable under functional impairment benefits as set forth in section 6.04 of this Code; or in the case where no functional impairment benefits are payable, then such overpayment of benefits may be deducted through payroll deductions.

SECTION 23-7: DEATH BENEFITS

23-7.01 Distribution of Death Benefits

A. When death ensues to the covered worker by reason of a compensable injury or occupational disease, benefits shall be payable to the dependents who were dependent as defined in Section 1.04 on the earnings of the worker for support at the time of his injury, compensation upon the basis of 70% per week of the worker's average weekly wage, commencing from the date of death as follows:

1. If there are no children entitled to benefits, then all to the surviving spouse for the projected probable life span of the decedent based on established mortality tables, the life of the surviving spouse or until remarriage., whichever comes first, provided that upon remarriage two years' benefits shall be paid to the surviving spouse in a lump sum. To be an eligible "surviving spouse" under this Code, the surviving spouse must have been married and living with the decedent at the time of the compensable injury, proof of eligibility may be required. If there are surviving eligible dependents

the surviving spouse shall be entitled to one-half of death benefits. If there is a surviving spouse, one-half of death benefits paid to each surviving eligible child in equal shares.

2. If there is no surviving spouse, equal share of all to dependent as defined in Section 1.04.

B. Where a worker is entitled to compensation under this Code for an injury sustained, and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability thereafter shall terminate.

23-7.02 Redistribution of Death Benefits

A. If a legal beneficiary as defined in section 7.01 dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries in accordance with section 7.01.

B. If all legal beneficiaries cease to be eligible, any duty to pay the remaining death benefits payable under section 7.01 shall cease immediately.

23-7.03 Verification of Eligibility of Death Benefits

Upon request from the Administrator, all persons claiming to be eligible for death benefits shall furnish all necessary documentation to support their claim of eligibility.

23-7.04 Burial Benefits

If death results from a compensable injury, the person and/or entity who incur liability for the costs of the burial shall be reimbursed up to $5,000.00 to cover burial expenses with original supporting documents. This burial benefit payment shall not be reduced as a result of any burial benefit paid by any other source.

SECTION 23-8: MEDICAL BENEFITS

23-8.01 Entitlement to Medical Benefits

All covered workers are entitled to reasonable health care, supplies and reasonably necessary transportation incurred for such services. Medical benefits are payable from the date the compensable injury or accident occurred.

23-8.02 Right to Select Doctor; Employer Selection

A. Except in an emergency, all health care must be approved or recommended by the employer or Administrator. Health care treatment must be offered promptly and be reasonably suited to treat the injury. If the worker has reason to be dissatisfied with the care offered, he should communicate the basis of such dissatisfaction to the Administrator, in writing following which the Administrator and the worker may agree to alternate care reasonably suited to treat the injury. If the Administrator and the worker cannot agree on alternate care, TWPAC may, upon application and the reasonable proofs of the necessary

thereof, allow and order other such care. Any non-authorized treatment of the covered worker is not payable under this section and shall be at the worker's sole expense.

B. Chiropractic, osteopathic, naturopathic, acupuncture, or other non-traditional forms of treatment must be approved by the Administrator and approved by the attending physician. Duration of treatment and/or number of visits to such medical providers shall be subject to Administrator's approval, who may rely upon the advice of the consulting or attending physician.

C. After notice and opportunity for a hearing, TWPAC may issue a decision relieving the Administrator of the duty to pay for health care furnished by a health care provider or any other person selected in a manner inconsistent with the requirements of this Code.

23-8.03 Release of Medical-Related Information

Any worker, employer or insurance carrier or its agents making or defending a claim for benefits agrees to the release of all information to which the worker, employer, carrier, or its agents have access concerning the worker's physical or mental condition relative to the claim and further waives any privilege for the release of such information. The information shall be made available to any party or the party's representative upon request, and includes any third-party health care providers. Any institution or person releasing the information to a party or the party's representative shall not be liable criminally for civil damages by reason of the release of the information.

23-8.04 Medical Expenses

Expenses shall be limited to those usual and customary charged in the community, or like community, for similar services. Charges believed to be excessive or unnecessary may be denied by the Administrator. Any institution or person rendering treatment to a worker under this Code agrees to be bound by such charges as allowed by the Administrator and shall not recover in law or equity any amount in excess of that set by the Administrator.

23-8.05 Settlement of Future Medical Treatment, INCOME LOSS, IMPAIRMENT, DEATH BENEFIT

The covered employer and covered worker may negotiate settlement of future medical expenses, income loss, impairment, death benefit and other benefits under this Code that are owed to the covered worker. For purposes of settling the future medical expenses, the basis for settlement will be the value of the current and future medical treatment plan. Settlements under this section are not to exceed $100,000 unless approved by the TWPAC.

23-9.01 Appeals From Decisions of the Administrator

A. The Administrator shall administer this Code in accordance with the terms and conditions set forth in this Code. Any appeals from final decisions of the Administrator shall follow the procedures as set forth in this Code and in accordance with any and all rules and regulations of the TWPAC.

B. First Level – Any claimant may appeal a decision of the Administrator by filing a contested claim in writing to TWPAC within 30 business days of the Administrator's final decision. TWPAC will hold a hearing within 10 business days between the claimant and the Administrator, once all requested documentation from both parties are received. TWPAC will render a decision within 5 (five) business days of the hearing. Any claimant appealing the decision of the Administrator shall bear the burden of proof that the Administrator's decision was not in accordance with, or was in violationof, this Code. TWPAC will conduct hearings in accordance with their established rules and render awritten decision in the dispute. The decision of TWPAC shall be final and binding on all parties except for an appeal to the Tribal Court as provided herein.

C. Second Level - Tribal Court. Any and all appeals from a decision of TWPAC shall be heard by the Tribal Court under the laws of the Kalispel Tribe of Indians. The TWPAC decision shall be upheld unless the Tribal Court finds the decision was:

1. Unsupported by evidence;
2. Arbitrary and capricious;
3. An abuse of discretion by the Administrator; or
4. Contrary to the Code or other applicable law.

23-9.02 Hearings

A. A claimant and the Administrator shall have the right to be represented by an attorney in all matters presented before TWPAC and/or Tribal Court, if applicable, to cross-examine all witnesses and to review all evidence of any nature, as may be related to the matter under consideration. However, attorney fees are limited by section 9.03. All hearings will be conducted in a manner that does not violate due process.

B. An TWPAC hearing appeals under this Code shall not be bound by formal rules of evidence or by technical or formal rules of procedure and may conduct investigations in such a manner as its judgment is best calculated to ascertain the substantial rights of the parties and to promote the spirit and intent of the Tribal Workers Protection System.

C. A full and complete record of all TWPAC proceedings shall be kept by the TWPAC by the method provided in their rules and regulations and shall be available to any party who requests the record in

writing, demonstrating reasonable need for such record, and by paying the fee set forth in the rules and regulations of the TWPAC.

23-9.03 Claimant Attorney's Fees and Other Related Arbitration Costs

A. If TWPAC awards benefits to the claimant in excess of the Administrator's original benefit determination the claimant's attorney's fees will be approved with a maximum limit of 10% of the total benefit award, or $3,500, whichever is less. The award of attorney's fees to the claimant shall be over and above any benefits paid or provided to the claimant pursuant to this Code. Disputes over attorney fees must be filed with TWPAC in accordance with TWPAC established rules and regulations.

B. The claimant or Administrator may engage the services of physicians or experts for hearing purposesat the respective parties' costs which are not reimbursable regardless of the ultimate outcome of the dispute. The opinions of such consultants will be considered in a contested case, notwithstanding theprovisions of this Code limiting the outside or unauthorized treatment.

The Tribal Business Council reserves the right to modify or terminate this program at any time without notice.

CHAPTER 24 - KALISPEL WATER CODE

SECTION 24-1: LEGISLATIVE FINDINGS AND INTENT

Water has long been of great importance to the Kalispel Tribe of Indians and its ancestors. Even before the Kalispel Indian Reservation was established alongside the Pend Oreille River, the Kalispels were known as the "water people" or "river people." From time immemorial, they utilized the Clark Fork and Pend Oreille Rivers and their tributaries for fishing, hunting, gathering, religious and cultural purposes, and transportation. Preserving, restoring, and enhancing the surface and ground water resources of the Reservation are of prime importance to the Tribe.

Within the Kalispel Indian Reservation, the tribe holds exclusive fishing and hunting rights. Water rights are reserved pursuant to Winters v. United States, 207 U.S. 563 (1908), and extend to the rivers and streams flowing through and alongside the reservation, as well as to ground water. The Tribe has a federally protected right to a quantity and quality of water sufficient to meet the Reservation's purposes, which encompass, among other uses, the protection of traditional tribal fisheries and wildlife resources. Nothing in this Chapter shall be deemed to be a waiver of or limitation on the Tribe's federally reserved rights.

While tribal members still use the Pend Oreille River system to take fish and wildlife, and for gathering and other purposes, these uses are clearly impaired by the degradation of Reservation waters. Through the establishment of its own water quality standards and the adoption of laws such as this to implement and enforce those standards, the Tribe hopes to protect and restore Reservation water quality.

SECTION 24-2: DEFINITIONS

(1) "Clean Water Act" means the Federal Water Pollution Control Act, codified at 33 U.S.C. § 1251 etseq.

(2) "EPA" means the United States Environmental Protection Agency.

(3) "KNRD" means the Kalispel Natural Resources Department.

(4) "Mixing Zone" means a limited area or volume of water where initial dilution of a discharge takes place, and where numeric water quality criteria can be exceeded but acutely toxic conditions are prevented from occurring. In conjunction with the issuance of sections 402 and 404 permits pursuant to the Clean Water Act, the Tribe or EPA may designate mixing zones in the waters of the Reservation on a case-by-case basis.

(5) "Person" means any individual; business association; state, Tribal, county, or municipal subdivision or entity; interstate body; and all entities subject to the sections of the Clean Water Act that the Tribe has been granted authority to implement.

(6) "Project" means any activity within the Reservation that may impact Reservation water quality

including, but not limited to, the construction or operation of a facility.

(7) "Project Analysis" means the determination of site specific and/or cumulative environmental impactsof proposed projects.

(8) "Reservation" means the Kalispe1 Indian Reservation, as defined in the Kalispel Law and Order Code Section 1-2.03.

(9) "Tribal Council" means the governing body of the Kalispel Tribe of Indians, as organized under the Constitution and Bylaws of the Tribe, also known as the Kalispel Business Committee.

(10) "Tribe" means the Kalispel Tribe of Indians.

(11) "Triennial Review Process" means the process required by Section 303(c) (1) of the Clean Water Act, which requires the Tribe to review its water quality standards at least once every three years and, as appropriate, modify those standards and/or adopt new standards.

(12) "Waters of the Reservation" means all rivers, lakes, streams and other bodies of water, including both surface and ground water, on the Reservation. This definition does not exclude wetlands, sloughs, and ephemeral waters, except to the extent such exclusion is required by applicable federal law.

SECTION 24-3: TERRITORIAL SCOPE

The provisions of this Chapter shall apply to all lands and waters within the Kalispel Indian Reservation, except as otherwise provided in this Chapter or by federal law.

SECTION 24-4: JURISDICTION

24-4.01 INHERENT SOVEREIGN AUTHORITY

The Kalispel Tribe has inherent sovereign authority to govern the use of water within the Reservation. This inherent tribal sovereignty has been assigned to Tribal Council through the Tribal Constitution.

24-4.02 CLEAN WATER ACT AUTHORITY

On November 4, 2002, the Tribe was given authority to administer provisions of the Clean Water Act pursuant to 33 U.S.C. §1377(e). Tribal Council reserves the power to, at any time, amend, modify, add, or otherwise change any tribal water quality standards, beneficial uses, or treatment criteria as may be necessary to protect Reservation waters, provided that such change is made in compliance with applicable provisions of the Clean Water Act and implementing EPA regulations.

24-4.03 KALISPEL TRIBAL COURT AUTHORITY

The Kalispel Tribal Court shall have subject matter jurisdiction to adjudicate all cases in accordance with the provisions of this Chapter. The Kalispel Tribal Court shall have personal jurisdiction over any person who is a defendant in a case commenced pursuant to this Chapter for violation of tribal water

quality standards.

SECTION 24-5: AUTHORITY AND DUTIES OF KNRD

24-5.01 AUTHORITY

KNRD is delegated the authority to perform all duties required of it by this Chapter.

24-5.02 GENERAL DUTIES

Pursuant to the Tribe's delegation of authority, KNRD shall ensure that water resources on the Reservation are protected by performing the following duties:

(1) Develop and regularly update a water resources management plan in consultation with tribal members;

(2) Ensure that water resource management decisions and actions are derived from best available science and consistent with the water resources management plan;

(3) Monitor all activities and policies affecting water resources on the Reservation, including any off-reservation activities or policies that KNRD believes may adversely impact the Tribe's water resources;

(4) Collaborate with other natural resource managers to protect the Tribe's water resources;

(5) Make recommendations to Tribal Council regarding the need for tribal action through tribal law enforcement, development or change in tribal law or policy, or other appropriate measures;

(6) Provide technical assistance to Tribal Council as needed; and

(7) Take other actions consistent with this Chapter as directed by Tribal Council.

24-5.03 CLEAN WATER ACT DUTIES

KNRD shall ensure that the Tribe meets all of its obligations under the Clean Water Act, as amended from time to time, by performing the following duties:

(1) Complete triennial reviews of tribal water quality standards as prescribed by the Clean Water Act and recommend updates for Tribal Council approval if best available science demonstrates that revisions are necessary to further the Tribe's interest in protecting beneficial uses on the Reservation;

(2) Implement tribal water quality standards and interpret narrative criteria adopted by Tribal Council;

(3) Review all proposed projects and activities within or discharging within the Reservation that could impact the Tribe's water resources and ensure that they comply with tribal water quality standards;

(4) Monitor all activities on and near the Reservation that may hinder attainment of the Tribe's water quality standards, and take any enforcement actions necessary to remedy violations; and

(5) Perform all other Clean Water Act obligations consistent with this Chapter.

SECTION 24-6: WATER ADVISORY BOARD

24-6.01 ESTABLISHMENT

Tribal Council may establish a Water Advisory Board ("Board") to help inform KNRD's water management decisions. Board duties, membership requirements, and term limits will be prescribed by Tribal Council at such time as the Board is established.

PART ONE
ADOPTION, IMPLEMENTATION, AND ENFORCEMENT OF WATER QUALITY STANDARDS

SECTION 24-7: DEVELOPMENT OF WATER QUALITY STANDARDS

24-7.01 CONTENT

The Tribe's water quality standards shall be structured according to the requirements of the Clean Water Act, as amended from time to time, and at a minimum include:

(1) Use designations consistent with the requirements of the Clean Water Act;

(2) Water quality criteria sufficient to protect the designated uses, including criteria for priority toxic pollutants and biological criteria;

(3) An antidegradation policy and implementation methods consistent with the Clean Water Act;

(4) General information supporting the adequacy of the scientific basis of the standards, as well as information on general policies applicable to Kalispel Tribe standards that may affect their application and implementation;

(5) Certification that the regulations for water quality standards have been adopted pursuant to the requirements of this Chapter; and

(6) Any other information required by the Clean Water Act.

24-7.02 EFFECTIVENESS

Tribal water quality standards shall not be effective until approved by Tribal Council.

24-7.03 PUBLIC AVAILABILITY

Tribal water quality standards shall be attached as an appendix to the Kalispel Water Code.

SECTION 24-8: TRIBAL WATER QUALITY PROTECTION PERMITS

24-8.01 WHEN REQUIRED

Except as otherwise provided by federal law, a tribal water quality protection permit issued by the Tribe is required for any project that the Tribe determines may impact water quality within the Reservation. Impacts on water quantity and flow may impact water quality.

24-8.02 ISSUANCE OF PERMITS

KNRD is delegated the authority to issue permits under this Chapter. A tribal water quality protection

permit

shall not be issued unless the Tribe determines that there is a reasonable assurance that the approved project

will not violate tribal water quality standards. A permit shall contain the following information:

(1) Name and address of applicant;

(2) Project's name and federal identification number, if any;

(3) Type and general location of project or activity;

(4) Name of water body within the Tribe's jurisdiction that could be affected;

(5) Any conditions, including but not limited to monitoring and record keeping requirements, deemed necessary to ensure compliance with tribal water quality standards and this Chapter;

(6) A statement that by performing activities under the permit, the applicant consents to tribalenforcement of permit conditions; and

(7) A statement that the permit is valid for the applicant only and is not transferable without Tribal approval.

24-8.03 VARIANCES

The Tribe may issue a tribal water quality protection permit authorizing a variance to a specific water quality standard, provided that Tribal Council first determines by Resolution that such variance is in the best interests of the Tribe and is consistent with the provisions of the Tribe's antidegradation policy, achievement of tribal water quality standards, and this Chapter. The terms of the variance shall be set forth in the Resolution and included verbatim in the tribal water quality protection permit. KNRD shall provide Tribal Council with whatever technical analysis it needs to make a variance determination.

SECTION 24-9: CERTIFICATIONS UNDER SECTION 401 OF THE CLEAN WATER ACT

24-9.01 WHEN REQUIRED

A federal agency may not issue a permit or license for an activity that may result in any discharge that originates or will originate in waters of the Reservation until a certification is granted or waived by the Kalispel Tribe in accordance with section 401(a)(1) of the Clean Water Act. The Tribe hereby appoints KNRD as the Kalispel Tribe's certifying agency, as defined in 40 C.F.R. §121.1(e).

24-9.02 GRANT OF CERTIFICATION WITH OR WITHOUT CONDITIONS

(1) If, after considering the complete application, public comments, the record of a hearing, if any, and such other information and data as KNRD deems relevant, KNRD determines that there is a reasonable assurance that the proposed project will not result in a violation of tribal water quality standards, KNRD will so certify, and shall make the certification subject to such conditions, if any, which KNRD deems appropriate. If KNRD determines that no water quality standards are applicable

to Reservation waters that might be affected by the proposed activity, KNRD will so notify the applicant and the licensing or permitting agency in writing and shall provide the 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 Clean Water Act. In such case, no certification shall be required.

(2) If KNRD approves the certification application for a project, such certification shall contain the following:

(A) Name and address of applicant;

(B) Project's name and federal identification number, if any;

(C) Type of project or activity;

(D) Name of water body within the Tribe's jurisdiction that could be affected;

(E) General location;

(F) Findings that the proposed project is consistent with applicable provisions of the Clean Water Act;

(G) Such conditions as KNRD determines necessary to comply with tribal water quality standards and this Chapter;

(H) A condition that requires the certificate holder to notify KNRD of all changes in the projectproposal subsequent to certification;

(I) A statement that there is a reasonable assurance that the project or activity will be conducted in amanner that will not violate tribal water quality standards;

(J) A statement that by seeking this certification, the applicant has consented to tribal enforcementof the certification decision in regard to the project; and

(K) A statement that the certification is valid for the applicant only and is not transferable withoutprior approval of KNRD.

24-9.03 DENIAL OF CERTIFICATION

Certification shall be denied and reasons provided to the applicant if:

(1) An applicant fails to complete an application or provide any requested additional information within the time specified in the request; or

(2) KNRD determines that, even if conditions are imposed, there is not a reasonable assurance that the project or activity will be conducted in a manner that will not violate tribal water quality standards.

24-9.04 WAIVER OF CERTIFICATION

If KNRD fails or refuses to act on a request for certification within one year after receipt of such request or such other period within which a certification decision must be provided to the federal permitting or

licensing agency, the certification requirements of this Code and section 401 of the Clean Water Act shall be waived with respect to the application for the federal license or permit.

24-9.05 SUSPENSION OR REVOCATION OF CERTIFICATION

Certification granted pursuant to this Chapter may be suspended or revoked if KNRD determines that:

(1) The federal permit or license for the project has been or is being 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; or

(5) Special conditions or limitations of the certification are being violated.

SECTION 24-10: ISSUANCE OF TRIBAL WATER QUALITY PROTECTION PERMITS OR SECTION 401 CERTIFICATIONS WHEN KNRD IS THE APPLICANT

If KNRD wishes to perform an activity that requires a tribal water quality protection permit or section 401 certification, it shall complete an application as required by this Chapter and present it to Tribal Council for a decision. KNRD shall not commence any such activity until Tribal Council issues a tribal water quality protection permit or grants a section 401 certification. Tribal Council's decision shall be final and not subject to appeal.

SECTION 24-11: APPLICATION AND FEE REQUIREMENTS FOR PROJECT PERMITS, VARIANCES, OR CERTIFICATION

24-11.01 APPLICATION REQUIREMENTS

Applications for a permit, variance, or certification under this Chapter shall be signed by the applicant and contain the following information:

(1) Name and address of the project owner and the project owner's designated representative, if any;

(2) A description of the project, using written narrative, maps, diagrams, and any other materials as needed to provide a complete understanding of the location, nature, and scope of the project or activity;

(3) A description of the discharge(s) involved in the project, including the discharge's biological, chemical, thermal, volumetric, and other characteristics, and the location or locations at which such discharge may enter navigable waters;

(4) Name or description of water(s) of the Reservation into which the discharge(s) would be made andthe specific location or locations at which the discharge(s) might enter Reservation waters;

(5) Copies of any environmental background information required by another licensing or permitting agency or such other environmental background information as may be necessary to demonstrate

that the proposed project will comply with tribal water quality standards;

(6) Copies of any public notice or supporting information issued by another licensing or permitting agency for the project or activity;

(7) A plan that contains:

(A) A description of the function and operation of equipment or facilities to treat wastes or effluentsthat may be discharged, including specification of the degree of treatment expected to be attained;

(B) The date or dates on which the project would begin and end, if known, and the date or dates on which the discharge will take place;

(C) 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 effluents; and

(D) An exhibit that identifies and describes any applicable requirements of other agencies that may have a direct or indirect relationship to Reservation water quality;

(8) An affirmative statement that the activity will be conducted in a manner that will not violateapplicable federal, tribal, or state water quality standards;

(9) A signed consent to the Tribe's enforcement of the permit, variance, or certification requirements and conditions in regard to the activity, subject to the review procedures afforded by this Chapter; and

(10) Such additional information as the Tribe deems necessary to properly evaluate a project's potential impacts on water quality.

The Tribe may use or accept a Joint Aquatic Resource Permit Application (JARPA) or other application that substantially complies with these requirements if it determines such action is appropriate.

24-11.02 APPLICATION FEES

Each application must be accompanied by a Tribal Council-approved application fee, if any. Such fee shall be reasonably related to the expense of governmental administration in processing an application and implementing and enforcing this Chapter.

SECTION 24-12: APPLICATION REVIEW PROCESS

24-12.01 NOTICE TO APPLICANT

Within 28 days of receiving a project permit application or section 401 certification request, the Tribe shall notify the applicant by certified mail that the application is complete or incomplete. If determined incomplete, the notice shall identify the additional information required and the date by which the information shall be submitted. Notice of completion shall be sent by certified mail within 28 days of KNRD's receipt of such additional information.

24-12.02 PUBLIC NOTICE

Within 14 days of sending a notice of completion to a project permit or 401 certification applicant, the Tribe shall prepare and publish or circulate a public notice of the application. Notice shall be sent by mail or electronic mail to all persons who have requested the same and to all others deemed appropriate. General notice shall also be posted on Reservation and published in a local newspaper or newspapers. The Tribe shall provide a period of not less than 30 days following the date of issuance of the public notice during which time interested persons may submit written comments. The Tribe shall consider all comments received during the 30-day period.

24-12.03 PUBLIC HEARING

The Tribe shall provide an opportunity for the applicant or any affected agency, person, or group to request a public hearing with respect to the application. If the Tribe determines that new and useful information may be produced thereby, a public hearing will be held prior to its final determination. At least 20 days advance notice of the public hearing shall be provided through the methods prescribed by section 24-12.02. All affected parties will be given a reasonable opportunity to present evidence and testify at the public hearing.

24-12.04 TRIBAL WATER PROTECTION PERMIT DECISIONS

The Tribe shall serve by certified mail written notice of its decision to approve, conditionally approve, or deny project permit (including variances) applications within 90 days of notifying the applicant that the application is complete. The review period may be extended up to 180 days for reasonable cause, provided written notice is given to the applicant.

24-12.05 SECTION 401 CERTIFICATION DECISIONS

Within 120 days after an application is deemed complete, the Tribe shall serve written notice upon the applicant that the certification is granted, granted subject to certain conditions, or denied, or that a further specified time period is required to process the application. Any extension of time shall not exceed one year from the date of filing a completed application, or such other deadline for providing a certification decision to the federal licensing or permitting agency. A copy of the certification decision shall also be provided to the federal licensing or permitting agency.

24-12.06 EFFECTIVE DATE OF DECISIONS

Project permit, variance, and certification decisions shall become effective 20 days from the date of mailing written notice unless within that time the applicant files an appeal to the Tribal Council.

SECTION 24-13: APPEALS/HEARINGS

24-13.01 STANDING

Permit, variance, and certification decisions made under this Chapter may be appealed by any affected person to the Tribal Council.

24-13.02 APPEAL REQUIREMENTS

An appeal must be made in writing within 20 days of the date of the disputed decision. The appeal shall describe the action complained of and the grounds on which the appeal is based. It shall be filed with the Tribal Council's secretary, who shall set a time and date for a hearing and notify by certified mail the appellant and KNRD.

24-13.03 ASSIGNMENT OF APPEALS

Any appeal provided for in this Chapter may be assigned to a hearing officer upon the authorization of Tribal Council. The appellant shall be advised in writing as to the hearing officer assigned to hear the appeal. The hearing officer shall conduct the hearing, make any pertinent findings of fact, and recommend a disposition to the Council.

24-13.04 FINAL DECISION

The decision of the Tribal Council on appeal shall be final and binding on all parties.

SECTION 24-14: ENFORCEMENT

24-14.01 AUTHORIZED ENFORCEMENT OFFICER

The Tribe hereby appoints KNRD to be the Tribe's Enforcement Officer of the Water Code. The Enforcement Officer has authority to inspect and monitor activities and to enter, for the purpose of inspection and monitoring, Reservation facilities for which a permit, variance, or certification has been applied for or issued.

24-14.02 INSPECTION AND MONITORING

The Tribe may require the owner or operator of a facility or activity to:

(1) Establish and maintain records;

(2) Make reports;

(3) Install, use, and maintain monitoring equipment or methods (including, where appropriate, biological monitoring methods);

(4) Sample effluents (in accordance with such methods, at such locations, at such intervals, and in such

manner as the Tribe shall prescribe); and

(5) Provide other information pertinent to a permit, variance, or certification decision as the Tribe may require.

24-14.03 RIGHT OF ENTRY

The Enforcement Officer shall, upon presentation of credentials, have a right of entry to, upon, or through any location of a Reservation facility or activity for which a tribal permit, variance, or certification has been applied for or issued, or for which any records must be maintained under the subsection above. The Enforcement Officer shall also, at reasonable times, have access to and the authority to copy any records, inspect monitoring equipment or methods, and sample any effluents to determine compliance with the preceding subsection.

24-14.04 DISCLOSURE OF RECORDS TO THE PUBLIC

Any records, reports, or information obtained under this section shall:

(1) In the case of effluent data, be related to applicable effluent limitations and/or toxic, pretreatment, or new source performance standards; and

(2) Be available to the public, with the exception of any information (other than effluent data) that the Tribe determines contains trade secrets or is otherwise confidential.

24-14.05 INTERNAL DISCLOSURE OF RECORDS

Nothing in this section shall prohibit the Tribe or its authorized representative from disclosing records, reports, or information to other officers or employees concerned with carrying out this Chapter or when relevant in any proceeding under this Chapter.

24-14.06 DISCLOSURE OF RECORDS TO EXTERNAL GOVERNMENTAL ENTITIES

Notwithstanding any limitation contained in this section, all information reported to or otherwise obtained by the Tribe under this Chapter may be made available, to the extent permitted by applicable law, to other agencies with jurisdiction over the facility or activity and, upon written request of any duly authorized committee of Congress, to such committee.

SECTION 24-15: INSPECTION FOR COMPLIANCE

24-15.01 INSPECTION OF UNPERMITTED ACTIVITIES OR DISCHARGES

Where the Enforcement Officer believes a tribal certification, permit, or variance may be required for a particular facility or activity within the Tribe's jurisdiction, the Enforcement Officer, with written notice unless an emergent situation has arisen, may inspect such facility or activity for the purpose of reviewing the manner in which such facility or activity will be or is being constructed, operated, or conducted. The inspection shall be conducted in a similar manner as that provided for in section 14 and shall specifically

determine whether such facility or activity:

(1) May or does result in any discharge to any Reservation waters; and/or

(2) May or does violate applicable tribal water quality standards.

24-15.02 REMEDIAL MEASURES

If, after inspecting an unpermitted facility or activity, the Enforcement Officer determines that a violation of tribal water quality standards is occurring or likely to occur, the Enforcement Officer shall exercise its enforcement authority to verify whether a water quality violation is occurring and issue a compliance order to remedy the problem.

SECTION 24-16: PENALTIES/COMPLIANCE ORDERS

24-16.01 AUTHORITIES

(1) The Tribal Court is responsible for hearing all cases prosecuted under the civil and/or criminalpenalty provisions of this Chapter.

(2) Compliance Orders. Whenever, on the basis of any information available to it, the Enforcement Officer finds that any person is in violation of any condition or limitation of a permit, variance, or certification issued under this Chapter, is in violation of any of the Tribe's water quality standards, or is in violation of any provision of this Chapter, the Enforcement Officer, with the approval of Tribal Council, may seek an order from Tribal Court requiring such person to comply with whatever conditions, limitations, or other requirements the Tribe determines are necessary to remedy the violation. In any case in which the compliance order is issued to a corporation, a copy of such order shall be served on any appropriate corporate officers. A compliance order may include a requirement that the project cease operations pending compliance.

24-16.02 CIVIL PENALTY

(1) Whenever, on the basis of any information available to it, the Enforcement Officer finds that any person is in violation of any condition or limitation of a permit, variance, or certification issued under this Chapter, is in violation of any of the Tribe's water quality standards, or is in violation of any provision of this Chapter, the Enforcement Officer, on behalf of the Tribe, may seek to impose a civil penalty in the Kalispel Tribal Court for each violation. Such civil penalty shall not exceed the sum of $5000.00 for each day that such violation continues. The procedures governing civil actions under this section shall be those set forth in Chapter 3 of the Tribe's Law and Order Code. The TribalCouncil hereby finds that such civil penalties are reasonably related to the administrative expenditures necessary to maintain the Tribe's health, welfare, and economic security, through the management, protection, and development of 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 adverse economic impact of the penalty, and such other matters as justice may require.

SECTION 24-17: SEPARATE VIOLATIONS/OTHER CIVIL ACTION RELIEF

(1) A single operational upset (any incident or activity which deviates from the normal operation of a permitted activity or facility) resulting in simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(2) Other Relief. In addition to taking other enforcement measures authorized by this Chapter, the Tribe, through its Enforcement Officer may commence a civil action for appropriate relief, including permanent or temporary injunction, for a violation of any condition or limitation of a permit, variance, or certification issued under this Chapter, a violation of any of the Tribe's water quality standards, a violation of a compliance order, or a violation of any provision of this Chapter. Any action under this subsection may be brought in Kalispel Tribal Court or (if jurisdiction grounds are satisfied) the District Court for the United States for the district in which the defendant is located, resides or is doing business, or in which the violation occurred.

(3) In addition to other available remedies, the civil action may seek to recover actual damages. "Actual damages" includes, but is not limited to, the cost of investigations, inspections or monitoring surveys that 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 violation, 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 violation, either to the Tribe and/or to any property owners within the Reservation who are directly aggrieved by the violation.

(4) In any action brought by the Tribe, the Tribe may also 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.

(6) The Tribe may refer any negligent or knowing violations of permit, variance, certification conditions, or other violations of law to the EPA and any other appropriate federal or state licensing or permitting agency, when there is also a potential violation of federal or state law.

SECTION 24-18: CRIMINAL ACTION

(1) Tribal members and all other Indians subject to the criminal jurisdiction of the Kalispel Tribal Court,

who violate this Chapter, or any permit, variance, or certification condition, shall, upon conviction, be subject to a penalty or punishment of not greater than imprisonment for a term of one year and a fine of not more than $5000.00 or both.

(2) The Tribe may refer persons not subject to tribal criminal prosecution who are in violation of tribal water quality standards, or any condition or limitation of a tribal certification, to the EPA or other appropriate federal or state licensing or permitting agency.

(3) In any case in which the criminal penalty provided under this section is issued to or brought against a corporation, a copy of notice of criminal penalty shall be served on any appropriate corporate officers.

SECTION 24-19: EXCLUSION FROM THE RESERVATION

(1) Any person not legally entitled to reside on the Reservation may be subject to exclusion by the Tribal Court as provided in the Tribe's Law and Order Code, after notice and an opportunity to be heard, when such person fails to obtain a permit, variance, or certification required under this Chapter, or, having obtained a permit, variance, or certification, does not abide by its terms, or otherwise violates this Chapter.

(2) Both resident non-members and non-resident non-members may be subject to the exclusion provisions of the Law and Order Code.

PART TWO
WATER RESOURCE USE AND DEVELOPMENT

SECTION 24-20: [RESERVED]

CHAPTER 25 - TORT CLAIMS CODE

SECTION 25-1: TITLE

25-1.01 TITLE

This section shall be known as the Kalispel Tribe of Indians Tort Claims Code.

SECTION 25-2: DEFINITIONS

25-2.01 DEFINITIONS

For purposes of this section, the following words and phrases shall have the designated meanings:

(1) "Agency" shall mean any tribal board, commission, department or officer, authorized to propose rules for adoption by the Business Committee, except that the term "agency" shall not include either the Business Committee or the Tribal Court.

(2) "Business Committee" shall mean the Business Committee of the Kalispe1 Tribe of Indians.

(3) "Reservation" shall mean the Kalispel Indian Reservation as set apart by Executive Order of March 23, 1914, and all other lands, wherever located, owned by the Ka1ispe1 Tribe of Indians, including lands held in fee, or any interest in lands held by the Tribe, whether or not such lands or interests are held in trust for the Tribe by the United States, and any lands, wherever located, held in trust by the United States for a member or members of the Kalispel Tribe of Indians unless located on another Federally Recognized Indian Tribe's Reservation and having already been determined by the FederalGovernment to be in "reservation" status as to a Tribe other than the Kalispel Tribe of Indians. All waterways, roadways, rights of way, public lands, lakes and streams located on the above described lands held by the Tribe or its members are considered Reservation lands, subject to applicable federal and Tribal laws and regulations.

(4) "Injury" shall mean an injury to a person, death, damage to or loss of property of whatever kind, which, if caused by the negligent or wrongful act or omission of a private person would be a tort under Tribal law, applicable federal law, and, to the extent consistent with Tribal law, laws of the State of Washington in effect as of the date of this Code, regardless of the type or form of action or form of relief sought by the claimant.

(5) "Tort" shall mean a civil wrong, other than breach of contract, for which a remedy may be obtained.

(6) "Tribe" shall mean the Kalispel Tribe of Indians, including but not limited to any branch, office, department, agency, commission, utility, authority, instrumentality, any Tribally held corporation, enterprise, or other entity of the Tribe.

(7) "Tribal Court" shall mean the Kalispel Tribal Court.

(8) "Tribal officer or employee" shall mean:

(A) any elected official of the Tribe;

(B) any employee of the Tribe;

(C) any volunteer acting on behalf of the Tribe in a recognized program for volunteers;

(D) any member of a board, council, commission, authority, task force or other body of the Tribe, while such person is acting in the course of official duties, employment, authorization, service or volunteer work for the Tribe;

(E) any law enforcement officer employed by another jurisdiction who at the time of the injury is exercising authority under tribal law by reason of a cross-deputization agreement, a mutual aid agreement or similar agreement.

(F) The term does not include independent contractors or the employees or agents of independent contractors.

SECTION 25-3; LIMITED WAIVER OF TRIBAL SOVEREIGN IMMUNITY

25-3.01 WAIVER EFFECTIVE

The sovereign immunity of the Tribe is hereby waived for tort claims brought in accordance with this Chapter. This waiver is subject to all the restrictions, limitations and procedures set forth in this Chapter. This chapter is to be strictly construed and all procedures, restrictions and limitations are to be adhered to strictly. No waiver of any kind is made beyond the scope or outside the limitations and reservations of this chapter.

25-3.02 WAIVER INEFFECTIVE

Nothing in this chapter shall be construed as a waiver of the sovereign immunity of the Tribe for:

(1) Actions in breach of contract which are covered by Chapter 22: Arbitration Code.

(2) Claims relating to worker's compensation which are covered by Chapter 23: Worker's Protection Code.

(3) Where the Tribe has been or is hereafter indemnified or held harmless by a third party.

(4) Claims relating to unemployment compensation or claims or actions relating to employment decisions.

(5) Any claim of injury which is defended by the United States because such claim is deemed a claim against the United States under the Indian Self-Determination and Education Assistance Act, the Federal Tort Claims Act, or any other federal law. Upon certification by Kalispel Legal Office that defense of any claim of injury has been tendered to the United States, any action or proceeding on such claim shall be stayed by order of the Tribal Court without bond. The action or proceeding in Tribal Court shall be dismissed, after notice to the parties and opportunity for a hearing, upon receipt of notice satisfactory to the Tribal Court that the United States has assumed defense of the claim of

injury. The stay shall be dissolved and an order directing further proceedings in the action or proceeding on the claim of injury shall be entered by the Tribal Court, after notice and hearing thereon, upon receipt of notice satisfactory to the Tribal Court that the United States has declined to assume defense of the claim of injury.

(6) Any claim of monetary damages for any injury alleged to have resulted from any:

(A) Exercise or performance or the failure to exercise or perform a discretionary function or duty or the implementation or failure to implement decisions by the Tribe or any agent employee or officer of the Tribe whether or not the discretion be abused in any such matter;

(B) Action taken or decision made in good faith and without gross negligence in carrying out the law;

(C) Any intentional tort, including but not limited to assault, battery, false imprisonment, malicious prosecution, abuse of process, libel, slander, defamation, misrepresentation, deceit, interference with contract rights, or interference with prospective economic advantage, except that this provision does not immunize the Tribe for any acts or omissions of investigative or law enforcement officers giving rise to claims for assault, battery, false arrest, false imprisonment or malicious prosecution, provided that for purposes of this subsection "investigative or law enforcement officer" means any agent, employee or officer of the Tribe who is empowered to execute searches, to seize evidence, or to make arrests under Tribal law;

(D) Legislative or judicial action or inaction, or administrative action or inaction of a legislative or judicial nature, such as but not limited to adopting or failing to adopt a law;

(E) Issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke, any-permit, license, certificate, approval or other authorization;

(F) Termination or reduction of benefits under a Tribal assistance program if the Tribe or any agent, employee or officer of the Tribe is authorized by law, rule or regulation to determine whether or not such authorization or benefits should be issued, denied, suspended, or revoked;

(G) Probation, parole, furlough or release from confinement of a prisoner or other detainee or from the terms and conditions or the revocation thereof except upon a showing of gross negligence;

(H) Any injury or damage caused by an escaping or escaped person or prisoner, a person resisting arrest or by a prisoner to himself or herself, except upon a showing of gross negligence;

(I) Any decision made by the Tribe or any agent, employee or officer of the Tribes in the implementation of the Indian Child Welfare Act or other laws respecting the placement or supervision of minors or incompetent persons;

(J) Any claim based upon an act or omission of any agent, employee or officer of the Tribe

exercising due care, in the execution of any statute, rule or regulation, whether or not such statute, rule or regulation be valid;

(K) Any claim based on the assessment or collection of any tax or the detention of any goods or merchandise by any law enforcement officer;

(L) Failure to discover violations of any provisions of law requiring inspections of property;

(M) Failure to respond to a fire or to provide fire fighting services or protection;

(N) Failure to respond to medical emergencies Of to provide emergency medical services; and,

(O) The enumeration of the above immunities shall not be construed to waive any other immunities nor to assume any liabilities except as explicitly provided by this Code.

(7) Any claims under any theory of Products Liability.

(8) An injury to the driver of a motor vehicle who is found to be driving while intoxicated or was driving recklessly.

(9) Acts of Tribal Employees who a Court determines to be guilty of a criminal offense, unless the Tribe knew of the Tribal employees propensity for that action. This subsection does not apply to acts or omissions arising out of the operation or use of a motor vehicle.

(10) The Tribe shall not be vicariously liable for the acts of Tribal Employees who act without Tribal authorization or whose acts are otherwise outside or beyond the course and scope of the Tribal Employee's authority or employment.

(11) This Code does not immunize a Tribal officer or employee from individual liability, if it is established that such conduct that gave rise to the tort claim was outside of the Tribal officer oremployee's scope of authority.

SECTION 25-4: TRIAL IN TRIBAL COURT

25-4.01 JURISDICTION AND VENUE

The Tribe may be sued in the Kalispel Tribal Court only when authorized by either: (1) applicable federal law, or (2) statute, ordinance, or resolution approved by the Kalispel Business Committee.

The Tribe consents to suit in the Tribal Court for suits based on tort claims under this Chapter. The Tribe does not consent to suit in any other forum for such claims and specifically preserves and retains its sovereign immunity to any tort suit in any other forum. The Tribal Court shall have exclusive jurisdiction over all claims arising under this Chapter.

No suit against the Tribe brought pursuant to this Code is authorized unless it complies with all applicable requirements of this Code and any other applicable laws of the Tribe.

25-4.02 BENCH TRIAL

All actions commenced under this Chapter shall be tried by a Judge of the Tribal Court without a jury.

SECTION 25-5: LIMITATIONS ON AWARDS

25-5.01 ACTUAL DAMAGES

No monetary damages shall be awarded under this section in excess of the limits of insurance amounts covered and paid by the Tribe to compensate for injury claimed hereunder.

25-5.02 DAMAGES PROHIBITED

No prejudgment, or post-judgment remedy, whether execution, attachment, or otherwise, shall issue against the Tribe, its enterprises, departments, or instrumentalities in any claim or proceedings initiated under this code except that the Tribal Court may issue an order to the Tribe to turn over insurance proceeds, if any, received by the Tribe with respect to the claims, and to pay the deductible, if any, applicable to the claim under the insurance policy. No rule of law imposing absolute or strict liability shall be applied in any claim for injuries.

Awards of the following types shall not be permitted:

(1) Injunctive relief

(2) Punitive damages

(3) Pre-judgment interest

(4) Attorneys fees

(5) Loss of consortium

25-5.03 ADJUSTMENT OF CLAIM

The Tribe may consider, ascertain, adjust, determine, compromise, and settle any claim presented under this Code. The offer of a compromise or settlement shall not be construed as, or constitute evidence of an admission of liability or the amount of damages owed by the Tribe. The acceptance by a claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant, and shall constitute release of any claim against the Tribe and against the employee or officer of the Tribe whose act or omission gave rise to the claim, by reason of the same subject matter.

SECTION 25-6: NOTICE PROCEDURES

25-6.01 NOTICE REQUIRED

No action may be brought in Tribal Court for monetary damages under this Chapter and no claim shall be valid for monetary damages under this Chapter unless the person who claims to have suffered an injury shall, prior to the filing of any court action, send a written notice of the claim for monetary damages within the appropriate time frames as provided in § 25-6.03 below by certified mail return receipt requested to the Secretary of the Business Committee and the Kalispel Tribe of Indians Legal Department. In the case of any claim wherein it is alleged an injury was caused by the act or omission of any Tribal commission, authority, corporation or enterprise or any agent, employee or officer of such

Tribal commission, authority, corporation or enterprise, the written notice required by this section also shall be given to the chief executive officer or Chairman of such Tribal commission, authority, corporation or enterprise.

25-6.02 CONTENT OF NOTICE

To be valid under this Chapter, a written claim for damages shall contain the following:

(1) The name and current address and telephone number of the claimant and the name and current address and telephone number of the claimant's attorney, if any; and

(2) A concise statement of the factual basis of the claim, describing the location, conduct, circumstancesof the act, omission, or condition complained of, or other facts which brought about the injury; describing the injury; stating the time and place of injury; stating the name of any Tribal employee involved, if known, and the name, address and telephone number, if known, of any other person involved or who has knowledge of the conduct, circumstances, facts or injury; and stating that amount of damages claimed.

(3) When the claim is one for death by negligent act or omission, the notice may be presented by the personal reply of surviving spouse, or next of kin of the deceased.

(4) Any claims against the Tribe, Tribal departments, agencies, or instrumentalities of the Tribe for acts or omissions occurring during the course of and within the scope of their employment and authority shall be asserted solely against the Tribe in accordance with this Code, and shall in all respects be subject to the provisions of this Code.

25-6.03 TIMELINESS OF NOTICE - STATUTE OF LIMITATIONS

To be valid under this Chapter, a written claim for damages shall be given no later than one hundred-eighty (180) days after the act or omission occurred giving rise to the claim. The written notice of claim for monetary damages shall be conclusively deemed given and effective as of the date of the last postmark of any written notice required by § 25-06.01 above.

25-6.04 TIMELINESS OF RESPONSE

The Tribe may respond to the written claim for monetary damages; provided, however, such response must occur within sixty (60) days after the last notice required by § 25-06.01. To be valid under this Chapter, no action for monetary damages may be brought under this Code until the expiration of sixty (60) days after the last notice required by § 25-06.01 is given.

SECTION 25-7: SUIT PROCEDURES

25-7.01 PRIOR NOTICE REQUIRED

No action may be brought in Tribal Court for monetary damages under this Chapter and no claim shall

be valid for monetary damages under this Chapter unless the person who claims to have suffered an injury shall, prior to the filing of any court action, send a written claim for monetary damages as required in § 25-6. No action against the Tribe under this Code shall be accepted for filing by any Tribal Judge unless the claimant at the same time files proof of compliance with § 25-6 above.

25-7.02 CLAIMED DAMAGES SET BY NOTICE

No action for monetary damages shall be instituted under this Chapter for a sum in excess of the amount set forth in the written notice of claim required by § 25-06.01, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time notice required by § 25-06.01 is deemed given in accordance with § 25-06.03 or upon allegation and proof of intervening facts relating to the amount of the claim.

25-7.03 TIMELINESS OF SUIT

Any action for monetary damages under this Ordinance must be filed with the Tribal Court within two-hundred-seventy (270) days of when the act or omission occurred which gave rise to the injury.

25-7.04 SERVICE OF PROCESS

Any person filing an action for money damages against the Tribe under this Chapter shall cause a copy of the complaint and summons to be served upon the Secretary of the Business Committee, the Kalispel Tribe of Indians Legal Office, and, in the case of a claim involving an act or omission of any Tribal commission, authority, corporation or enterprise, or any agent employee or office of any Tribal commission, authority, corporation or enterprise, then also upon the chairman or chief executive officer of such Tribal commission, authority, corporation or enterprise. Service of the complaint and summons as required by this subsection shall be completed within the time for service of a complaint and summons under rules generally applicable to actions filed in Tribal Court.

25-7.05 TIMELINESS OF RESPONSE

In any action against the Tribe under this Code, the Tribe shall have not less than sixty (60) days after receipt of the complaint and summons, and such other time as the Tribal Court may allow, to file an answer or other responsive pleading or motion. No default judgment may be entered against the Tribe under this Ordinance.

25-7.06 COMPLIANCE WITH CHAPTER 3 REQUIRED

Actions brought in Tribal Court for monetary damages under this Chapter must comply with the requirements of Chapter 3 which governs civil actions in Tribal Court.

SUMMARY

This code outlines the process by which a party allegedly injured on Kalispel Tribal property through negligence of the tribe or its employees may bring a tort claim in tribal court. The code requires that a party wishing to make a claim must follow certain procedures before they are permitted to file suit in tribal court.

First, the claimant must file a written notice of claim with the tribe by certified mail with return receipt within 180 days of the alleged injury. The written claim notice must include identifying information of the claimant, the claimant's attorney (if any), and a concise statement of the alleged injury.

(Under Tribal Council Review)

CHAPTER 27 - ELDER AND VULNERABLE ADULT CODE

PART 1: GENERAL PROVISIONS

SECTION 27-1: PURPOSE AND DEFINITIONS

27-1.01 PURPOSE

The Elder and Vulnerable Adult Code serves to recognize and preserve the rights of Elders and Vulnerable Adults of the Kalispel Tribe of Indians, and shall be liberally interpreted and construed to meet the unique and specific needs of the Kalispel Tribe and fulfill the following expressed purposes:

(1) To foster respect of fellow human beings and to ensure the care of family members and the extended Kalispel Tribe as a whole;

(2) To protect Elders and Vulnerable Adults who may be subjected to abuse, neglect, exploitation, and abandonment;

(3) To provide for those with health and other problems that may place them in a mental or physical situation where they are unable or unwilling to ask for help;

(4) To provide procedures through which the provisions of this Chapter are executed and enforced, and in which the parties are assured a fair hearing and due process.

(5) To better coordinate Tribal services offered to Elders, Vulnerable Adults and their families.

27-1.02 TITLE TO REAL ESTATE – EFFECT

Nothing in this act may affect the title to real estate.

27-1.03 SEVERABILITY

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application or the provision to other persons or circumstances is not affected.

27-1.04 DEFINITIONS

As used in this Chapter:

(1) Abandonment:

"Abandonment" is leaving an Elder or Vulnerable Adult without means or ability to obtain one or more of the basic necessities of life or essential services.

(2) Abuse:

"Abuse" is the intentional or reckless behavior toward an Elder or Vulnerable Adult which places that person's life, physical, mental, or emotional health or welfare in jeopardy or which is likely to result in impairment of health. Abusive acts includes but is not limited to physical abuse; sexual abuse; mental abuse; unreasonable confinement; unreasonable restraint; or deprivation of essential services.

(3) Adult:

"Adult" is any person who is either eighteen (18) years of age or older, married or otherwise emancipated.

(4) Adult Protective Services:

" Adult Protective Services" are preventative and remedial activities performed on behalf of Elders and Vulnerable Adults who are subjected to abuse, neglect, exploitation, or abandonment.

(5) Caretaker:

"Caretaker" is an individual or entity with the duty to, or has assumed the duty, for the care of an Elder or Vulnerable Adult.

(6) Court Or Tribal Court:

The Kalispel Tribal Court when exercising jurisdiction under this Chapter.

(7) Elder:

"Elder" is a person who is fifty-five (55) years of age or older.

(8) "Elder Advocate" is an employee of the Tribe whose primary duties include providing advocacy, education, and resources to Elders. Designation as an "Elder Advocate" under this Chapter shall made by the Tribe.

(9) Emergency situation:

"Emergency situation" is where an Elder or Vulnerable Adult is in imminent or immediate risk of physical or mental injury as a result of abuse, neglect, exploitation, or abandonment.

(10) Essential Services:

"Essential Services" are the things necessary to sustain a person's life, physical and mental health, and general well-being, like food, clothing, shelter, and health care. It may include service or items considered essential under the person's customs, tradition or religion, including but not limited to, access to traditional foods, and to religious ceremonies or services.

(11) Exploitation:

"Exploitation" is illegal or improper use of an Elder or Vulnerable Adult or that person's income or resources, including trust funds, for another person's profit or advantage. This includes but is not limited to intentionally or recklessly using income, funds, or property of an Elder or Vulnerable Adult to their detriment or acquiring an interest in property or funds of an Elder or Vulnerable Adult by using undue influence, harassment, duress, or fraud.

(12) Extended Family Member:

A person who is the Elder's or Vulnerable Adult's grandparent or grandchildren, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step-child

and any other person who is considered a family member under tribal law or custom; a non-Indian relative who is an accepted member of the Kalispel Indian Community and would be considered a family member by tribal custom shall also be considered part of the Elder's or Vulnerable Adult's extended family for purposes of definition.

(13) Guardian:

A person, 25 years or older, whom the Court has given certain rights and responsibilities to care for another person and/or the person's real and/or personal property.

(A) Guardian of the Person: Entails the responsibility for the care and custody of the incapacitated person.

(B) Financial Guardian: Entails the responsibility for the administration and management of the incapacitated person's finances and/or property.

(14) Incapacity:

"Incapacity" is the current inability of a person to receive and evaluate information, or to make and communicate responsible decisions about himself or herself as a result of mental illness, mental deficiency, physical illness or disability, or the chronic use of drugs or alcohol. Such a person would lack the ability to provide or obtain the essential services for their own physical health or safety and are at significant risk of personal harm, or are unable to manage their financial affairs without Court-ordered assistance.

(15) Indian Tribe:

"Indian Tribe" is any Indian Tribe, band, nation, or other organizational group, or community of Indians recognized as eligible for services provided to Indians by the Secretary of the Interior based on their status as Indians, including any Alaskan Native village defined in §3(c) if of the Alaska Native Claims Settlement Act (85) Stat. 688, 689), as amended; any treaty tribe, metis community or non-status Indian community from Canada; and any tribe recognized as an Indian tribe by the Kalispel Tribe of Indians, regardless of whether it has federal recognition.

(16) Kalispel Tribal Community:

"Kalispel Tribal Community" includes enrolled members of the Kalispel Tribe of Indians, members of their households, residents of land held in trust for the Kalispel Tribe of Indians, and persons consenting to the jurisdiction of the Kalispel Tribe of Indians.

(17) Mental Abuse:

"Mental Abuse" is to willfully subject an Elder or Vulnerable Adult to verbal assaults, threats, ridiculing, coercion, harassment, unreasonable confinement or restraint, or other forms of intimidating behavior.

(18) Neglect:

"Neglect" is behavior or inaction of a family member or caretaker which results in a failure to provide or arrange for the essential services necessary to maintain the health, well being, and safety of an Elder or Vulnerable Adult. This definition also includes self-neglect.

(19) Physical Abuse:

"Physical Abuse" is the intentional, reckless, or negligent infliction of bodily injury, physical pain, serious illness or an impairment of a physical condition to an Elder or Vulnerable Adult.

(20) Probable Cause/Reason To Believe:

"Probable Cause/Reason to Believe" is/are facts which support a reasonable belief of the existence of a particular conclusion.

(21) Retaliation:

"Retaliation" is committing or threatening to commit the following acts to investigators, reporters, or witnesses under this Chapter: physical, emotional, property, or financial harm; or reprimand, suspension, or termination from employment .

(22) Self Neglect:

"Self Neglect" is the failure of an Elder or Vulnerable Adult to obtain or arrange for the essential services necessary to maintain the person's own health, well being, and safety; this does not include the conscious and voluntary decision as a matter of personal choice of a mentally competent Elder or Vulnerable Adult to live in circumstances that threaten his health or safety.

(23) Sexual Abuse:

"Sexual Abuse" is the willful threat or imposition of malicious sexual activity that is violent and abusive, including lewd or indecent acts or proposals, and sexual exploitation toward an Elder or Vulnerable Adult by another, including a caretaker. This definition shall not apply to consensual relationships between an Elder or Vulnerable Adult and a spouse, or by an Elder or Vulnerable Adult and another of legal age, where the Elder or Vulnerable Adult has the capacity to consent to the activity.

(24) Tribal Court:

"Tribal Court" or "Court" shall refer to the Kalispel Tribal Court.

(25) Tribal Status:

"Tribal Status" is the potential Indian tribe or tribes, in which an Elder or Vulnerable Adult is eligible to be enrolled or to be a member, or is enrolled or is a member.

(26) Unreasonable Confinement:

"Unreasonable Confinement" includes: acts intentionally committed to prevent an Elder or

Vulnerable Adult from receiving his or her mail or telephone calls; or telling a caller or visitor that an Elder or Vulnerable Adult is not present or does not wish to talk with the caller or meet with the visitor, when this statement is false and contrary to the wishes of the Elder or Vulnerable Adult, and is made for the purpose of preventing the Elder or Vulnerable Adult from having contact with family, friends, or concerned persons. Such acts shall not constitute unreasonable confinement if performed pursuant to the instructions of a licensed medical provider who is providing medical care to the Elder or Vulnerable Adult and such instructions are part of his or her medical care; or if performed in response to a perceived threat of danger to property or physical safety.

(27) Unreasonable Restraint:

"Unreasonable Restraint" is the physical or chemical restraint of an Elder or Vulnerable Adult for the purpose of exploitation, or preventing the Elder or Vulnerable Adult from meeting with or having contact with family, friends, or concerned persons.

(28) Vulnerable Adult:

(A) A "Vulnerable Adult" is a person eighteen years of age or older, or an emancipated person younger than eighteen years of age, that is permanently or temporarily unable to provide for their own care including the provision of food, shelter, clothing, health care, supervision, or management of finances, or has an impaired ability to protect themselves from abuse, neglect, exploitation, or abandonment. The inability to provide for their own care must be due to an illness, chronic use of drugs or alcohol, or a physical, mental, or developmental disability; or

(B) A person who has been found incapacitated and appointed a guardian under the laws of the Kalispel Tribe or by a court of competent jurisdiction.

SECTION 27-2: ELDER AND VULNERABLE ADULT SERVICES

27-2.01 ELDER AND VULNERABLE ADULT SERVICES - DEFINED

"Elder and Vulnerable Adult Services means those persons employed or appointed by the Kalispel Tribe of Indians who are trained to deliver services in Elder and Vulnerable Adult welfare. Elder Advocates working for the Tribe shall be included in the definition of "Elder and Vulnerable Services," and duties outlined in this Section may be assigned to them.

(1) Duties.

The duties of Elder and Vulnerable Adult Services shall include, but are not limited to the following:

(A) Conduct investigations as provided in this Chapter or as directed by the Court.

(B) Write reports as provided in this Chapter, or as directed by the Tribal Court.

(C) Make arrangements with outside agencies for investigation services, case management services, or placement of Elders or Vulnerable Adults. Such arrangements shall not affect the jurisdiction

of the Tribal Court over Elders or Vulnerable Adults and families.

(D) Make recommendations to the Presenting Officer on actions to take in Tribal Court.

(E) Assist the Elder or Vulnerable Adult in obtaining a state order of protection, if a Tribal Court order will not provide adequate protection.

(F) Perform additional duties as requested by the Elder and Vulnerable Adult Services Director, Presenting Officer, Tribal Court, or the Tribal Council.

(G) If appropriate, involve or refer case to Tribal Police or Tribal Prosecutor. Access to records shall be provided to facilitate police investigation or prosecution. If appropriate and after consultation with the Tribal Prosecutor, Elder and Vulnerable Services may also refer the case to State or Federal law enforcement, investigators, or prosecutors.

(H) If a case involves an Elder, and the Elder Advocate is not assigned to any of the above duties, the Elder shall be given the option to have the Elder Advocate be involved with the case to provide the Elder with advocacy and support.

27-2.02 CONFIDENTIALITY

Elder and Vulnerable Adult Services staff shall have a duty to maintain strict confidentiality of all information involving the welfare of specific Elders or Vulnerable Adults, regardless of whether a formal investigation or case has been initiated on that individual. The only exception shall be when reporting suspected abuse of an Elder or Vulnerable Adult, as required under this Chapter.

SECTION 27-3: REPORTING REQUIREMENTS

27-3.01 WHO MUST REPORT

Any member of the Kalispel Tribe of Indians, persons residing within the jurisdiction of the Tribe, and tribal employees and contractors, who have reason to believe that an Elder or Vulnerable adult has been abused, neglected, exploited, or abandoned (as provided this Chapter) is required to promptly file a report with the Elder and Vulnerable Adult Services Director or Tribal Police.

27-3.02 FAILURE TO REPORT

Failing to abide by the reporting requirements under this Chapter is prohibited. Any person that is subject to making a mandatory report, regardless of doctor/patient, clergy/penitent, or attorney/client privilege, who knowingly fails to do so or willfully prevents another from doing so shall be subject to applicable laws and procedures established in the Kalispel Law and Order Code.

27-3.03 FALSE REPORTS

False reporting under this Chapter is prohibited. Any person or entity who intentionally, maliciously, or in bad faith makes a false report of alleged abuse, neglect, exploitation, or abandonment of an Elder or

Vulnerable Adult, or causes another person to do so, shall be subject to applicable laws and procedures established in the Kalispel Law and Order Code.

27-3.04 RETALIATION

Retaliation against a person who reports under this Chapter, or who investigates a report, is prohibited. Any person who retaliates shall be subject to the applicable laws and procedures established in the Kalispel Law and Order Code.

27-3.05 WHEN A REPORT MUST BE MADE

In an emergency situation, as defined in this Chapter, the report shall be made immediately. In all other situation the report must be made within 72 hours.

27-3.06 WHO MAY REPORT

Any person not listed in KLOC 27-3.01, upon reasonable cause/reasonable suspicion to believe that a violation of this Chapter has or will occur, may make a report to the Elder and Vulnerable Adult Services Director or Tribal Police. This Section does not create a duty to report, and no civil liability shall attach for failure to make a report.

27-3.07 IMMUNITY FOR REPORTER

Any person who in good faith and for reasonable cause, makes a report, participates in making a report, or testifies in a proceeding under this Chapter, is immune from liability.

27-3.08 CONFIDENTIALITY

(1) The identity of the person making the report, and the report itself, are to be confidential.

(2) All files, reports, records, communications, and working papers used or developed for investigation or provision of protective services are to be confidential.

(3) The Tribal Court may order disclosure of confidential information only if the Court determines thatdisclosure is essential to the administration of justice and will not endanger the life or safety of theElder or Vulnerable Adult, or individual who made the report. The Court, in a hearing, may place restrictions on such disclosure as the Court deems appropriate and essential for the Court proceedings.

27-3.09 CONTENTS OF REPORT

A report that is made under this Chapter shall include the following, if known:

(1) The name of the Elder or Vulnerable Adult,

(2) The nature of the suspected abuse, neglect, exploitation, or abandonment of an Elder or VulnerableAdult, and

(3) Any evidence of the suspected abuse, neglect, exploitation, or abandonment.

27-4.01 INVESTIGATION REQUIREMENTS

(1) Duty to investigate. The Kalispel Tribe Elder and Vulnerable Adult Services have a duty to investigate allegations of abuse, neglect, exploitation, and abandonment of Elder and Vulnerable Adults who fall under the jurisdiction of the Tribal Court pursuant to this Chapter, and to provide appropriate services to address concerns which may arise during the investigation. This duty may be satisfied by coordinating with an appropriate adult protection agency which may assist with or conduct the investigation, or provide necessary services for the Elder or Vulnerable Adult.

(2) Non-emergent reports. In non-emergency situations, designated Kalispel Tribe Elder and Vulnerable Adult Services staff and/or appropriate adult protection agency shall investigate the report within 72 hours of receipt to determine whether the interests of the person and the tribal community require that further action be taken.

(3) Emergent reports. In emergency situations, the report shall be investigated within 24 hours by designated Kalispel Elder and Vulnerable Adult Services staff and/or appropriate adult protection agency.

(4) Investigative procedures. The investigation conducted by Elder and Vulnerable Adult Services shall include the following, whenever possible:

(A) Personal interviews of the alleged victim, the immediate family and caregivers, suspected abuser,employees of the agencies that may be involved, and any other person who may have pertinent information;

(B) Acquiring medical records and other evidence of physical or mental condition or acts of harm;

(C) Assessing the Elder's or Vulnerable Adult's living conditions, using the Tribal standard for housing; and

(D) Any other investigative procedure or assessment that may aid in completing an accurate report.

(5) Written summary. The Elder and Vulnerable Adult Services staff assigned to the investigation shall prepare a written summary of the investigation within 40 days of the receipt of the initial report, or sooner if required for Court proceedings. This summary shall include the following:

(A) The description of the allegations made by the initial reporter;

(B) A description of the condition of the Elder or Vulnerable Adult;

(C) The conclusions made after the investigation pursuant to part 4 of this section;

(D) Other information helpful in establishing whether abuse, neglect, exploitation, or abandonment has occurred; and

(E) The Elder and Vulnerable Adult Services staff's recommendations for future action, including

but not limited to the following:

(i) Recommend that no further action be taken; or

(ii) Provide supportive services, case management, or referrals for the vulnerable adult; or

(iii) Request to the Tribal Court Presenting Officer that Kalispel Tribal Court proceedings under this chapter begin; or

(iv) Request to Tribal Law Enforcement and the Tribal Prosecutor that a concurrent criminal investigation be opened; or

(v) Recommend that the Tribal Court transfer the matter to a state court or another Tribal Court under Section 1.03 of this code.

27-4.02 OBSTRUCTION OF INVESTIGATION, DENIAL OF ACCESS, RETALIATION, AND WITNESS TAMPERING

The following acts are prohibited: Obstructing an investigation under this Chapter; denying or knowingly preventing access to an Elder or Vulnerable Adult suspected of being a victim under this Chapter; retaliation against investigators or reporters under this Chapter; and tampering of witnesses who make statements to investigators or who testify in proceedings under this Chapter. Any person who commits such acts shall be subject to the applicable laws and procedures established in the Kalispel Law and Order Code.

SECTION 27-5: VISITATION WARRANTS AND PROTECTIVE CUSTODY

27-5.01 VISITATION WARRANTS

(1) If, during the course of an investigation, Elder and Vulnerable Adult Services staff or Tribal Police have been denied access to the Elder or Vulnerable Adult, or to the Elder's or Vulnerable Adult's residence, they may petition the Tribal Court for a Visitation Warrant. The purpose of this Visitation Warrant is to investigate a referral of abuse, neglect, exploitation, or abandonment.

(2) The Tribal Court may issue a Visitation Warrant upon a showing of probable cause to believe that an Elder or Vulnerable Adult on those premises has been abused, neglected, exploited, or abandoned, and that Elder and Vulnerable Adult Services staff or Tribal Police has been denied access to the Elder or Vulnerable Adult, or his or her residence. The Visitation Warrant is enforceable through contempt proceedings provided Chapter 1 of this Code.

(3) A Visitation Warrant may only be served by Tribal Police. The Tribal Police officer may allow Elder and Vulnerable Adult Services staff, or any other appropriate person, to accompany him or her in order to interview the Elder or Vulnerable adult and assess his or her living conditions.

27-5.02 PROTECTIVE CUSTODY

(1) Law enforcement involvement. Tribal Police shall have the authority to place an endangered Elder

or Vulnerable Adult into protective custody. For the purposes of this Section, "endangered" means an Elder or Vulnerable Adult who is at immediate risk of serious injury or death due to suspected abuse, neglect, exploitation, or abandonment, and who demonstrates the inability to take action to protect himself or herself from the consequences of remaining in that situation or condition.

(2) Medical treatment. When a Tribal Police officer takes an endangered Elder or Vulnerable Adult into protective custody, the officer shall cause the endangered person to be transported to a hospital or Tribal health facility as soon as possible if a medical evaluation or necessary treatment is required.

(3) Notification. Upon taking an endangered Elder or Vulnerable Adult into protective custody pursuant to this Section, Tribal Police shall notify:

(A) The endangered Elder's or Vulnerable Adult's next of kin, when appropriate, and

(B) Elder and Vulnerable Adult Services staff.

(4) Temporary custody. Protective custody under this Section shall be temporary and not exceed a period of three business days from the date of placement into protective custody.

(5) Authority to place. Both Tribal Police and Elder and Vulnerable Adult Services staff shall have the authority to locate and place an endangered Elder or Vulnerable Adult in an appropriate emergency placement. Examples of an appropriate emergency placement are: the home of a family or community member, if there is no risk to the Elder or Vulnerable adult; an adult residential care facility or adult foster home; or a medical facility such as a hospital.

27-6.03 CONFIDENTIALITY

Any agency or individual involved in the issuance or execution of a Visitation Warrant or Protective Custody order shall have a duty to maintain strict confidentiality of all information involving the welfare of specific Elders or Vulnerable Adults, regardless of whether a formal investigation or case has been initiated on that individual. The only exception shall be when reporting suspected abuse of an Elder or Vulnerable Adult, as required under this Chapter.

SECTION 27-6: AVAILABILITY OF ALTERNATIVE PROCEEDINGS.

27-6.01 PREVENTATIVE MEASURES

Unless otherwise required under this Chapter, the Elder and Vulnerable Adult Services staff may attempt the following listed below in lieu of filing a petition for an Elder and Vulnerable Adult Protection Order or an Adult Guardianship to ensure safety of the Elder or Vulnerable Adult, when he or she is not at risk of imminent harm. Attempting these preventative measures are not required, if Elder and Vulnerable Adult Services staff reasonably believe making these efforts would be futile:

(1) Family Group Conference. The Tribes may hold a Family Group Conference (FGC) to put in place a safety plan to ensure safety of the Elder or Vulnerable Adult, and/or to protect his or her finances and

property. Such a plan may involve agreed removal of the Elder or Vulnerable Adult from their current situation. This FGC is designed to empower families by making them an integral part of the decision-making and planning process. This model promotes self-sufficiency and positive lifestyle choices. It is private, confidential and completely voluntary. The Elder and Vulnerable Adult Services staff may assist the family in identifying an appropriate person as the mediator, who will help facilitate a purposeful and directed conversation in which family members are encouraged to express their interests and concerns. Meetings are informal and are held in locations which meet the family's needs, including, but not limited to, private homes, tribal government offices, or community facilities. In this process, both the family members and service providers identify the needs of the family and develop a safety plan that recognizes and builds on their strengths. A safety plan will be developed as described below, as a result of the family group conference.

(2) Safety Plan. A safety plan to prevent filing of an Elder and Vulnerable Adult Protection Order may be set forth in writing, including any conditions or requirements to be performed, and over a fixed time period. This safety plan shall be voluntary. The Elder or Vulnerable Adult, his or her family, caregiver, and any other necessary persons shall sign the voluntary safety plan agreement. If the safety plan is not followed, the Tribe may immediately file for an ex parte protection order in accordance with this Chapter.

SECTION 27-7: FINANCIAL EXPLOITATION INTERVENTION MEASURES

27-7.01 FINANCIAL EXPLOITATION INTERVENTION MEASURES

Financial exploitation of Kalispel Elders and Vulnerable Adults is of great concern to the Tribe. Interventions should protect the Elder or Vulnerable Adult, while still being respectful of his or her values and culture. In addition, interventions should be tailored to the specific needs of the Elder or Vulnerable Adult, taking into consideration his or her abilities and deficits. Intervention measures such as referring the Elder or Vulnerable Adult to a representative payee service, creating a trust, or establishing a power of attorney should be considered if an Elder and Vulnerable Adult Protection Order or Adult Guardianship are not appropriate or would not meet the needs of the Elder or Vulnerable Adult.

PART 2: TRIBAL COURT PROVISIONS

SECTION 27-8: JURISDICTION

27-8.01 JURISDICTION OF THE KALISPEL TRIBAL COURT

(1) The Kalispel Tribal Court has exclusive original jurisdiction over all proceedings arising under thisChapter, proceedings arising under other laws of the Kalispel Tribe of Indians providing for disposition by the Tribal Court, and any actions arising under the customs and traditions of the Kalispel Tribe of Indians affecting family, elders, and vulnerable adult welfare within the exterior boundaries of the Kalispel Reservation (as defined in KLOC 1-2.03).

(2) The Kalispel Tribal Court has concurrent jurisdiction over all proceedings arising under this Chapter and any actions arising under the customs and traditions of the Kalispel Tribe of Indians affecting Elder or Vulnerable Adult Kalispel Tribal members that may arise outside of the Kalispel Reservation.

(3) The jurisdiction of the Court over persons and territory is limited only by the Law and Order Code or Constitution of the Kalispel Tribe of Indians.

27-8.02 EMERGENCY JURISDICTION

The Tribal Court shall have emergency jurisdiction over any Elder or Vulnerable Adult who is physically present on the Kalispel Tribe of Indians Reservation if the Elder or Vulnerable adult subjected to abuse, neglect, exploitation, or abandonment, or if it is reasonably necessary to protect the Elder or Vulnerable Adult from the threat of any of the aforementioned.

27-8.03 TRANSFER OF JURISDICTION

(1) The Tribal Court may accept or decline transfers from other states or tribal courts involving matters covered under this Chapter. The Court may give recognition to state and other tribes' court orders as a matter of comity if the court granting the order had jurisdiction over the case and the order does not violate the public policy of the Kalispel Tribe of Indians.

(2) In general, the Tribal Court may transfer a case to another court or jurisdiction only when the Tribal Court has no jurisdiction over the case, or if compelling reasons exist for transferring the case.

(3) Any transfer from Tribal Court to another court shall be in accordance with the followingprocedures:

(A) A petition must be filed with the Tribal Court which includes 1) the name, date of birth, address, and tribal affiliation of the Elder or Vulnerable Adult, and 2) a sworn statement of facts describing the reasons the transfer should be granted.

(B) A transfer hearing shall be held within 10 days of receipt of the petition by the Tribal Court.

Written notice of the time, place and purpose of the hearing is to be given to the person at least 3 days before the hearing.

(4) The Tribal Court must consider the following when determining whether to transfer a case to anothercourt or jurisdiction:

(A) The wishes of the Elder or Vulnerable Adult, if it appears to the Tribal Court that the Elder or Vulnerable Adult is able to understand the consequences of the transfer;

(B) The wishes of the caretaker, or guardian;

(C) The wishes of the immediate and extended family members;

(D) The recommendation of tribal law enforcement and of tribal health and Elder and Vulnerable Adult Services staff;

(E) The tribal affiliation of each party;

(F) The residence of each party;

(G) The type and duration of contacts the Elder and Vulnerable Adult and the Elder's or Vulnerable Adult's family members have with each community involved; and

(H) Whether another tribe (if involved) has responded to the Tribal Court's notice of the proceedings.

(6) The Tribal Court may make such orders as are necessary to protect the Elder or Vulnerable Adult, and to retain jurisdiction over the Elder or Vulnerable Adult, pending the outcome of any transfer proceedings.

SECTION 27-9: CIVIL AND CRIMINAL PROCEEDINGS

27-9.01 NON-CRIMINAL PROCEEDINGS

No adjudication of any person under this Chapter, in the jurisdiction of the Kalispel Tribal Court, shall be deemed criminal or be deemed a conviction of a crime.

27-9.02 CRIMINAL PENALTIES AND REFERRAL TO PROSECUTOR

Civil adjudication under this Chapter shall not affect the Tribal Prosecutor's right to prosecute any criminal case which may arise under the same facts for which an order is sought under this Chapter. A criminal investigation and prosecution may occur concurrently with an investigation by Elder and Vulnerable Adult Services or civil proceeding under this Chapter.

27-9.03 CIVIL INFRACTIONS AND PENALTIES

A person or entity who causes abuse, neglect, exploitation, or abandonment to an Elder or Vulnerable Adult has committed a civil infraction. In addition, a person or entity who fails to abide by the requirements and prohibitions under this Chapter has committed a civil infraction. Kalispel Tribal Police and the Tribal Prosecutor have the authority to issue Notices of Infractions, which shall be adjudicated pursuant to KLOC Chapter 21 Administrative Code. A person or entity who commits a

civil infraction under this Chapter is subject to a civil penalty of up to $5000. Nothing in this Chapter precludes criminal prosecution in addition to a civil penalty if a crime has been committed.

27-9.04 CONFIDENTIALITY

Any agency or individual involved in actual or potential proceedings pursuant to this Section shall have a duty to maintain strict confidentiality of all information involving the welfare of specific Elders or Vulnerable Adults. The only exception shall be when reporting suspected abuse of an Elder or Vulnerable Adult, as required under this Chapter.

SECTION 27-10: COURT PROCEDURE

27-10.01 RULES OF PROCEDURE

Proceedings brought pursuant to this Chapter of the Code shall be governed by the rules of procedure found in Chapter 3, Civil Actions of the Kalispel Law and Order Code.

27-10.02 STANDARD OF PROOF

All actions under this Chapter will be determined by the evidentiary standard of clear and convincing evidence, unless otherwise stated in this Chapter.

27-10.03 RIGHTS OF PARTIES

All parties are entitled to the following rights in all proceedings under this Chapter:

(1) A statement by the Court to the caretaker, guardian or custodian that the Elder or Vulnerable Adult has the right to have a spokesperson or legal representative's advise and representation. A party may request a continuance of a proceeding in order to seek legal representation;

(2) The opportunity to subpoena witnesses;

(3) The opportunity to introduce, examine and cross-examine witnesses;

(4) The opportunity to discover, offer and inspect evidence; and

(5) The opportunity to present arguments and statements.

There is no right to a jury trial for any proceeding under this Chapter of the Code.

27-10.04 CONFIDENTIALITY OF HEARINGS AND CONFERENCES

All hearings under this Chapter shall be closed to the public. Only the Court Clerk, Presenting Officer, the Judges, the Elder and Vulnerable Adult Services staff, the parties to the proceeding and their representatives shall be permitted at the hearings and conferences; provided that the Court and the parties may agree to allow the presence of other persons. Any person asked to testify or speak shall be permitted at the hearings and conferences but, only for the limited purpose of giving testimony or presenting evidence.

27-10.05 CONFIDENTIALITY OF TRIBAL COURT RECORDS

Court records under this Chapter shall be confidential and shall not be open to inspection to anyone but the following, unless ordered otherwise by the Court in the Elder's or Vulnerable Adult's best interest:

(1) The Elder or Vulnerable Adult;

(2) The caretaker, guardian, or custodian, unless subject to investigation under this Chapter;

(3) The Elder and Vulnerable Adult Services staff;

(4) The Presenting Officer; and

(5) The spokesperson or attorney, for any party.

Law enforcement records and files under this Chapter concerning an Elder or Vulnerable Adult shall be kept separate from the other records and files of the Elder or Vulnerable Adult. The Court may issue and/or publish a written opinion in a case. The identity of the parties shall be protected in such opinion.

27-10.06 DESTRUCTION OF RECORDS

Law enforcement and tribal court records and files concerning an Elder or Vulnerable Adult shall be destroyed in compliance with KLOC 1-5.01.

27-10.07 NOTICE TO OTHER TRIBES

If the Tribal Court or any party, in a proceeding involving an Elder or Vulnerable Adult, has reason to believe the Elder or Vulnerable Adult may be enrolled or eligible for membership in another Indian tribe or tribes, the Court Clerk shall be directed to give written notice of the proceeding to the other tribe(s). The notice shall include a request to the other tribe to advise the Tribal Court, within fifteen (15) days whether it intends to act in the matter.

SECTION 27-11: PRESENTING OFFICER

27-11.01 PRESENTING OFFICER

The Tribal Council or its designee shall appoint a Presenting Officer to carry out the duties and responsibilities set forth in this Kalispel Law and Order Code.

(1) The Presenting Officer shall do the following:

(A) File petitions with the Court as provided in this Chapter;

(B) Represent the Tribe in all proceedings under this Chapter, unless otherwise indicated; and

(C) Perform such other duties as the Court or this Chapter may require.

27-11.02 CONFIDENTIALITY

The Presenting Officer shall have a duty to maintain strict confidentiality of all information involving the welfare of specific Elders or Vulnerable Adults, regardless of whether a formal investigation or court case has been initiated. The only exception shall be when reporting suspected abuse of an Elder or Vulnerable Adult, as required under this Chapter.

27-12.01 PURPOSE

The purpose of the Elder and Vulnerable Adult Protection Order is to provide a means of Tribal Court intervention, protection, and oversight when an Elder or Vulnerable Adult is subject to abuse, neglect, exploitation, or abandonment.

27-12.02 FILING PETITION

(1) A petition for an order for protection for an Elder or Vulnerable Adult in cases of abuse, neglect, exploitation, or abandonment may be initiated by:
   (A) The Elder or Vulnerable Adult, or their representative;
   (B) Any reporting party or agency, on behalf of the Elder or Vulnerable Adult; or
   (C) The Kalispel Tribe, through the Kalispel Tribe Elder and Vulnerable Adult Services Director.
(2) A petition may be filed regardless of whether other court proceedings between the parties have beenfiled or criminal charges have been filed against the alleged violator.
(3) A petition may be filed in the Kalispel Tribal Court even if the Elder or Vulnerable Adult has left the residence as a result of abuse, neglect, exploitation, or abandonment.
(4) The filing fee may be waived at the discretion of the court.

27.12.03 CONTENTS OF PETITION

A petition for an Elder and Vulnerable Adult Protection Order shall allege that the alleged victim meets the definition of Elder or Vulnerable Adult under this Chapter, and that this person has been abused, neglected, exploited, or abandoned, or is threatened with abuse, neglect, exploitation, or abandonment by respondent. The petition must also include the following:

(1) The name, date of birth, residence, and tribal affiliation of the Elder or Vulnerable Adult needing protection.
(2) The name and address of the petitioner, if different from the Elder or Vulnerable Adult.
(3) The name, date of birth, residence, and tribal affiliation of the person accused of committing or threatening to commit abuse, neglect, exploitation, or abandonment of an Elder or Vulnerable Adult.
(4) Citation to the specific KLOC section(s) which gives the Court jurisdiction over the proceedings.
(5) Citation to the specific KLOC section(s) which the accused is alleged to have violated.
(6) A plain and concise, sworn statement of facts upon which the allegations are based, including thedate, time and location at which the alleged act(s) occurred.
(7) The proposed relief or protective services requested.

27-12.04 NO BOND IS REQUIRED

A person filing a petition for an order of protection is not required to post a bond in order to receive

relief under this Chapter.

27-12.05 NOTICE

(1) After an Elder or Vulnerable Adult petition has been filed, the Court Clerk shall issue a summons containing the name of the Court, the title of the proceedings, and the date, time, and place of the hearing. The summons shall also advise the parties of their rights.

(2) Personal service (as described in KLOC Chapter 3) of the summons and petition shall be made upon the respondent, the Elder or Vulnerable Adult (if the petition is filed by another person or entity), and the Kalispel Tribe Elder and Vulnerable Adult Services Director not less than five (5) days prior to the hearing. If timely service cannot be made, the Court may set a new hearing date. If personal service cannot be made after reasonable efforts, the Court may allow another form of service as set out in KLOC Chapter 3.

(3) The petitioner is responsible for personal service of the complaint and petition.

27-12.06 HEARING

Upon receipt of the petition or issuance of an ex-parte emergency order, the Court Clerk shall schedule a hearing which shall be held not later than fourteen days from the date of the temporary order or receipt of the petition.

27-12.07 ORDER OF PROTECTION

Upon notice and after a hearing, the Court may make an order of protection binding on any party. The order may:

(1) Restrain a party from committing further acts of abuse, neglect, exploitation, or abandonment.

(2) Restrain a party from having contact, including physical, verbal, written, telephonic, or electronic contact, and contact through a third party with any person(s) specified by the Court.

(3) Exclude any party from the dwelling shared or from the residence of the other until further order of the Court.

(4) Order a party to participate in treatment or counseling.

(5) Assess costs against the abuser, including filing fees, court costs, and costs of service.

(6) Order (or restrain) distribution or use of a party's personal possessions, household furnishings, vehicles, or other personal property.

(7) Require the respondent to provide an accounting of the disposition of the Elder or Vulnerable Adult's income or other resources.

(8) Any other relief the Court deems necessary to include repayment of funds obtained by exploitation.

27-12.08 DURATION OF ORDER OF PROTECTION

Any relief granted by the order of protection, other than judgment for costs, shall be for a fixed period

not to exceed one year.

The order may be extended at one year intervals, as many times as necessary, to protect the Elder of Vulnerable Adult. The extension may only be granted after a party, designated in KLOC 27-12.02(1), files a petition seeking an extension, provides notice as outlined in KLOC 27-12.05, and a hearing is held. The petition for extension must be filed within the three months before the order expires.

27-12.09 COPY TO LAW ENFORCEMENT

An order of protection granted under this Chapter shall be forwarded by the clerk of the court within 24 hours to Tribal Police.

27-12.10 SERVICE AND EXECUTION OF ORDER OF PROTECTION

The respondent must be personally served with the Order of Protection. Service shall follow the procedure outlined in KLOC 8-6.10 SERVICE OF ORDER. Law enforcement may assist with executing order, following the procedure outlined in KLOC 8-6.11 ASSISTANCE OF LAW ENFORCEMENT IN EXECUTING THE ORDER.

27-12.11 VIOLATION OF ORDER OF PROTECTION – PENALTIES AND ARREST

Violation of the order of protection may result in civil penalties, arrest, or both. Violators may be required to appear and show cause why he or she should not be held in contempt of Court. If the Court finds contempt of Court, the person shall be subject to a civil penalty of up to $5000. Violators may also be subject to arrest by Tribal, Federal, or state police.

27-12.12 ORDER MODIFICATION

Modification and renewal of the order of protection shall follow the procedures outlined in KLOC 8-6.14 ORDER – MODIFICATION – TRANSMITTAL.

27-12.13 PEACE OFFICERS - IMMUNITY

No tribal police officer may be held criminally or civilly liable for making an arrest under this chapter if the officer acts in good faith and without malice.

27-12.14 CONFIDENTIALITY

Any agency or individual involved in actual or potential proceedings or actions pursuant to this Section shall have a duty to maintain strict confidentiality of all information involving the welfare of specific Elders or Vulnerable Adults. The only exception shall be when reporting suspected abuse of an Elder or Vulnerable Adult, as required under this Chapter.

SECTION 27-13: EX-PARTE TEMPORARY ORDER FOR PROTECTION

If irreparable injury could result to an Elder or Vulnerable Adult from abuse, neglect, exploitation, or abandonment if an order is not issued immediately and without prior notice to the respondent, the court

may grant (in-person or by telephone) an ex-parte temporary order for protection, pending a full hearing, and grant relief as the court deems proper, including an order:

(1) Restraining any party from committing acts of abuse, neglect, exploitation, or abandonment;

(2) Excluding any party from the dwelling shared or from the residence of the other until further order of the court;

(3) Restraining respondent from removing petitioner from the jurisdiction of the court; and

(4) Prohibit contact between the parties.

Irreparable injury under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with bodily injury or has engaged in acts of domestic violence against the petitioner. Procedures regarding hearing, service and execution of order, and violation of order shall follow the provisions in Section 27-12 ELDER AND VULNERABLE ADULT PROTECTION ORDER.

SECTION 27-14: CAUSE OF ACTION FOR DAMAGES

An action for damages under this Chapter may be brought by the Elder or Vulnerable Adult, their guardian or legal fiduciary, surviving spouse or heirs, or by the Kalispel Tribe through the Kalispel Tribe through the Kalispel Tribe Elder and Vulnerable Adult Services Director.

SECTION 27-15: GUARDIANSHIP

27-15.01 PURPOSE

The purpose of this section is to provide a process for creating guardianships for Elder or Vulnerable Adults who are unable to manage their personal affairs, property, or both.

Any restriction on an Elder or Vulnerable Adults shall be the least restrictive method of intervention needed to protect the freedom and independence and shall be consistent with the interests of the tribal community.

27-15.02 CONFIDENTIALITY

Any agency or individual involved in actual or potential proceedings or actions pursuant to this Section shall have a duty to maintain strict confidentiality of all information involving the welfare of specific Elders or Vulnerable Adults, regardless of whether a formal guardianship court case has been initiated. The only exception shall be when reporting suspected abuse of an Elder or Vulnerable Adult, as required under this Chapter.

27-15.03 TYPES OF GUARDIANS

The Tribal Court may appoint a guardian of the person, a financial guardian, or both, to protect the interests of an Elder or Vulnerable Adult. The guardian of the person shall serve as the financial guardian, unless the Court specifically appoints a separate individual as the financial guardian. The

petitioner may request, and the Court may grant pursuant to the request or *sua sponte*, that the powers and duties assigned to the guardian be limited or that the guardianship be limited in duration. These limitations shall be listed in the order establishing guardianship. Unless specifically limited, the powers and duties of the guardians shall follow that outlined in this section.

27-15.04 GROUNDS FOR APPOINTMENT OF GUARDIAN

(1) The Tribal Court may appoint a guardian of the person for the Elder or Vulnerable Adult if he or she is incapacitated and therefore is unable to manage their personal affairs or property.

(2) The Tribal Court may appoint a financial guardian for the Elder or Vulnerable Adult if he or she is unable or unwilling to competently administer his financial affairs.*

*Financial guardianships that were previously established for incarcerated individuals, who may not meet the current definition of an Elder or Vulnerable Adult, shall continue to be reviewed under this Section.

27-15.05 WHO MAY BE GUARDIAN

The following are entitled to consideration for appointment as guardian in the order listed:

(1) The spouse of the incapacitated person;

(2) An adult child of the incapacitated person;

(3) A parent of the incapacitated person;

(4) Any relative of the incapacitated person with whom the person has resided for more than 6 months prior to the filing of the petition;

(5) A person nominated by the person caring for or paying for the care of the incapacitated person; or

(6) A suitable person or agency of the Kalispel Tribe.

If more than one person has equal priority, the Court shall select the one it deems best qualified to serve as guardian. The Court, acting in the best interest of the incapacitated person, may pass over a person having priority and appoint a person having a lower or no priority.

27-15.06 QUALIFICATIONS OF GUARDIANS

The guardian must be at least 25 years old, familiar with the rights of and privileges of an Elder or Vulnerable Adult, and the provisions of this Chapter.

27-15.07 MANDATORY FAMILY MEETING

Prior to the filing of a petition for guardianship, a family meeting must be held to ensure that guardianship is the least restrictive method of intervention to protect the Elder or Vulnerable Adult, and if it is, that an appropriate guardian has been chosen. Family members and the Elder or Vulnerable Adult may chose to have this meeting facilitated by Elder and Vulnerable Adult Services staff, the Tribal Court staff, or another appropriate agency or individual.

27-15.08 PETITION FOR GUARDIANSHIP- WHO MAY FILE- CONTENTS

Any person, including the Kalispel Tribe's Elder and Vulnerable Adult Services Director, who is at least 18 years old, may file a petition with the Court requesting that he or she or some other qualified person be appointed as the guardian of the person or financial guardian of an Elder or Vulnerable Adult. A petition for appointment of a guardian shall be in writing and shall include:

(1) The name, birthdate, residence, and tribal status of the Elder or Vulnerable Adult who is the subject of the petition;

(2) If petitioning for a guardianship over the person, a description of the nature of the Elder or Vulnerable Adult's alleged incapacity or if petitioning for a financial guardianship, a description ofhow the Elder or Vulnerable Adult is unable or unwilling to manage his or her financial affairs;

(3) The approximate value and description of the Elder's or Vulnerable Adult's property, including any compensation, pension, insurance, per capita payments or allowance to which he or she may be entitled;

(4) Whether there is, in any state or other tribal court, a guardianship of any type for the person or property of the Elder or Vulnerable Adult;

(5) The residence and post office address of the person whom petitioner asks to be appointed guardian of the person or financial guardian;

(6) The names and addresses, and nature of the relationship, so far as known or can be reasonably ascertained, of the persons most closely related by blood or marriage to the Elder or VulnerableAdult;

(7) The name and address of the person or institution (if any) having the care and custody of the Elder or Vulnerable Adult;

(8) A statement by the petitioner of the facts and reasons supporting his or her request forappointment of a guardian of the person or financial guardian;

(9) Any request for limitations to the duties or powers of the guardian, or the duration of the guardianship, and the facts and reasons supporting the petitioner's request for these limitations.

27-15.09 SETTING THE HEARING

When the Court receives the petition for guardianship, it shall set a hearing date not more than forty (40) days after the Court receives the petition.

27-15.10 NOTICE

(1) After a Guardianship petition has been filed, the Court Clerk shall issue a summons containing the name of the Court, the title of the proceedings, and the date, time, and place of the hearing. The summons shall also advise the parties of their rights.

(2) Personal service (as described in Chapter 3 of this Code) of the summons and petition shall be made upon:

(A) The petitioner;

(B) The Elder or Vulnerable Adult;

(C) The spouse of the Elder or Vulnerable Adult, if any;

(D) Any person the Court deems necessary for proper adjudication; and

(E) Any person the Court deems necessary for the hearing.

(3) If timely service cannot be made, the Court may set a new hearing date. If personal service cannot be made after reasonable efforts, the Court may allow another form of service as set out in Chapter 3 of this Code.

(4) The petitioner is responsible for personal service of the summons and petition.

27-15.11 GUARDIANSHIP REPORT

If the guardianship petition requests guardianship on an Elder, the Tribal Court shall ask the Elder Advocate to prepare a report on the proposed guardianship. The Court may alternatively appoint a guardian ad litem to prepare a report on the proposed guardianship, or if the Tribe is not the petitioner, ask that Elder and Vulnerable Adult Services prepare a report on the proposed guardianship. If the guardianship petition requests guardianship on a Vulnerable Adult, the Tribal Court shall appoint a guardian ad litem to prepare a report on the proposed guardianship. The Court may alternatively ask that Elder and Vulnerable Adult Services prepare a report on the proposed guardianship, if the Tribe is not the petitioner for the guardianship.

This report should be based upon consultations with the Elder or Vulnerable Adult and his or her family members, the petitioner, the proposed guardian, health and social service personnel who have had professional contact with the Elder or Vulnerable Adult, and any other individual who may provide knowledgeable opinions, relevant facts, or other information regarding the proposed guardianship. The report shall be in writing and include the following:

(1) A complete inventory of all property belonging to the Elder or Vulnerable Adult;

(2) A written statement prepared by a physician, physician's assistant, psychologist, psychiatrist, or advanced registered nurse practitioner regarding the following:

(A) The Elder or Vulnerable Adult's current physical and mental condition, and the duration of any condition which may cause incapacity;

(B) Opinions on the specific assistance that the Elder or Vulnerable Adult needs;

(C) Any relevant medical, functional, neurological, mental health history, or drug/alcohol history of

the Elder or Vulnerable Adult;

(D) Any medication the Elder or Vulnerable Adult is currently taking, and its effect on the person's behavior, cognition, and judgment; and

(E) The dates of any examinations of the Elder or Vulnerable Adult

(3) Whether other resources are available to provide for the Elder or Vulnerable Adult's personal needs or property management, and whether the appointment of a guardian is the least restrictive means to provide for the Elder or Vulnerable Adult's needs;

(4) Whether the Elder's or Vulnerable Adult's situation places him or her at risk of abuse, neglect, exploitation, or abandonment;

(5) The Elder's or Vulnerable Adult's management of and ability to provide for his or her own essential services;

(6) Whether the Elder or Vulnerable Adult can adequately understand or appreciate the nature and consequences of his or her impairment, and how the impairment may impact property management or personal needs;

(7) Whether the proposed guardian is suitable to serve as financial guardian, guardian of the person, or both, for the Elder or Vulnerable Adult, including information on the following: whether the proposed guardian has any history of causing abuse, neglect, exploitation, or abandonment of any person, and any other circumstance which may be relevant to the proposed guardian's suitability;

(8) The Elder's or Vulnerable Adult's position regarding the proposed guardianship and the proposed guardian; and

(9) Any other relevant evidence.

27-15.12 GUARDIANSHIP REPORT –SERVICE

The petitioner(s) shall file and serve the guardianship report and property inventory with the Court and all individuals listed in 27-14.08 at least 10 calendar days before the hearing.

27.15.13 LEGAL COUNSEL

An alleged incapacitated person shall have the right to be represented by counsel at any stage in the guardianship proceeding.

27-15.14 GUARDIANSHIP HEARING

The hearing shall be private and closed. Only those persons who have received Notice of the hearing, and any other persons the Court finds have a legitimate interest in the proceeding, may attend. The Court shall consider the Guardianship Report submitted for review, additional evidence, and any testimony provided to determine whether:

(1) A guardianship is the least restrictive alternative and in the best interests of the Elder or Vulnerable

Adult and the Tribal community;

(2) The Elder or Vulnerable Adult meets the requirements outlined in KLOC 27-15.04 GROUNDS FOR APPOINTMENT OF GUARDIAN; and

(3) The proposed guardian is capable of adequately discharging the duties of a guardian.

27-15.15 COURT REVIEW

Unless otherwise ordered by the Tribal Court, all guardianships shall be subject to review every 12 months.

27-.15.16 DUTIES OF THE FINANCIAL GUARDIAN

The financial guardian shall act as a reasonable and prudent person would incident to the collection, preservation, management, and use of the Elder's or Vulnerable Adult's estate to accomplish the desired result of administering that person's estate in his or her best interest, including but not limited to the following duties:

(1) Meet regularly with the Elder or Vulnerable Adult to involve him or her, as much as possible, with financial decision-making, and the creation of a budget;

(2) Provide evidence of completion of standardized training related to the duties of a financial guardian. This may be waived by the Court if the financial guardian shows evidence that he or she already possesses the requisite knowledge to serve as a guardian without the training.

(3) Maintain strict confidentiality regarding the Elder or Vulnerable Adult, except in the following situations:

(A) Mandatory reports to the Court.

(B) When necessary to perform the duties of a financial guardian.

(C) When reporting suspected abuse of an Elder or Vulnerable Adult.

(4) To provide the Court with annual written reports on his or her management of the property of the Elder or Vulnerable Adult. Any substantial change in income or assets or in the Elder or Vulnerable Adult's condition shall be reported to the Court within 30 days of the substantial change;

(5) Protect and preserve the property of the Elder or Vulnerable Adult, account for it faithfully, and perform all of the duties required by the Court;

(6) Invest and reinvest the property of the Elder or Vulnerable Adult, except that:

(A) No investments shall be made without prior order of the Court in any property other than unconditional interest-bearing obligations of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States government;

(B) If it is in the best interests of the incapacitated person that a specific property be used by the

incapacitated person rather than sold and the proceeds invested, the Court may so order;

(4) To apply to the Court for an order authorizing any disbursement on behalf of the Elder or Vulnerable Adult. The Court shall require a written accounting to be filed, documenting all expenditures. In proper cases, the Court may order payment of amounts directly to the Elder or Vulnerable Adult for his or her maintenance or incidental expenses; and

(5) At the termination of the financial guardianship, the guardian shall deliver the assets of the Elder or Vulnerable Adult to the persons entitled thereto.

27-15.17 BOND FOR THE FINANCIALGUARDIAN

The Court may require a financial guardian to furnish a bond, which shall be in the amount of the aggregate capital value of the property of the estate.

27-15.18 DUTIES OF THE GUARDIAN OF THE PERSON

To the extent not inconsistent with any order of the Court, a guardian of the person has the following powers and duties, in addition to the powers and duties of financial guardian, if so appointed:

(1) To provide the Court with annual written reports on the condition of the Elder or Vulnerable Adult. Any substantial change in the Elder or Vulnerable Adult's condition shall be reported to the Court within 30 days of the substantial change;

(2) Provide evidence of completion of standardized training related to the duties of a guardian of the person. This may be waived by the Court if the guardian of the person shows evidence that he or she already possesses the requisite knowledge to serve as a guardian without the training.

(3) Maintain strict confidentiality regarding the Elder or Vulnerable Adult, except in the following situations:

(A) Mandatory reports to the Court.

(B) When necessary to perform the duties of a guardian of the person.

(C) When reporting suspected abuse of an Elder or Vulnerable Adult.

(4) The guardian of the person shall make provisions for the Elder or Vulnerable Adult's care, comfort,and maintenance, and shall as appropriate to the incapacitated person's need, arrange for their training, education, employment, rehabilitation or custodial care.

(5) The guardian of the person shall have authority to consent to any medical, legal, psychological, or other professional care, counsel, treatment or service for the incapacitated person. The guardian of the person may give any other consent or approval on the incapacitated person's behalf that maybe required or in their best interest. The guardian of the person may petition the Court for its concurrence in the consent or approval.

27-15.19 MODIFICATION OR TERMINATION OF GUARDIANSHIP OR LIMITED GUARDIANSHIP

At any time after the establishment of a guardianship, the court may, upon the death of the Elder or Vulnerable Adult, or the guardian, or, for other good reason, modify or terminate the guardianship.

27-15.20 REMOVAL OF GUARDIAN

The Court has the power to remove a guardian and appoint a replacement guardian when clear and convincing evidence indicates it would be in the best interests of the incapacitated person.

SECTION 27-16: KALISPEL TRIBAL COURT APPEALS

27-16.01 WHO CAN APPEAL

Under this Chapter, any party to the action in a Kalispel Tribal Court hearing may appeal a final Tribal Court order, including all transfer, adjudication and/or disposition orders, except the Kalispel Tribe cannot appeal an adjudication order.

27-16.02 TIME LIMIT FOR APPEAL

Any party to the action appealing a final tribal court order or disposition, shall file a written notice of appeal with the Kalispel Tribal Court Clerk within ten (10) days of the date of the hearing on final order or disposition.

27-16.03 RECORD OF PROCEEDINGS

For purposes of appeal, a record of proceedings shall be made available to the parties, and the parties' counsel or spokesperson by the Kalispel Tribal Court Clerk. Costs of obtaining this record, shall be paid by the party seeking the appeal.

27-16.04 STAY OF APPEAL

In any case where a party has perfected his Right of Appeal as established by this Chapter or by Rules of Court, a Stay of Execution of judgment shall be granted and the sentence shall not be carried out unless affirmed by the Appellate Court.

27-16.05 CONDUCT OF PROCEEDINGS

All appeals shall be conducted in accordance with Kalispel Law and Order Code, Chapter 1 Section 12: Appellate Proceedings.

SECTION 27-17: SOVEREIGN IMMUNITY

27-17.01 SOVEREIGN IMMUNITY

The sovereign immunity of the Kalispel Tribe of Indians shall in no manner be waived by this Chapter. The employees, appointees, and volunteers of Kalispel Elder and Vulnerable Adult Services (including, but not limited to, the Community Health Representative, Kalispel Tribal Elder and Vulnerable Adult Services staff, Presenting Officer, Guardian, substance abuse program, foster care program, and tribal

court personnel) and law enforcement (including tribal, county, state, and federal officers while acting on behalf of the Kalispel Tribe of Indians) are cloaked with the sovereign immunity of the Kalispel Tribe of Indians. Such employees, appointees, volunteers and law enforcement staff and officers shall not be held liable for the inability or failure to provide services to any person while acting on behalf of the Kalispel Tribe of Indians.

CHAPTER 28 - KALISPEL BUSINESS LICENSING

SECTION 28-1: GENERAL PROVISIONS

28-1.01 PURPOSE

(1) The purpose of this Chapter is to promote economic development on the Kalispel Reservation and to clearly establish and exercise the Tribe's authority to regulate the conduct and operations of businesses within the Kalispel Reservation. Such regulation is to protect the economic security, health, safety and welfare of the Kalispel Tribe of Indians, its members, and of community members.

(2) The grant of the privilege of doing business on the Kalispel Reservation constitutes a consensual relationship with the Kalispel Tribe of Indians and/or its members. The Kalispel Tribe has the sole and exclusive authority to grant, deny, or withdraw the privilege of doing business on the Kalispel Reservation.

28-1.02 APPLICABILITY

The Kalispel Business Licensing Chapter shall apply to all businesses located on Reservation lands that are designated by the Tribe for commercial development.

28-1.03 ADMINISTRATION

The Kalispel Business Committee/Tribal Council delegates the authority to issue business licenses to the [coordinate department to be determined by Tribal Council].

28-1.04 SOVEREIGN IMMUNITY

The sovereign immunity of the Kalispel Tribe is not in any way waived or limited by this Chapter, or by any appeal commenced pursuant to this Chapter, and nothing in this Chapter shall constitute or be construed as a waiver of the sovereign immunity of the Tribe. Such sovereign immunity shall extend to the Tribe, the Kalispel Business Committee, its corporations chartered under Section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. § 5124, any subordinate organization or Kalispel governmental corporation chartered and duly empowered pursuant to the Kalispel Tribe Law and Order Code, as amended, and all Tribal officials, employees, staff, and agents, as to all actions taken in, or concerning, the administration or enforcement of this Chapter, and as to all actions taken pursuant to any authority of any action, decision or order authorized by this Chapter.

28-1.05 SEVERABILITY

The provisions of this Chapter are severable. If a court of competent jurisdiction should hold any provision of this Chapter invalid, such ruling shall not affect the validity of any other provision, such that the remaining provisions shall have full force and effect

28-1.06 DEFINITIONS

For purposes of this Chapter, unless otherwise expressly provided, the following definitions shall apply:

(1) "Business" shall mean a person, partnership, or corporation engaged in a profit-seeking commercial, manufacturing, or service enterprise. For the purposes of this Chapter, a business includes, but is not limited to, operating a retail store, restaurant, hotel, or entertainment venue.

(2) "Business License" means a license, issued by the Tribe, to engage in business within the Kalispel Reservation.

(3) "Business Licensee" or "Licensee" means a person who has been issued a Business License by the Tribe to engage in business. Business Licensees are considered to be a person authorized to engage in trade on the Kalispel Reservation.

(4) "Person" means any individual, agent, principal, entity, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, corporation, association, society, or group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. "Person" does not include the Tribe.

(5) "Reservation" means all the lands owned by Kalispel Tribe of Indians as defined in KLOC 1-2.03.

(6) "Sale" shall mean goods, services, rooms, admission fees, or food and beverages; charged by a business; to a buyer for purchase, use, entertainment, recreation, amusement, or rent; whether such provision is complementary or for a consideration. A sale also consists of the delivery of goods or services by a business located within the boundaries of the Reservation, for the use or benefit of any person of which the business is a part.

SECTION 28-2: LICENSING

28-2.01 LICENSE REQUIREMENTS

(1) General. All persons engaging in business activities on the Kalispel Reservation must possess and display a valid Business License to engage in such activities within the Kalispel Reservation. Business Licenses must be posted in a conspicuous place at the place of business, or if the Licensee has no established place of business, such license must be carried by the licensee when engaged in the licensed business activity.

(2) Limitations. No Business License issued under the authority of this Chapter shall entitle the licensee to conduct or operate the business or other activity for which s/he has secured such license at a place or location other than the location stated in such license. No Business License issued under the provisions of this Chapter shall be transferable or assignable.

(3) Tribal Law. Each Business Licensee shall comply with all applicable Tribal laws.

(4) Insurance. Each Business Licensee shall maintain in force any liability insurance required by theTribe throughout the effective period of a Business License.

(5) Initial license and Renewal. Business Licenses issued pursuant to this Chapter are valid for a period of four calendar years.

28-2.02 SPECIALTY LICENSES AND CERTIFICATES

(1) Vehicle Dealer License. Vehicle dealers located on the Reservation shall obtain a vehicle dealer license in addition to a Business License. A vehicle dealer license is required for vehicle dealers engaging in the buying and/or selling five or more vehicles in a twelve-month period, or in any other way engaged in dealer activity on the Reservation. Vehicle dealers must abide by the following:

(A) A vehicle dealer must maintain an office in a commercially zoned location and in a location complying with all applicable federal and Tribal laws for land-use. The vehicle dealer must have a sign affixed to its exterior displaying its business name and the hours of the business.

(B) A vehicle dealer must obtain a motor vehicle dealer bond in the amount of $30,000. The name ofthe principal on the bond must reflect the business owner's name and the business name. Each separate business location must have its own bond.

(C) A vehicle dealer must provide proof of a completed training program by a certified or accredited training program for vehicle dealers, or proof of at least 8 hours of similar training.

(D) If a vehicle dealer is not an enterprise of the Kalispel Tribe, the Tribe shall have the option of requesting additional background and criminal history, financial information, and business lease information from the applicant.

(2) Resale Exemption Certificate. Resale exemption certificates may be issued by the Tribe to retailers, manufacturers, and wholesalers to purchase items for resale in the regular course of business without paying state sales tax.

(A) Resale exemption certificates must contain the following information:

(i) Name and business address of the buyer;

(ii) Tribal Business License, Kalispel Tribal Resale Permit Number, or uniform business identifier or registration certificate number of the buyer, if the buyer is required to be registered;

(iii) Type of business engaged in;

(iv) Effective date and expiration date;

(v) Statement regarding why exemption is given;

(vi) Signature of the authorized Tribal government individual issuing the certificate; and

(vii) Signature of the buyer.

(B) Resale certificates shall be valid for a period of four years from the date the certificate is provided to the seller.

28-2.03 LICENSE EXEMPTIONS

(1) The following activities, persons, entities or businesses are exempt from the license requirements of this Chapter:

(A) Charitable, religious or nonprofit organizations or corporations;

(B) Newspaper carriers;

(C) Sales by enrolled members of the Kalispel Tribe of Indians of Native American arts, crafts or goods;

(D) Services or goods ordered by mail, phone or internet;

(E) Business activity that is conducted pursuant to and in accordance with a permit or license that has been issued by the Tribe under any other law, provision, or regulation;

(F) Any activity conducted by the Kalispel Tribe of Indians , a Tribal Department, a Tribal entity or a Tribal enterprise;

(G) Occasional yard or garage sales; and

(H) Cutting and/or splitting of firewood by an enrolled member of the Kalispel Tribe of Indians orby the spouse of an enrolled member.

28-2.04 LICENSE APPLICATION PROCESS

(1) All applications for a Business License required by this Chapter shall be made upon forms to be furnished by the Tribe, signed by the applicant pursuant to and submitted to the Tribe. The application may request such information as is deemed relevant by the Tribe to carry out the purposes of this Chapter, including the residence of the applicant, the nature of the proposed business activity, the previous business experience of the applicant, the place where the business is proposed to be conducted, civil or criminal judgments entered against the applicant or the applicant's business, and the duration for which the business license is requested not to exceed four calendar years unless the applicant has negotiated a specific period of time for their application with the Tribe.

(2) The Tribe may inspect any proposed place of business after an application for a Business License hasbeen filed to determine whether the premises comply with applicable law. Failure to permit an inspection or to cure any material non-compliance identified in the inspection shall result in a denial or revocation of a Business License.

(3) The Tribe shall issue a license to the applicant if the Tribe determines that:

(A) the applicant is eighteen (18) years or older;

(B) the applicant has truthfully and accurately provided all information requested by the Tribe;

(C) the character, business experience and any required insurance coverage of the applicant are satisfactory to the Tribe;

(D) the applicant has paid all applicable fees;

(E) operation of the proposed business at the location identified by the applicant will be consistent with all Tribal laws, and

(F) issuance of the license is in the best interests of the Tribe, the members of the Tribe and the residents of the Kalispel Reservation.

(4) The Tribe may deny any business license application at its discretion. The Tribe shall deny the applicant a license if the applicant does not meet all of the requirements in KLOC 28-2.04(3).

28-2.05 LICENSE FEES

The fees set out by the Tribe shall be paid, as applicable, at the time of the filing of an application for issuance or renewal of a Business License. No application shall be accepted until all of the applicable fees have been paid in full. The License fees are non-refundable.

28-2.06 INSURANCE

The Tribe may require that an applicant for a Business License have and maintain in force, throughout the effective period of any Business License that is issued, insurance with terms and conditions as the Tribe may deem necessary to protect the Tribe, its members, the Reservation, and the community.

SECTION 28-3: BUSINESS LICENSING ENFORCEMENT

28-3.01 BUSINESS OWNER DUTIES

(1) Each owner of a business shall comply, and shall assure that the business and all persons employed at the business comply, at all times with all provisions of this Chapter.

(2) Each owner of a business is responsible for any violation of, or noncompliance with, any provision of this Chapter by the business or by any person employed at the business.

28-3.02 CONDUCTING BUSINESS ACTIVITIES WITHOUT A LICENSE

If any person engages in business activities on the Kalispel Reservation without a business license, he or she shall be ordered to cease and desist, and levied a fine of up to , and shall not be issued a Tribal license or permit until the fine is paid.

28-3.03 SUSPENSION OR REVOCATION OF LICENSE

(1) A Business License issued pursuant to this Chapter may be suspended or revoked by the Kalispel

Business Committee/Tribal Council for any of the reasons listed in this Section. A revocation of a business license upon order of the Business Committee is final and conclusive.

(2) Reasons for suspension or revocation:

(A) The Licensee made a material misrepresentation or false or misleading statement in the application for the Business License and the statement was not known by the Tribe to be a misrepresentation, false or misleading at the time that the license was issued;

(B) The conduct of the business licensed by the Tribe violated a material term or condition of the License; or

(C) The conduct of the business violated a provision of this Chapter or other Tribal Code provision, or the conduct constituted a breach of the peace or as to constitute a material threat to the health, safety and general welfare of the Tribe, its members or residents of or persons present in the Kalispel Reservation.

(3) The Tribe may suspend a license, rather than revoking the license, in order to afford the BusinessLicensee a reasonable opportunity to cure the circumstances that gave rise to the suspension.

SECTION 29-1: GENERAL PROVISIONS

29-1.01 PURPOSE

The Kalispel Tribe of Indians hereby enacts this Tax Code for the purpose of generating revenue for the operation, maintenance, and improvement of essential tribal governmental services which are provided to Tribal members and non-members visiting the Reservation. The Kalispel Tribe of Indians finds that there are substantial unmet needs in funding for governmental services, including maintenance of roads; social services and education programs; maintenance of public health, safety, and law and order services, including tribal police, fire protection, environmental protection, comprehensive land use planning and regulation, and the provision of a Tribal Court system; the protection of Reservation lands and resources;the provision of public recreational amenities and facilities such as the Camas Center; the support of cultural and religious events and activities; the promotion and regulation of Reservation businesses and economic development; and the provision of employment to both members and non-members of the Tribe. Therefore, it is in the public's interest that the Reservation community, including Tribal members and non-members those who are visiting, residing, employed or otherwise doing business on the Reservation, help fund these essential governmental services through the Tribe's imposition, collection and administration of taxes. Tax revenues generated pursuant to this Tax Code will preserve the politicalsovereignty, integrity and stability of the Kalispel Tribe, promote economic development on the KalispelIndian Reservation, and enhance and support the services available to Tribal members and non-tribal members.

29-1.02 AUTHORITY

This Tax Code is adopted pursuant to the authority vested in the Kalispel Tribal Governing Body by the Kalispel Constitution, and inherent authority of the Kalispel Tribe of Indians.

29-1.03 SOVEREIGN IMMUNITY

Nothing in this Tax Code nor any individual provision herein shall be construed as a waiver of the sovereign immunity of the Kalispel Tribe of Indians, officials, employees, agents, subdivisions, enterprises, or corporate entities of any nature or type or as a consent to suit in any court.

29-1.04 DEFINITIONS

For purpose of this Chapter, the following definitions apply:

(1) "Admission Fee" shall mean the amount assessed or charged to access, use, or be admitted to an entertainment venue.

(2) "Business" shall mean a person, partnership, or corporation engaged in a profit-seeking commercial,

manufacturing, or service enterprise. For the purposes of this Chapter, a business includes, but is not limited to, operating a retail store, restaurant, hotel, or entertainment venue.

(3) "Complementary" or "comp" shall mean any goods or services, including use of hotel rooms, provided by a business to a customer free of charge, whether by a rewards program, loyalty program,or any other means.

(4) "Entertainment Venue" shall mean any venue, place, or location where amusement, entertainment, or recreation is provided. A restaurant may also be considered an entertainment venue in instances where it charges an admission fee for amusement, entertainment, or recreation.

(5) "Goods" shall mean all forms of personal property that may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses, but excluding food and beverages.

(6) "Hotel Room Gross Receipts" shall mean the total amount charged for the room and any occupancyrelated services. Gross Receipts are deemed to have been received on a daily basis as rooms are rented or services are provided.

(7) "Lodging" shall mean hotel, motel, inn, bed and breakfast, house of lodging, Recreational Vehicle (RV) space, or tiny house unit; or any other building regularly used for-profit transient lodging of guests for 30 days or less. .

(8) "Kalispel Tribal Governing Body" refers to the governing body of the Kalispel Tribe (also referred to as the Kalispel Tribal Business Committee) as constituted by Article III of the Constitution and By¬laws of the Kalispel Tribe of Indians.

(9) "Occupancy" shall mean the use or possession, or the right to the use or possession, of a room or rooms in a hotel or lodging house or the right to the use or possession of the furnishings or the services and accommodations accompanying the use and possession of such room or rooms.

(10) "Operator" shall mean any owner, manager, or employee charged with operating a business on the Reservation.

(11) "Reservation" shall mean the Kalispel Indian Reservation as set apart by Executive Order of March 23, 1914, and all other lands, wherever located, owned by the Kalispel Tribe of Indians, including lands held in fee, or any interest in lands held by the Tribe, whether or not such lands or interests are held in trust for the Tribe by the United States, and any lands, wherever located, held in trust by the United States for a member or members of the Kalispel Tribe of Indians unless located on another Federally Recognized Indian Tribe's Reservation and having already been determined by the FederalGovernment to be in "reservation" status as to a Tribe other than the Kalispel Tribe of Indians, All waterways, roadways, rights of way, public lands, lakes and streams located on the above described

lands held by the Tribe or its members are considered Reservation lands, subject to applicable federal and Tribal laws and regulations.

(12) "Restaurant" shall mean any place of business that is kept, used, maintained, advertised, or held out to the public, as a place at which food and beverages are prepared and served for immediate consumption, whether or not the food or beverages are actually consumed on the premises of the restaurant.

(13) "Retail Store" shall mean any business or establishment offering goods and/or services for sale to the general public.

(14) "Room" shall mean any room or rooms of any kind in any part or portion of lodging provided for rent to guests for lodging of 30 days or less.

(15) "Sale" shall mean goods, services, rooms, admission fees, or food and beverages; charged by a business; to a buyer for purchase, use, entertainment, recreation, amusement, or rent; whether such provision is complementary or for a consideration. A sale also consists of the delivery of goods or services by a business located within the boundaries of the Reservation, for the use or benefit of any person of which the business is a part.

(16) "Services" shall mean manual, mechanical, or intellectual labor performed, and includes other business activity that does not have physical characteristics.

(17) "Tribe" shall mean the Kalispel Tribe of Indians.

29-1.05 SEVERABILITY

If any provision of this chapter, 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 29-2 TAXES AND FEES

29-2.01 SALES TAX

A Sales Tax is hereby levied and imposed on every sale at any business owned, or operated, within the Reservation. The rate of the Sales Tax shall be a percentage of the price of the sale as established by the Tribal Governing Body or a delegated administrative agency.

29-2.02 LODGING TAX

A Lodging Tax is hereby levied and imposed on the use or occupancy of a room in any hotel owned, or operated, within the Reservation. The tax imposed by this Chapter shall be collected by the operator at the same time as the rent is collected from the room occupant. The rate of the Lodging Tax shall be established by the Tribal Governing Body or a delegated administrative agency based on the total amount charged for use or occupancy of the room.

29-2.03 TOURISM FEE

A Tourism Fee is hereby levied and imposed on the use or occupancy of a room in any hotel owned, or operated, within the Reservation. The fee imposed by this Chapter shall be collected by the operator at the same time as the rent is collected from the room occupant. The rate of the Tourism Fee shall be $2 per room, per night, or as established by the Tribal Governing body or a delegated administrative agency.

29204 LAND OCCUPATION AND USE TAX

A Land Occupation and Use Tax is hereby levied and imposed upon the privilege of occupying or using buildings or improvements by persons or entities holding an interest by lease, easement, or license within the Reservation. The rates and regulations of the Land Occupation and Use Tax are to be promulgated by the Tribal Governing Body or a delegated administration agency.

29205 BUSINESS AND OCCUPATION TAX

A Business and Occupation Tax is hereby levied and imposed upon any business owned, or operated, within the Reservation. The rates and regulations of the Business and Occupation Tax are to be promulgated by the Tribal Governing Body or delegated administrative agency.

29206 BUSINESS PERSONAL PROPERTY TAX

A Business Personal Property Tax is hereby levied and imposed upon any business owned, or operated, within the Reservation. The rates and regulations of the Business Personal Property Tax are to be promulgated by the Tribal Governing Body or a delegated administrative agency.

29-2.07 OTHER TAXES

The Tribe has implemented other Tribal Fees and Taxes, including but not limited to the following: Tribal Alcohol Beverage Tax (KLOC 10-5.04); Tribal Cigarette Tax (KLOC 10-5.01); Tribal Tobacco Product Tax (KLOC 10-5.02); and Tribal Fuel Tax (KLOC Chapter 29A), which amounts and terms are unaffected and are defined by separate agreements or compacts.

SECTION 29-3 PAYMENT, PROCEDURE, AND EXEMPTIONS

29-3.01 COLLECTION OF FEES

A delegated administrative agency shall have the duty and authority to assess, impose, collect, account for and remit to the Kalispel Tribe of Indians all taxes and fees imposed under this Chapter subject to final approval of the Tribal Governing Body. Operators of establishments subject to the taxes and fees imposed under this Chapter shall, on or before the twentieth (20th) day of the month, complete a return for the preceding quarter on a prescribed form showing the entire amount of Gross Receipts from such sales or services, the allowable deductions, and the amount of tax liability.

Under the direction of the Kalispel Tribal Governing Body, an administrative agency shall make such

rules and regulations consistent with the provisions of this Chapter as may be necessary or useful to permit its effective administration, including provisions for collection and remittance of the tax.

29-3.02 RECORDS

All operators of businesses located within the Reservation shall keep, maintain, and preserve complete and accurate books, records, and accounts showing the gross receipts for retail sales and admission fees; and the taxes collected for each day and shall make available such books, records and accounts to the Tribe for examination. Such records shall be retained by operators for a period of not less than three years.

29-3.02 RECEIPTS

The amount of the tax collected pursuant to this Tax Code shall be separately stated by operators on all documentation pertaining to each fee raising event, including receipts.

29-3.03 FAILURE TO PAY TAX

Upon failure to pay the tax there shall be assessed against the taxpayer the amount of tax found to be due plus interest at the rate of 12 percent per annum thereupon from the date said tax should have been remitted and paid as provided by this section.

The Tribe shall notify the operator by mail of the tax due, together with interest thereupon, and the same shall become due and payable within 10 days of the date of said notice. If payment is not received by the due date of said notice there shall be added to the amount due a penalty of 12 percent and the Tribal license of the taxpayer to do business may, upon hearing before the regulatory body hereinafter created, be revoked.

29-3.04 CHANGES IN TAX RATES

Each rate of tax or fee levied or imposed by this Tax Code shall be subject to change through official action by the Kalispel Tribal Governing Body.

29-3.05 SEPARATE ACCOUNTING REQUIRED.

The amount of taxes shall be separately stated upon the operator's records and on any receipt delivered to the occupant or purchaser by the operator.

29-3.06 NON-PAYMENT OF TAX PROHIBITED.

No operator shall advertise that the tax or any part thereof will be assumed or absorbed by the operator, that it will not be added to the cost, or that, when added, any part will be refunded.

29-3.07 EXEMPTIONS FROM IMPOSITION OF TAX.

(1) The Kalispel Tribal Governing Body, at its sole discretion, may exempt imposing fees or taxes under this Chapter when the purchaser is a Kalispel Tribal member, a member of another federally-

recognized Indian tribe, band, or Alaskan Native, or a member of a the Canadian First Nations, provided, however, the purchaser shall present a valid tribal identification card upon request of the operator.

(2) The Kalispel Tribal Governing Body, at its sole discretion, may exempt any business or individual on the Reservation from paying imposed or imposing taxes or fees under this Chapter.

(3) Sales of food or food ingredients not prepared for immediate and/or on premise consumption are exempt from the Sales Tax under this Chapter. This exemption does not apply to food and beverages sold by restaurants.

SECTION 29-4: USE AND ALLOCATION OF REVENUE

29-4.01 USE AND ALLOCATION OF REVENUE

Revenue from the fees under this Chapter shall be placed in the General Fund of the Kalispel Tribe. The revenue may be allocated, at the discretion of the Kalispel Tribal Governing Body, to activities included but not limited to Tribal projects, expenses for essential governmental services, or repayment of loans, or to secure bonds or other indebtedness.

CHAPTER 29A - FUEL TAX REFUND PROCEDURES

POLICY: The Fuel Tax Refund program will be maintained by the Kalispel Tribal Economic Authority (KTEA) on behalf of the Kalispel Tribe of Indians. These procedures are guidelines for proper accountability and controls over the number of gallons of motor vehicle and special fuel purchased by the Tribe for re-sale at Tribal filling stations, the amount of State tax included in the price of the fuel purchased by the Tribe, and the use of Fuel Tax proceeds or their equivalent. These procedures will be followed by the staff of the Kalispel Tribal Economic Authority.

SCOPE: This procedure applies to all retail outlets selling motor vehicle or special fuel pursuant to a license issued by The Tribe (Tribal Retailers).

SECTION 29A-1: NOTIFICATIONS

29A-1.01

The Tribe shall provide the Washington State Department of Licensing with a list of the name and physical location of each retail outlet operated by the tribe who sells fuel.

29A-1.02

Such notification shall be in writing and will be signed by the KTEA Chief Executive Officer, KTEA Chief Operating Officer or KTEA Chief Financial Officer no later than 30 days after any new retail outlet is opened.

29A-1.03

All Tribal Retailers shall on an annual basis, unless otherwise required, inform the Tribe of the physical location (address) of the retail outlet, including changes to physical locations.

SECTION 29A-2: LICENSES

29A-2.01

Any person engaged in the retail sale of motor fuel products to Tribal Member, nonmember Indian and non-Indian customers on the Reservation shall obtain a license from the Kalispel Business Committee prior to the operation of the retail sale of motor fuel products.

29A-2.02

Any entity issued a license shall frame it under glass and display the license on the premises.

SECTION 29A-3: FUEL PURCHASES

29A-3.01

All Tribal Retailers shall purchase only fuel on which the state fuel tax has been paid, and to purchase fuel only from persons or companies operating lawfully in accordance with RCW 82.36 and RCW 82.38 as a motor vehicle or special fuel distributor, supplier, importer, or blender, or from a tribal distributor,

supplier, importer, or blender lawfully doing business according to all applicable laws.

29A-3.02

All Tribal Retailers shall pass on to the retail customer the state tax included in the price of the fuel.

SECTION 29A-4: STATE TAX REFUND

29A-4.01

For any motor vehicle or special fuel on which the State tax already has been collected prior to delivery to the Tribal Fuel Facilities and Tribal businesses, the State shall remit monthly to the Tribe, via KTEA, an amount equal to 75% of the state motor vehicle and diesel fuel tax actually paid on all such fuel delivered to the Tribal Fuel Facilities and Tribal businesses in the preceding month.

29A-4.02

The Tribe shall:

(1) Maintain invoices showing the number of gallons of motor vehicle fuel and special fuel purchased by the tribe for resale at tribal retail stations;

(A) Invoices must include date, name of seller, and the amount of State motor fuel and special fuels tax paid or included in the price of the fuel;

(2) maintain records to document the use of fuel tax proceeds or their equivalent

29A-4.03

The Tribe shall submit copies monthly of invoices for fuel delivered to the Tribal Fuel Facilities and Tribal businesses, which invoices shall include the invoice date, name of the seller, and the amount of State motor vehicle fuel and special fuels taxes paid or included in the price of the fuel.

29A-4.04

Within 30 days of receiving an invoice, the State shall remit to the Tribe 75% of the state motor vehicle fuel and special fuels tax actually paid or included in the price of the fuel delivered to the Tribal Fuel Facilities and Tribal businesses.

SECTION 29A-5: FEDERAL TAX REFUND

29A-5.01

Federal Tax paid on fuel purchased for Tribal government vehicles for essential government functions and Tribal businesses are entitled to a refund of 100% of the tax.

29A-5.02

The Tribe shall maintain Internal Revenue Service (IRS) Forms 4136 and detail schedules reflecting the number of gallons claimed for refund for Federal fuel tax purposes.

SECTION 29A-6: FUEL SALES

29A-6.01

The retail sale of fuel products to member and non-member customers will be at prices competitive with surrounding retail sellers.

29A-6.02

The Tribal Retailer shall maintain accurate records of the retail sales of motor vehicle fuel and special fuel.

SECTION 29A-7: INSPECTIONS

29A-7.01

The Tribal Retailer shall make available for inspection by the Tribe, and/or third party auditor retain by the Tribe, accurate written records of the purchase and retail sale of motor vehicle fuel and special fuel.

29A-7.02

Retailers shall permit representatives from the Tribe access to the retailer's premises for the purpose of conducting inspections, including unannounced inspections, of facilities where motor fuel products are sold and stored. Inspections may include any vehicles used to transport motor fuel products.

SECTION 29A-8: REVENUE DEPOSITS OF FUEL TAX

29A-8.01

All funds received for the fuel tax refund will be deposited into the Fuel Tax Refund Account.

29A-8.02

No other funds are to be deposited into this account.

SECTION 29A-9: USE OF FUEL TAX REFUND DOLLARS

29A-9.01

The Tribe agrees to expend fuel tax refunds from the State or amount equivalent thereto on:

(1) Planning, construction and maintenance of roads, bridges or boat ramps

(2) Transit services and facilities;

(3) Transportation planning;

(4) Police services; and

(5) Other Highway-related Purpose

29A-9.02

The Tribe agrees to maintain records to document the use of fuel tax proceeds or their equivalent.

SECTION 29A-10: RECORDS RETENTION

29A-10.01

The Tribe shall maintain the following records for a minimum of three years:

(1) invoices showing the number of gallons of motor vehicle fuel and special fuel purchased by the tribe for resale at tribal retail stations;

(2) records to document the use of fuel tax proceeds or their equivalent.

(3) Internal Revenue Service (IRS) Forms 4136 and detail schedule reflecting the number of gallons claimed for Federal fuel tax purposes.

SECTION 29A-11: AUDIT

29A-11.01

The Tribe shall cause an audit to be performed annually by an independent third party auditor who shall be a certified public accountant in good standing, to:

(1) Review such records as are necessary to certify the number of gallons of motor vehicle and special fuel purchased by the Tribe for re-sale at Tribal filling stations.

(2) the amount of State tax included in the price of the fuel purchased by the Tribe

(3) The use of Fuel Tax proceeds or their equivalent for the purposes identified in section 9.1

29A-11.02

The Tribe shall deliver a copy of the final written report of such audit to the Director of the State Department of Licensing.

CHAPTER 30-2: NON-PROFIT CORPORATIONS

30-2.01 SHORT TITLE

This Code shall be known and may be cited as the Kalispel Tribal Non-Profit Corporations Code.

30-2.02 DEFINITIONS

(1) "Corporation or Domestic Corporation" means a corporation chartered under the provisions of this Code.

(2) "Not for Profit Corporation" means a corporation, which no part of the income is distributable to its members, directors, or officers; except nothing in this Code 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 Code.

(3) "Articles of Incorporation" means the original articles of incorporation and all amendments thereto, including articles of merger of consolidation, and in the case of a corporation created by a special ordinance or resolutions of the Business Council, means such special ordinance or resolution and any amendments thereto.

(4) "By-laws" means the Code or Codes of Rules adopted for the regulation or management of the affairs of a corporation irrespective of the name or names by which such rules are designated.

(5) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or by-laws.

(6) "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.

(7) "Insolvent" means that a corporation is unable to pay its debts as they become due in the usual course of its affairs.

(8) "Secretary" means the Secretary of the Kalispel Business Committee or the agent or agents designated by her or him to perform any function vested in the Secretary by this Code.

(9) "Reservation" means the Kalispel Indian Reservation as defined in Code 1-2.03 of the Kalispel Law and Order Code.

(10) "The Court" means except where otherwise specified, the Kalispel Tribal Court.

30-2.03 APPLICABILITY

The provisions of this Code shall apply to all corporations organized hereunder or which elect to accept the provisions of this Code.

30-2.04 PURPOSE

Corporations may be organized under this Code for any lawful purpose or purposes including, but not limited to, one 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.

30-2.05 GENERAL POWERS

Each 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, complain and defend, in its corporate name;

(3) 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 of affixed in any other manner reproduced;

(4) 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;

(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 other than its officers and directors;

(7) 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 Code 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, ormunicipality or of any instrumentality thereof or any tribe;

(8) 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;

(9) 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;

(10) To conduct its affairs, carry on its operations, hold property, and have offices and exercise the powers granted by this Code;

(11) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation;

(12) To make and alter by-laws, not inconsistent with its articles of incorporation or with the laws, ordinances, and regulations of the Kalispel Tribe of Indians and the United States, for the administration and regulation of the affairs of the corporation; and

(13) 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.

30-2.06 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:

(1) 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. 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.

(2) 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

(3) In a proceeding by the Tribal Secretary as provided in this Code, to dissolve the corporation or in a proceeding by the Tribal Secretary to enjoin the corporation from the transaction of authorized acts.

30-2.07 CORPORATE NAME

The Corporate Name:

(1) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation; and

(2) 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 Code or any other Code or resolution of the Tribe to transact business or conduct affairs in the Reservation.

30-2.08 REGISTERED OFFICE AND REGISTERED AGENT

Each corporation shall have and continuously maintain on this Reservation:

(1) A registered office, and;

(2) A registered agent.

30-2.09 REGISTERED AGENT AS AN AGENT FOR SERVICE

(1) The registered agent appointed by a corporation as provided in this Code 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.

(2) 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. In the event that any such process, notice or demand is served on the Tribal Secretary, he shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office.

(3) The Tribal Secretary shall keep a record of all processes, notices, and demands served upon themunder this Section, and shall keep a record therein the time of such service and their action with respect thereto.

(4) 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.

30-2.10 MEMBERS

A corporation may have members or may have no members. 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. If the corporation has no members, that fact shall be set forth in the articles of incorporation. A corporation may issue certificates evidencing membership therein.

30-2.11 BY-LAWS

The initial by-laws of a corporation shall be adopted by its Board of Directors. 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.

30-2.12 MEETINGS OF MEMBERS

(1) 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.

(2) 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.

(3) 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. 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 one-twentieth (1/20) of the votes to the cast at such meeting.

30-2.13 NOTICE OF MEETING MEMBERS

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 ten (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. 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.

30-2.14 VOTING

(1) Members shall not be entitled to vote except as the right to vote shall be conferred by the articles of incorporation.

(2) 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. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. 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.

(3) 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 one 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.

(4) 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.

30-2.15 QUORUM

(1) 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. In the absence of any such provisions, members having at least one-tenth (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 Code, the articles of incorporation or the by-laws.

(2) 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.

(3) 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.

30-2.16 BOARD OF DIRECTORS

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. The articles of incorporation or the by-laws may prescribe other qualifications for directors.

30-2.17 NUMBER, ELECTION, CLASSIFICATION, AND REMOVAL OF DIRECTORS

(1) The number of directors of a corporation shall be not less than three. 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. 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. No decrease in number shall have the effect of shortening the term of any incumbent director. 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.

(2) The names and addresses of the members of the first Board of Directors shall be stated in the articles of incorporation. 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. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the by-laws. In the absence of a provision fixing the term of office, the term of office of a director shall be one (1) year.

(3) Directors may be divided into classes; the terms of office of the several classes need not be uniform. 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, except in the case of ex officio

directors.

(4) A director may be removed from office pursuant to any procedure therefore provided in the articlesof 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.

30-2.18 VACANCIES

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. 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.

30-2.19 QUORUM OF DIRECTORS

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 one-third (1/3) of the number of directors so stated or fixed. 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 Code or by the articles of incorporation or by-laws.

30-2.20 COMMITTEES

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 two 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. Other committees not having the exercising 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. 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.

30-2.21 PLACE AND NOTICE OF DIRECTOR'S MEETINGS

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. 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.

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.

30-2.22 OFFICERS

(1) The officers of a corporation shall consist of a president, a secretary, and a treasurer, and may include one 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 three (3) years as may be prescribed in the articles of incorporation or the by-laws. In the absence of any such provision, all officers shall be elected or appointed annually by the Board of Directors. If the by-laws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

(2) The articles of incorporation or the by-laws may provide that any one or more officers of the corporation or other organizations shall be ex officio members of the Board of Directors.

(3) 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.

(4) 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 by resolution of the Board of Directors not inconsistent with the by-laws.

30-2.23 REMOVAL OF OFFICERS

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. Election or appointment of an officer or agent shall not itself create contract rights.

30-2.24 BOOKS AND RECORDS

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. 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.

30-2.25 SHARES OF STOCK AND DIVIDENDS PROHIBITED

A corporation organized under this Code shall not authorize or issue shares of stock. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors, or officers. 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 Code.

30-2.26 LOANS TO DIRECTORS AND OFFICERS PROHIBITED

No loans shall be made by a corporation organized under this Code to its directors or officers. 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.

30-2.27 INCORPORATORS

Three (3) or more natural persons of the age of eighteen (18) 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.

30-2.28 ARTICLES OF INCORPORATION

(1) The articles of incorporation shall set forth:

(A) The name of the corporation;

(B) The period of duration, which may be perpetual;

(C) The purpose or purposes for which the corporation is organized;

(D) If the corporation is to have no members, a statement to that effect;

(E) 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;

(F) 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.

(G) Any provisions, not inconsistent with this Code or any other law or ordinance of the Kalispel Tribe of Indians 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 Code is required or permitted to be set forth in the by-laws;

(H) The address, including street and number, if any, of its initial registered office, and the name of its initial registered agent at such address;

(I) 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

(J) The name and address, including street and number, if any of each incorporator.

(2) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Code.

(3) 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. Whenever a provision of the articles of incorporation is inconsistent with the by-law, the provision of the articles of incorporation shall be controlling.

30-2.29 FILING OF ARTICLES OF INCORPORATION

(1) Duplicate originals of the articles of incorporation shall be delivered to the Tribal Secretary. The Tribal Secretary may by regulation set fees for filing articles and other filings under this Code.

(2) If the Tribal Secretary finds that the articles of incorporation conform to law, they shall, when all fees and charges have been paid as under this Code prescribed:

(A) Endorse on each of such duplicate originals the work "Filed" and the month, day, and year of filing thereof;

(B) File one of such duplicate original in their office;

(C) Issue a certificate of incorporation to which they shall affix the other duplicate original; and

(D) Deliver the certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto, to the incorporators or their representative.

30-2.30 EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORATION

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 Code, except as against the Kalispel Tribe of Indians in a proceeding to cancel or revoke the certificate of incorporation. A corporation organized under this Code shall in all matters be subject to the jurisdiction of the Kalispel Tribe of Indians and the Kalispel Tribal Court.

30-2.31 ORGANIZATION MEETING

(1) 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. The directors calling the meeting shall give at least five (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 andplace for said organization meeting, no notice shall be required of such meeting.

(2) A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least five (5) days notice, for such purposes as shall be stated in the notice of the meeting.

30-2.32 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.

30-2.33 PROCEDURE TO AMEND ARTICLES OF INCORPORATION

Amendment to the articles of incorporation shall be made in the following manner:

(1) 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;

(2) 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 Code for the giving of notice of meetings of members. If the meeting is an annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting;

(3) The proposed amendment shall be adopted upon receiving the affirmative vote of at least two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meeting;

(4) 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

(5) Any number of amendments may be submitted and voted upon at any one meeting.

30-2.34 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:

(1) The name of the corporation;

(2) The amendment so adopted;

(3) Where there are members having voting rights;

(A) 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 two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meeting; or

(B) A statement that such amendment was adopted by a consent in writing signed by all membersentitled to vote with respect thereto.

(4) 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.

30-2.35 FILING OF ARTICLES OF AMENDMENT

(1) Duplicate originals of the articles of amendment shall be delivered to the Tribal Secretary.

(2) If the Tribal Secretary finds that the articles of amendment conform to law, they shall, when all fees and charges have been paid as in this Code prescribed:

(A) Endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(B) File one of such duplicate originals in their office;

(C) Issue a certificate of amendment to which they shall affix the other duplicate original; and

(D) Deliver the certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto, to the corporation or its representative.

30-2.36 EFFECT OF CERTIFICATE OF AMENDMENT

(1) 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.

(2) 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.

30-2.37 VOLUNTARY DISSOLUTION

A corporation may dissolve and wind up its affairs in the following manner:

(1) 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. Written or printed notice stating that the purpose, or one 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 Code, for the giving of notice of meetings to members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meetings;

(2) 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

(3) 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 Code.

30-2.38 DISTRIBUTION OF ASSETS

The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provisions shall be made therefor;

(2) 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;

(3) 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 one 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 Code;

(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 members, or any class or classes of members, or provide for distribution to others; and

(5) 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 Code.

30-2.39 PLAN FOR DISTRIBUTION

A plan providing for the distribution of assets, not inconsistent with the provisions of this Code, 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 Code requires a plan for distribution, in the following manner:

(1) 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. Written or printed notice stating that the purpose, or one 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 Code for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meeting;

(2) 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

(3) 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. If the articles of dissolution have been delivered to the Tribal Secretary, notice of such revocation shall be given to them in writing.

30-2.40 ARTICLES OF DISSOLUTION

If voluntary dissolution proceedings have not been revoked; when all debts, liabilities, and obligations of the corporation shall have been made therefor, 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 Code, 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:

(1) The name of the corporation;

(2) Where there are members having voting rights;

(A) 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 two-thirds (2/3) of the votes entitled to be cast by members or represented by proxy at such meetings; or

(B) A statement that such resolution was adopted by consent in writing signed by all membersentitled to vote with respect thereto;

(3) 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;

(4) That all debts, liabilities, and obligations of the corporation have been paid and discharged or that adequate provision has been made therefor;

(5) That all the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with the provisions of this Code; and

(6) 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.

30-2.41 FILING OF ARTICLES OF DISSOLUTION

(1) Duplicate originals of such articles of dissolution shall be delivered to the Tribal Secretary.

(2) If the Tribal Secretary finds that such articles of dissolution conform to law, he shall, when all fees and charges have been paid as in this Code prescribed:

(A) Endorse on each of such duplicate original the word "filed", and the month, day, and year of such filing thereof;

(B) File one of such duplicate original in their office;

(C) Issue a certificate of dissolution to which they shall affix the other duplicate original; and

(D) Deliver the certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto, to the representative of the dissolved corporation.

(3) 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 Code.

30-2.42 INVOLUNTARY DISSOLUTION

(1) A corporation may be dissolved involuntarily by a decree of the Court in an action instituted by the Tribal Secretary in the name of the Kalispel Tribe of Indians, when it is made to appear to the Court that:

(A) The franchise of the corporation was procured through fraud; or

(B) The corporation has continued to exceed or abuse the authority conferred upon it by this Code; or

(C) The corporation has failed for ninety (90) days to appoint and maintain a registered agent as provided in this Code; or

(D) The corporation has failed for ninety (90) days after change of its registered office or registered agent to deliver to the Tribal Secretary statement of such change.

(2) At least thirty (30) days before any action for the involuntary dissolution of a corporation shall be filed by the Tribal Secretary, he 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 therefor. 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 Code, or deliver to the Tribal Secretary, the required statement of change or registered agent, the Tribal Secretary shall not file an action against such a corporation for such cause. 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 Code, or shall deliver to the Tribal Secretary, the required statement of change of registered agent, and shall pay the costs of such action, the action for such cause shall abate.

30-2.43 JURISDICTION OF COURT TO LIQUIDATE ASSETS AND AFFAIRS OF CORPORATION

The Kalispel Tribal Court shall have full power to liquidate the assets and affairs of a corporation:

(1) 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.

(2) In an action by a creditor:

(A) 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

(B) 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;

(3) Upon application by a corporation to have its dissolution continued under the supervision of the Court;

(4) When an action has been commenced by the Tribal Secretary to dissolve a corporation and it is madeto appear that liquidation of its affairs should precede the entry of a decree of dissolution;

(5) It shall not be necessary to make directors or members parties to any such action or proceeding unless relief is sought against them personally.

30-2.44 PROCEDURE IN LIQUIDATION OF CORPORATION BY COURT

(1) 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.

(2) 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. 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. 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.

(3) The assets of the corporation of the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(A) 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 therefor;

(B) 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;

(C) 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 one 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;

(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 the 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, specified in the plan of distribution has been adopted, as the Court may direct.

(4) 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 of disposition of such assets.

(5) A receiver of a corporation appointed under the provisions of this Section shall have authority to sueand defend in all courts in his own name as receiver of such corporation. The Court appointing suchreceiver shall, for the purposes of this Code have exclusive jurisdiction of the corporation and its property, wherever situated.

30-2.45 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.

30-2.46 FILING OF CLAIMS IN LIQUIDATION PROCEEDINGS

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 four (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. Prior to the date so fixed, the Court may extend the time for the filing of claims. 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.

30-2.47 DISCONTINUANCE OF LIQUIDATION PROCEEDINGS

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. In such event the Court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its

remaining property and assets.

30-2.48 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.

30-2.49 FILING OF DECREE OF DISSOLUTION

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 Secretary, who shall file the same. No fee shall be charged by the Tribal Secretary for the filing thereof.

30-2.50 DEPOSITS WITH TRIBAL SECRETARY

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 Secretary and shall be paid over to such person or to his legal representative upon proof satisfactory to the Court of his rights thereto.

30-2.51 ANNUAL REPORT OF DOMESTIC AND FOREIGN CORPORATIONS

(1) Each domestic corporation shall prepare an annual report setting forth:

(A) The name of the corporation;

(B) The address of its registered office and the name of its registered agent;

(C) A brief statement of the character of the affairs which the corporation is actually conducting; and

(D) The names and respective addresses, including street and number, if any, of the directors and officers of the corporation.

(2) Such annual report shall be made on forms prescribed and furnished by the Tribal Secretary and the information therein contained shall be given as of the date of the execution of the report. 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.

30-2.52 FILING OF ANNUAL REPORT OF CORPORATION

Such annual report of a corporation shall be delivered to the Tribal Secretary. If the Tribal Secretary, 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. If he or she finds that it does not so conform, he or she 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 Code and returned to the Tribal Secretary in sufficient time to be filed prior to the first day of July of the year in which it is due.

30-2.53 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 Code shall be subject to a penalty of fifty dollars ($50.00), to be assessed by the Tribal Secretary.

30-2.54 FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES

The Tribal Secretary shall charge and collect for:

(1) Filing articles of incorporation and issuing a certificate of incorporation ($20.00);

(2) Filing articles of amendment and issuing a certificate of amendment; ($20.00);

(3) Filing a statement of change of address of registered office or change of registered agent, or both; ($20.00);

(4) Filing articles of dissolution and issuing a certificate of dissolution; ($20.00);

(5) Filing a statement of election to accept this Code and issuing certificate of acceptance; ($20.00);

(6) Filing any other statement or report, including an annual report of a domestic or foreign corporation; ($15.00);

(7) Indexing each document filed, except an annual report; ($5.00);

(8) Furnishing a certified copy of any document, instrument, or paper relating to a corporation; ($5.00, plus per page cost);

(9) Furnishing a certificate as to the existence of a fact relating to a corporation; ($10.00).

The Tribal Secretary 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 Code.

30-2.55 CERTIFICATES AND CERTIFIED COPIES TO BE RECEIVED IN EVIDENCE

All certificates issued by the Tribal Secretary in accordance with the provisions of this Code and all copies of documents filed in his or her office in accordance with the provisions of this Code, 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. A certificate by the Tribal Secretary 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.

30-2.56 FORMS TO BE FURNISHED BY THE TRIBAL SECRETARY

All reports required by this Code to be filed in the office of the Tribal Secretary shall be made on forms which shall be prescribed and furnished by the Tribal Secretary. Forms for all other documents to be filed in the office of the Tribal Secretary shall be furnished by the Tribal Secretary on request therefor, but the use thereof, unless otherwise specifically prescribed in this Code, shall not be mandatory.

30-2.57 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 Code, with respect to such action, the provisions of the articles of incorporation shall control.

30-2.58 WAIVER OF NOTICE

Whenever any notice is required to be given to any member or director of a corporation under the provisions of this Code, 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. Presence without objection also waives notice.

30-2.59 ACTION BY MEMBERS OR DIRECTORS WITHOUT A MEETING

Any action required by this Code 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 of 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. 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 Secretary under this Code.

30-2.60 EFFECT OF INVALIDITY OF PART OF THIS CODE

If a Court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this Code, such judgment or decree shall not effect, impair, invalidate, or nullify the remainder of this Code, but the effect thereof shall be confined to the clause, sentence, paragraph, section, or part of this Code so adjudged to be invalid or unconstitutional.

CHAPTER 31 - KALISPEL TRIBE STATE LOTTERY CODE

SECTION 31-1: KALISPEL TRIBE STATE LOTTERY CODE

31-1.01 TITLE

This chapter shall be known as the Kalispel Tribe State Lottery Code.

31-1.02 PURPOSE

The Tribe has determined that it is desirable to enter into an agreement with the State to allow sales of tickets for the Washington State Lottery at the gas station and convenience store, a Kalispel tribally chartered enterprise, located on the Reservation at 220 South Hayford Road, Airway Heights, 99001. The Tribe may, at its discretion, enter into other agreements with lottery at other enterprise locations on the Reservation.

31-1.03 DEFINITIONS

(1) "Director" means the person appointed by the Governor of the State of Washington to supervise and administer the Washington State Lottery;

(2) "license" means the license issued by the Director for the Tribe or Tribal retail business to sell Washington State lottery tickets.

(3) "Licensee" means the Kalispel Tribe or a Tribal business operating on trust or reservation land of the Tribe;

(4) "Lottery Commission" means the body authorized by the laws of the State of Washington to adopt rules governing the operation of the state lottery;

(5) "RCW" refers to the Revised Code of Washington;

(6) "Reservation" means the Kalispel Reservation together with tribal trust lands located outside theboundaries of the Reservation over which the Tribe exercises governmental authority;

(7) "State" means the State of Washington:

(8) "Tribe" means the Kalispel Tribe, a federally recognized Indian Tribe;

(9) "WAC" refers to the Administrative Code of the State of Washington; and

(10) "Washington State Lottery" or "Lottery" means the lottery authorized by the provisions of Chapter 67.70 of the RCW and as regulated by Title 315 of the WAC.

31-1.04 SIDE LOTTERY OPERATION

The Tribe will not object to the following assertions of concurrent state authority by the State of Washington operating pursuant to its exercise of licensing power pursuant to RCW 67.70 and the implementing state regulations and procedures in regard to the state lottery:

(1) the issuance and revocation of lottery retailer licenses and the regulation of the manner of lottery

tickets sales within the boundaries of the Reservation, pursuant to state law;

(2) state court jurisdiction, with exclusive venue in Thurston County, over state lottery license issues, including Issuance or revocation, the conduct of a lottery retailer, the financial relationship between any licensee and the state lottery and other matters regarding state lottery operation;

(3) jurisdiction of the Director, Washington State lottery, or any lawfully appointed designee thereof, over state lottery administrative disputes, in accordance with Washington State law;

(4) the entry upon trust lands and property including lands owned by the Tribe or its members, by lotteryemployees, including investigators or enforcement officers solely for the purpose of conducting investigations and enforcing the provisions of RCW67.70.

31-1.05 TRIBAL AUTHORIZATION

Any applicant for a lottery license located on the Reservation must obtain approval from the Tribe. The Tribe will consider the request for permission of any applicant who wishes to operate as a Washington State lottery retailer on the Reservation, and the State shall not grant a license to the applicant unless the Tribe grants permission, which permission shall be within the sole discretion of the Tribe. Permission granted by the Tribe for additional retailer subsequent to this ordinance shall be in writing and provided to Washington's Lottery.

31-1.06 SOVEREIGN IMMUNITY

Nothing in this Chapter shall be construed as a waiver of the sovereign immunity from suit of the Tribe or any of its agencies, business enterprises, officers or agents.

CHAPTER 32 - AN ORDINANCE ENACTING REGULATIONS PRESCRIBING PROCEDURES, TERMS AND CONDITIONS UNDER WHICH LEASES UP TO 75-YEARS OF TRIBAL LAND MAY BE GRANTED

BE AND IT IS HEREBY ENACTED by the Business Committee of the Kalispel Tribe of Indians ("Business Committee") pursuant to authority vested in it by Article VI, Section 1 of its Constitution and Bylaws and 25 USC Section 415(b), that the following regulations prescribing procedures, terms and conditions under which certain leases of Tribal lands of the Kalispel Tribe of Indians (°Kalispel Tribe") may be granted are hereby adopted, to-wit:

SECTION 32-1: EFFECTIVE DATE

32-1.01: EFFECTIVE DATE

These regulations shall be in full force and effect upon approval of the Secretary of the Interior or his duly authorized representative or designee ("Secretary").

SECTION 32-2: SCOPE

32-2.01: SCOPE

These regulations shall authorize the Kalispel Tribe, an Indian Tribe reorganized pursuant to Section 16 of the Indian Reorganization Act of 1934, as amended, 25 USC Section 476; its corporations chartered under Section 17 thereof, 25 USC Section 477; or any subordinate organization or Kalispel governmental corporation chartered and duly empowered pursuant to the Law and Order Code of the Kalispel Tribe of Indians, Chapter 17, as amended under Kalispel Resolution No. 2008-02, and approved by the Secretary, to govern and control the leasing of all Tribal lands on the Kalispel Indian Reservation, either in trust, restricted or fee status, for the purpose of public or private, religious, educational, recreational, residential, commercial, industrial and business uses for a period of duration not exceeding seventy-five (75) years (including options to renew).

SECTION 32-3: MANDATORY PROVISIONS

32-3.01: MANDATORY PROVISIONS

All leases under and pursuant to these regulations shall contain the following provisions in substantially the following form:

(1) Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. In the event of such termination, all powers, duties or other functions of the Secretary of the Interior or authorized

representative or designee shall terminate, and the responsibilities for enforcing compliance with the covenants of this lease including those of the Secretary shall be assumed by the lessor or successors in interest. The owners of the land and the lessee and its lease sureties shall be notified of any such change in the status of the land.

(2) The lessee agrees that they will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

(3) Leases granted hereunder may contain provisions that payments of rentals are to be made directly to the lessor.

(4) Direct Payment Arrangement:

(A) Payments must be made in accordance with billing invoice that is mailed approximately 45 days prior to the payment due date

(B) Payments for direct pay owners returned to the leases due to an undeliverable status must be forwarded to the centralized commercial lockbox with evidence of the returned mailing within two business days of receipt.

(C) Advance payments(s) to an owner are prohibited unless a modification to the lease payment schedule has been authorized by the Secretary of the Interior.

(D) The centralized commercial lockbox payment address listed below is for receiving trust and trust related payments on and after February 1, 2010. **This address is for payments only.**

a. Northwest Region Office–BIA
Dept. C152
P.O. Box 1058533
Atlanta, Georgia 30348-5533

SECTION 32-4: RENTAL REQUIREMENTS

32-4.01: RENTAL REQUIREMENTS

No lease shall be granted at less than the present fair annual rental as determined by appraisal, or, in the alternative, at a present fair annual or periodic rental as the Business Committee deems appropriate under all the circumstances then present in regard to said lease; PROVIDED, HOWEVER, any lease made and executed under these regulations to an adult member of the Kalispel Tribe for homesite purposes on residential Tribal lands, or to a Kalispel Tribally chartered housing authority for Indian homesites, and/or any subordinate organization or Kalispel governmental corporation, may be granted for a nominal rental.

SECTION 32-5: BONDS AND INSURANCE

32-5.01: BONDS AND INSURANCE

Each lease granted for business, industrial or commercial uses or organization shall have the performance of the lessee's contractual provisions, in not less than an amount deemed reasonable and prudent by the Business Committee, secured by insurance, bond or other security or undertaking satisfactory to the Business Committee as well as require the lessee to provide insurance or other undertaking in an amount or manner adequate to protect all insurable improvements on the leased premises and to hold harmless and indemnify the lessor from any liability arising from lessee's use and occupancy of the leased premises; provided, that the requirements of this Section may be modified or waived by the Business Committee in the exercise of its business judgment.

SECTION 32-6: SPECIAL LIMITATIONS AND EXCEPTIONS.

32-6.01

No lease shall provide the lessee with any option to renew which would result in the lessee obtaining a leasehold interest by the exercise of successive options for a term in the aggregate of more than seventy-five (75) years.

32-6.02

All leases made and executed pursuant to these regulations shall be for public or private religious, educational, residential, recreational, commercial, industrial or business purposes and uses, grazing purposes, and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops.

32-6.03

No lease shall be made and executed pursuant to these regulations for the exploitation of any natural resource without the approval of the Secretary.

32-6.04

No lease shall contain an option to purchase.

32-6.05

Each lease shall contain a covenant prohibiting a lessee or any number thereof from forming or annexing to a state municipal corporation or authority.

32-6.06

No lease or combination thereof shall work with a divestiture or diminishment of the Tribe's civil regulatory authority and control over said lands and occupants.

SECTION 32-7: RENTAL ADJUSTMENT

32-7.01

Any lease granted hereunder shall, in the sole discretion of the Business Committee, provide for:

(1) a periodic rental adjustment for the purpose of allowing lessor to benefit from increases in the value of the leased premises;

(2) a periodic rental adjustment for the purpose of maintaining the relative purchasing power of the rent contracted to be paid by the lessee to the lessor;

(3) a rental based primarily on percentages of income produced from the leased premises;

(4) a rental based primarily on percentages of income produced from or by sublessees;

(5) a basic rental based upon a fair market rental return for the value of the land and improvements, if any, rented;

(6) any combination of (5) above, and (1) through (4), inclusive.

32-7.02

In the event of a periodic rental adjustment pursuant to paragraph 32-7.01(1) and (5) above, such shall be made only after a determination of a present fair market rental at the time of the adjustment through appraisal conducted by not less than two (2) appraisers who shall be instructed in the consideration of such fair market rental to exclude improvements or developments accomplished by a lessee during the prior term of the lease or the contributive value of such improvements unless they are then the property of the lessor, and, further, in the instance of residential leases shall not be based upon a highest and best use different from that to which the leased premises are committed by the lease.

In the event of a rental adjustment for the purposes of 32-7.01(2) such shall be made by reference and comparison to an appropriate and relevant cost of living index or portions and agreed to by the Business Committee.

SECTION 32-8: ASSIGNMENTS, SUBLEASES, AND ENCUMBRANCES

32-8.01: ASSIGNMENTS, SUBLEASES, AND ENCUMBRANCES

Leases may contain provisions authorizing the lessee or such one's successors in interest to sublease the premises, in whole or in part, assign the same, or encumber the leasehold interest for the purposes of borrowing capital for development or improvement or purchase and sale of the leased premises, including improvements. Such provisions may be with or without approval of the lessor but if without such approval, any sublease, assignment or encumbrance shall not serve to relieve or abrogate any sublessor, assignor or purchaser upon foreclosure from any liability or obligation to perform the terms, conditions and covenants of the original lessee or perform the terms, conditions and covenants of the original or successor lessee under the lease, including that for payment of rent unless the lease expressly

so provides. In the event of any sublease, assignment or encumbrance by lessee or such one's successor in interest of the leasehold interest, the lessor may require notification thereof together with a copy of the sublease, assignment or encumbrance. All leases containing suretyship provisions shall provide that any surety under any bond shall first consent in writing to any sublease, assignment, encumbrance or amendment of the lease before any of such shall be valid and binding upon the lessor. Notwithstanding the provisions of this Ordinance, any lease granted hereunder authorizing the encumbrance of the leasehold interest may contain such provisions necessary to conform to the eligibility requirements for leasehold secured lending as may be now or hereafter be promulgated by FNMA, FHLMC, FHA/HUD and/or VA in the discretion of the Business Committee.

SECTION 32-9: OWNERSHIP OF IMPROVEMENTS

32-9.01: OWNERSHIP OF IMPROVEMENTS

Improvements placed upon the leased premises shall become the property of the lessor upon the expiration of the lease unless specifically excepted therefrom under the provisions of the lease. In the event of such exception, the lease shall specify the maximum time allowed for removal of any improvements so excepted and require restoration of the premises by the lessee.

SECTION 32-10: LEASE FEES

32-10.01: LEASE FEES

The following fees may be charged by lessor to defray costs of lease administration and shall be collected from lessee in addition to legal expense and costs:

a. Original lease set-up fee

$_____

b. Upon assignment, sublease or encumbrance

$_____

c. Upon amendment, extension, modification or other document issued in connection with the lease

$_____

The foregoing fees may be increased or decreased in such amounts as are deemed by the Business Committee appropriate to defray costs of administration of any lease or waived in the discretion of the Business Committee.

SECTION 32-11: VIOLATION OF LEASE PROVISIONS—VENUE

32-11.01

If, in the opinion of the lessor, any term, condition or covenant of the lease has been breached by failure to perform, the lessee shall be notified of such claimed breach and given the time prescribed by the lease after transmittal or receipt of such notice in which to perform and cure the same if the breach is capable of cure. A copy of such notice shall be similarly transmitted to any surety on the bond. Failure to remedy the claimed breach may be cause to declare the lease terminated and canceled and lessor may thereafter proceed to avail itself of such remedies as provided by law and/or by the provisions of the lease. The lessee in all leases shall consent to jurisdiction and venue of any lease enforcement action brought by the lessor being laid in any court of competent jurisdiction. Provided, however, nothing herein shall prevent lease provisions providing for the mediation or arbitration of disputes.

32-11.02

Nothing herein contained shall be construed to deprive the Kalispel Tribe of the right, at its option, to request the United States to enforce any lease entered into under and pursuant to these regulations or to bring any action for breach of any such lease by a lessee in the federal courts, nor shall these regulations be construed as an expression of intention of the Congress of the United States and of the Kalispel Tribe of Indians to abrogate the trust responsibility of the United States over lands to be leased hereunder held by it in trust for the Kalispel Tribe, nor shall the adoption and implementation of these regulations be deemed to exclude the right of the Kalispel Tribe, should it deem fit to lease Tribal lands pursuant to other laws and regulations now enacted or hereafter amended, should such allow it to do so.

32-11.03

Nothing herein contained shall be construed or interpreted to have either waived the sovereign immunity of or be deemed a consent to be sued by the Kalispel Tribe, whether acting in its governmental or proprietary capacity; provided, however, total or partial waivers of sovereign immunity and/or consent to be sued may be contained in any lease entered under the authority of this Ordinance and Regulation.

SECTION 32-12: COMPATIBILITY TO COMPREHENSIVE PLAN AND LAND USE/BUILDING CODES

32-12.01: COMPATIBILITY TO COMPREHENSIVE PLAN AND LAND USE/BUILDING CODES

No lease shall be granted unless the use to which the leased premises will be utilizing and improvements to be constructed are in conformance and compliance with the Comprehensive Land Use Plan of the lessor, its zoning and subdivision ordinances and its building and other applicable codes. In the event there exists no valid Tribal ordinance regulating the aforesaid subject matters, the otherwise appropriate and relevant ordinances and codes of the County of Pend Oreille and/or the County of Spokane, shall be

applicable.

SECTION 32-13: ENVIRONMENTAL IMPACTS

32-13.01: ENVIRONMENTAL IMPACTS

No lease shall be made or executed pursuant hereto until the Business Committee has considered the environmental aspects thereof; considered the relationship of the use to neighboring lands; the height, quality and safety of any structures or other facilities to be constructed on the leased lands, including but not limited to the operational effects from structures and facilities so erected and the availability of a judicial forum for all civil and criminal causes arising on the leased lands. Such review shall be conducted by the appropriate Tribal staff which shall report thereof to the Business Committee prior to their execution and signing of any lease made hereunder.

SECTION 33-1: GENERAL PROVISIONS

33-1.01: TITLE

This Chapter shall be known as the Land Use and Development Code.

33-1.02 PURPOSE AND INTENT

The purpose of this Code is to safeguard and promote, through the Kalispel Tribe's inherent authority, the peace, health, safety and general welfare of the Kalispel Tribe and its people, as well as the surrounding community; to ensure sustainable land use decisions for future generations through strategic planning and consistent development standards; to promote and preserve the unique character, identity and cultural integrity of existing development and the Tribe's presence; to provide certainty and stability in land use decision-making and investment that is consistent with adopted master plans, design guidelines, comprehensive plans, and other guiding principles adopted by the Tribe; to facilitate economic opportunity and diversity; and to incorporate a holistic and balanced approach to future planning and development.

33-1.03 APPLICABILITY

This Kalispel Tribe Land Use and Development Code applies to all construction and development occurring on or after the 21st day of October, 2014, on Kalispel Indian Reservation lands, except for residential projects on Reservation lands in Pend Oreille County, Washington.

A land use code for residential projects on Reservation lands in Pend Oreille County, WA shall take into account the rural nature of this part of the Reservation. Chapter 34 of the Kalispel Tribe Law and Order Code shall be reserved for the future development of applicable code for residential projects on Reservation lands in Pend Oreille County.

33-1.04 SOVEREIGN IMMUNITY

The sovereign immunity of the Kalispel Tribe is not in any way waived or limited by this Code, or by any civil suit commenced pursuant to this Title. Such sovereign immunity shall extend to the Tribe, its Tribal Business Committee, its corporations chartered under Section 17 of the Indian Reorganization Act of 1934, 25 USC Section 477, any subordinate organization or Kalispel governmental corporation chartered and duly empowered pursuant to Chapter 17 of the Kalispel Tribe Law and Order Code, as amended, and all Tribal officials, employees, staff, and agents, as to all actions taken in, or concerning, the administration or enforcement of this code, and as to all actions taken pursuant to authority of any Tribal Court order authorized by this code.

33-1.05 RIGHT OF INTERPRETATION

Any difference in interpretation or application of these regulations, including the precise boundaries of any sub-area plan or Military Influence Areas, shall be resolved by the Tribal Business Committee (or it's designee), subject to the procedures established by the remainder of this Code.

33-1.06 LEASING AUTHORITY

Section 32-2.01 of the Kalispel Tribe Law and Order Code provides the legal authority for the Kalispel Tribe; its corporations chartered under Section 17 thereof, 25 USC Section 477; or any subordinate organization or Kalispel governmental corporation chartered and duly empowered pursuant to the Law and Order Code of the Kalispel Tribe of Indians, Chapter 17, as amended under Kalispel Resolution No. 2008-02, and approved by the Secretary, to enter into lease agreements for property on the Reservation.

33-1.07 SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this Code is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion(s) shall be deemed separate, distinct, and independent provision(s), and such holding shall not affect the validity of the remaining portions of the Code.

33-1.08 DEFINITIONS

For the purposes of this Code, certain words and terms are defined herein. The word "shall" is always mandatory. The word "may" or "should" is permissive, subject to the judgment of the Tribe or its authorized designee. The present tense includes the future, and the future the present. The singular includes the plural, and the plural the singular.

The following definitions shall only apply to the Land Use and Development Code. Terms not specifically defined below shall use definitions available in the Kalispel Law and Order Code.

(1) "Construction and Development Permit" is a permit required for new construction or a change to an existing building or project resulting in more than 100 square feet of new construction.

(2) "Construction" is the clearing, dredging, excavating, and grading of land and other activity associated with buildings, structures, or other types of real property such as bridges, dams, roads.

(3) "Decibel" or "dB" is the measure of sound pressure or intensity.

(4) "Development" is the process of adding improvements to a parcel of land, such as grading, subdivisions, drainage, access, roads, buildings, and utilities.

(5) "Gross Floor Area" is the total square feet of all floors and habitable interior spaces of a given structure or defined project area, including all stories, basements, mechanical rooms, and enclosed

patios but excluding roof space not developed for the use of or accessible by tenants, occupants, or the general public.

(6) "Interior Noise Level" is the average level of noise expressed in decibels (dB) experienced in any habitable room with exterior windows and doors closed.

(7) "Kalispel Development Company" is a Tribally-chartered enterprise, devoted to development ofReservation lands for retail, commercial, industrial, and other uses, or improvement.

(8) "Kalispel Development Review Board (KDRB)" is comprised of representation from the Tribe's Planning and Public Works Department and the Kalispel Tribal Economic Authority (KTEA). An at-large Tribal Business Committee Member may sit on this review board. Additionally, other local public officials or community members may be granted representation on KDRB when it is deemed appropriate by the Tribal Business Committee. The KTEA Board will be responsible for appointing individuals representing the departments listed above to the KDRB pursuant to Kalispel Tribal Business Committee Resolution 2015-02.

(9) "Ldn" is a day-night average noise level which serves as a basic measure for quantifying noise exposure, namely the A-weighted noise level averaged over a 24-hour time period, with a 10 decibel penalty applied to nighttime (10:00 PM to 7:00 AM).

(10) "Noise Contours" is a geographic interpolation of Aviation Noise Contours as established by the2010 Fairchild Air Force Base Joint Land Use Study.

(11) "Performance Zoning," in contrast to traditional zoning, performance zoning allows different uses to co-locate within a zone as long as the development achieves specified performance criteria and planning goals. In lieu of regulating land uses, performance zoning establishes neighborhood compatibility, transportation, open space and other standards that developments must meet.

(12) "Reservation" means the Kalispel Indian Reservation as set apart by Executive Order of March 23, 1914, and all other lands, wherever located, owned by the Kalispel Tribe of Indians, including lands held in fee, or any interest in lands held by the Tribe, whether or not such lands or interests are held in trust for the Tribe by the United States, and any lands, wherever located, held in trust by the United States for a member or members of the Kalispel Tribe of Indians unless located on another Federally Recognized Indian Tribe's Reservation and having already been determined by the Federal Government to be in "reservation" status as to a Tribe other than the Kalispel Tribe of Indians. All waterways, roadways, rights of way, public lands, lakes and streams located on the above described lands held by the Tribe or its members are considered Reservation lands, subject to applicable

federal and Tribal laws and regulations. (Kalispel Law and Order Code Section 1-2.03)

(13) "Residential projects" refers to the construction, maintenance, or development of single-family detached and duplex residences, attached or detached multi-family residential developments withfewer than 5 units, manufactured or mobile homes, outdoor and indoor storage, temporary residences, or agriculture.

(14) "Substantial Completion" is the stage in construction/renovation of a project wherein the construction of a building or project is completed with all windows, doors, walls, treatments, mechanical equipment, facilities, utilities, paving, parking, etc. in place such that a determination ofthe occupancy requirements of this Code can be determined.

(15) "Tribal Fee Property" are those lands owned by the Tribe directly; title of ownership is not held bythe federal government.

(16) "Tribal Trust Land" are those lands held by the federal government in trust for the Kalispel Tribe.

SECTION 33-2: PERMIT PROCEDURES

33-2.01 LAND USE PERMIT

Permits shall be issued by the Kalispel Development Company on behalf of the Kalispel Planning and Public Works Department. All proposed construction and developments requiring permit approval (Tiers I, II, or III) shall submit a complete land use permit application to the Kalispel Development Company. Three (3) complete sets of plans shall be submitted with a complete application for any project as well as any additional information required to determine consistency with this Code. In order to expedite and better understand the review process, it is recommended that applicants contact the Kalispel Development Company prior to submitting a complete application to discuss the proposed project. This may be accommodated through an in-person pre-development conference or through other forms of communication. Land use permit applications are available during regular business hours at the offices of the Kalispel Development Company.

33-2.02 REQUIRED SUBMITTALS FOR PERMIT REVIEW

Applicants shall supply adequate plans and specifications for proposed developments to ensure the requirements of this Code would be met, including but not limited to:

(1) Site Plan demonstrating compliance with Section III (Performance Zoning);

(2) Lighting Plan (if applicable);

(3) Construction/Improvement Plans;

(4) Landscaping Plan (if applicable);

(5) Geotechnical Analysis (if applicable);

(6) Transportation Impact Analysis; and

(7) Other Plans As Deemed Necessary

33-2.03 APPROVAL AUTHORITY FOR PERMITS

All construction and development permit applications required by this Code will be reviewed and approved by the Kalispel Tribe. There are three (3) tiers of review authority, as follows:

(1) Tier I – projects that are less than 5,000 square feet in gross floor area (GFA). Tier I applications are reviewed administratively by the Kalispel Development Company, acting on behalf of the Kalispel Tribal Economic Authority ("KTEA"). The Kalispel Development Company can escalate Tier I approvals to Tier II or Tier III at its discretion.

(2) Tier II – projects that are between 5,000 and 100,000 square feet in GFA. Tier II applications are reviewed by the Kalispel Development Review Board (KDRB). The KDRB can escalate Tier II approvals to Tier III at its discretion.

(3) Tier III – projects that are greater than 100,000 square feet in GFA in size. Tier III applications are reviewed by the Tribal Business Committee or its designee.

33-2.04 PERMIT REVIEW

Once a complete application has been received by the Kalispel Development Company, the Tribe will work toward an expeditious review and approval/disapproval of a land-use permit. For Tier I and Tier II applications a decision will be made within 30 calendar days. For Tier III applications, a decision will be rendered within 45 calendar days. The Tribe will make an effort to review all applications as expeditiously as possible and will aim to comply with the above timeframes. However, it is understood that occasionally, due to unforeseen circumstances, such review times may exceed these timeframes.

(1) Environmental Analysis. Any consideration for a permit under this Code will include environmental analysis and consideration required by Chapter 32 of the Kalispel Tribe Law and Order Code.

(2) Utility Connections. It is the responsibility of the applicant to secure approval from service and utility providers for its project. A "will-serve" letter will be required by the Tribe from any service/utility provider prior to final approval of any land use permit. Confirmation of approval from local providers will be required prior to the issuance of a certificate of occupancy.

(3) Construction Plan Review. Upon receipt of approval of the land-use permit, the applicant shall contract with a qualified individual/firm (as determined by the Tribe) or local municipal building department, at its sole cost to conduct plan review, and no work shall be undertaken unless and until Applicant shall have sufficiently demonstrated compliance of the requirements listed in Section 33-4.01 and Section 33-6 (if applicable).

(4) Traffic Impact Review. The applicant shall contract with a qualified individual/firm (as determined by the Tribe), at its sole cost, to prepare reports demonstrating that traffic impacts will not cause levels of service to fall below accepted levels, and if such levels are impacted, propose mitigation to ensure levels of service are maintained.

(5) Inspections. Applicant shall contract with a qualified firm (as determined by the Tribe) or local municipal building department, at its sole cost, to conduct periodic inspections of the improvements during construction, in accordance to all requirements listed in Section 33-4.01 and Section 33-6 (if applicable). Phased occupancy may be permitted, so long as Applicant shall have obtained the equivalent of a temporary certificate of occupancy for the space to be occupied. Applicant shall, upon substantial completion of construction of all improvements, deliver to the Tribe the equivalent of a final certificate of occupancy (replacing all temporary certificates of occupancy) issued by a qualified and certified inspection agency in a form acceptable to the Tribe in its reasonable discretion.

(6) Project Completion. Following substantial completion of the project, and prior to tenant occupancy, the Tribe will conduct a site visit. If the completed project complies with all approved plans and any conditions of approval, the Kalispel Development Company will issue a certificate of occupancy to the applicant. Occupancy is not permitted until the certificate of occupancy is issued.

33-2.05 PERMIT APPEALS

Tier I determinations may be appealed by the project proponent to the KDRB. Tier II determinations may be appealed to the Tribal Business Committee; decisions made by the Tribal Business Committee are final and cannot be appealed. These appeals are limited to the decisions made as part of the proceedings for Tier I or Tier II consideration of an application and not the specific requirements of this Code. Tier III determinations are final and cannot be appealed.

33-2.06 EXCEPTIONS TO PERMIT PROCEDURES

Exceptions to the permit procedures in Section 33-2 may be granted by the Kalispel Business Committee (or its designee) upon a showing that the project shall safeguard and preserve the health, safety, and general welfare of the Tribe, its people, the Reservation, and the surrounding community.

33-3.01 ENFORCEMENT OFFICER

The Executive Director of the Kalispel Planning and Public Works Department, or his/her designee, shall be the Enforcement Officer of the Land Use and Development Code.

33-3.02 ENFORCEMENT OF LAND USE AND DEVELOPMENT CODE

(1) Use of any property, building or structure erected subsequent to the enactment of this Code without a valid land use permit and certificate of occupancy shall be deemed a violation of this Code.

(2) An individual or entity shall be deemed in violation of this Code if any of the following occurs:

(A) Any use, occupancy, or completion of work upon land or a structure in violation of this Code, or without, or in violation of, a permit required by this title and/or any applicable requirements in the lease agreement;

(B) Violation of any condition or mitigation requirement of a permit; or

(C) Violation of any provision of this Code.

(3) The Enforcement Officer shall be responsible for the necessary inspection and investigation of a property, building, or structure to assure compliance with this Code. The Enforcement Officer is also responsible for documenting the presence of violations and issuing administrative enforcement orders.

(4) The penalty for a violation may be monetary penalties, the revocation of a permit or certificate of occupancy, or both.

(5) An individual or entity receiving an administrative enforcement order shall be provided 30 days to correct the violation. If the violation is believed to be causing harm to the community or jeopardizing the health and safety of any person or the community, the Enforcement Officer shall have the discretion to order a time frame of correction of less than 30 days.

(6) An individual or entity who received an administrative enforcement order and failed to correct the violation within the time frame shall be subject to the penalties outlined in the order. The Enforcement Officer shall have the discretion to designate when fines will begin accruing for a violation. The Enforcement Officer shall also have the discretion to waive fines.

33-3.03 ADMINISTRATIVE ENFORCEMENT ORDER

(1) In the event of a violation, the Enforcement Officer shall issue an administrative enforcement order.

(2) All administrative enforcement orders must be served personally, or by certified mail, return receipt

requested. Service by mail shall be deemed completed three days after mailing.

(3) All administrative enforcement orders shall include the following information:

(A) The name, address, and phone number of the individual or entity, to whom the violation is directed;

(B) The address of the building, structure, or lot where the violation occurred;

(C) A statement from the Enforcement Officer finding that a violation of the Land and DevelopmentCode had occurred, a description of the violation (including references to applicable Land and Development Code sections), and the date, time, and place the infraction occurred.

(D) The action required to be taken by the individual or entity to correct the violation. The actions may include the following:

(i) Cease such use, occupancy, and/or work upon land and/or a structure, and/or such violation;

(ii) Not lease or occupy any property without an approval required by this Code; and/or

(iii) Remediate any adverse environmental effects of such construction, development, use or occupancy of land, and/or violation. Such order may also require compliance with any condition or mitigation requirement or any permit approval.

(E) The date by which the violation must be corrected.

(F) One or both of the following:

(i) A statement of the penalties imposed for failure to correct the violation by the specified date. The penalties may be monetary penalties, the revocation of a permit or certificate of occupancy, or both. The date upon which penalties begin to accrue will be clearly stated on the order.

(ii) If remediation is required and is not completed by the specified date, a statement regarding the Tribe's right to remediate and require reimbursement from the individual or entity to whom the violation is directed.

(G) A statement informing the individual or entity of their appeal rights, as outlined in this Chapter.

(H) Any additional information determined by the Kalispel Business Committee or KDRB to be necessary.

33-3.04 MONETARY PENALTIES AND REMEDIATION

(1) Monetary Penalties: Monetary penalties in the amount of up to $250 per day, per violation may be

ordered by the Enforcement Officer for violations of this Code. The administrative enforcement order shall clearly state when the fines will begin accruing.

(2) Schedule of Monetary Penalties: A schedule of monetary penalties may be prepared and approved by the Tribal Business Committee, or its designee. This schedule shall be made public and may be revised at the discretion of the Tribal Business Committee.

(3) Remediation: If the alleged violator's construction, development, use, or occupancy of land is creating an adverse environmental effect, the Tribe has a right to expend its own funds to remedy theviolation. In this situation, the individual or entity responsible for the violation must reimburse the Tribe for the expenditure within a time period determined by the Tribe. The cost of remediation shallbe separate from monetary penalties.

33-3.05 REVOCATION OF PERMIT OR CERTIFICATE OF OCCUPANCY

Revocation of a permit or certificate of occupancy may be ordered by the Tribe for violations of this Code.

Grounds for revocation of a land use permit or certificate of occupancy shall be limited to violations of the terms and conditions of the permit, and/or violation of provisions of this Code, regarding the subject matter for which the permit is issued.

33-3.06 OTHER REMEDIES

The Tribe may seek enforcement of any and all parts of this Code by court actions seeking injunctions, restraining orders, or other lawful action as is necessary to prevent or remedy any violation.

33-3.07 APPEALS TO KDRB

(1) An appeal to the KDRB is the exclusive remedy for an individual or entity to dispute any part of an administrative enforcement order.

(2) The individual or entity cited for a violation may appeal the administrative enforcement order by filing a written notice of appeal to the KDRB within 30 calendar days of service of the violation. The notice of appeal must include the appellant's name and contact information, a copy of the notice of violation, and a statement regarding the basis for the appeal.

(3) The KDRB may request documentation from the appellant, the Enforcement Officer, and other entities which may have pertinent information.

(4) The KDRB will hold a hearing within 30 calendar days after receiving all requested documentation. The time to hold a hearing may be extended if necessary, but may not exceed 60 calendar days.

Notice of the hearing shall be given to the appellant and Enforcement Officer no less than 5 business days prior to the hearing. Notice of the hearing to the appellant shall be via personal service or certified mail, return receipt requested, to the address provided by the appellant.

(5) The appellant must appear and present his or her case at the hearing. The appellant shall bear the burden of proof that the Enforcement Officer's decision was not in accordance with, or was in violation of this Chapter. Attorneys are not allowed at hearings with the KDRB.

(6) The KDRB may allow testimony from witnesses and cross-examination by parties. The KDRB shall have authority to administer oaths, and all testimony shall be under oath.

(7) All hearings shall be recorded via audio recorder or stenographic means.

(8) The KDRB shall issue a written decision within 30 calendar days of the conclusion of the hearing. The KDRB may reverse, affirm (wholly or partly), or modify a notice of violation and/or the penalties issued. The KDRB may not award damages separate from those identified in this Section (Section 33-3), including but not limited to attorney fees. The written decision shall be mailed to theappellant and Enforcement Officer by certified mail, return receipt requested.

33-3.08 APPEALS TO THE TRIBAL COURT

(1) Any decision made by the KDRB should be considered a final and conclusive decision, unless a party with standing appeals the decision to the Kalispel Tribal Court.

(2) Appeals from a KDRB final decision shall be heard by the Kalispel Tribal Court under the laws of the Kalispel Tribe. A party must file a written notice of appeal within 30 calendar days of the KDRB ruling.

(3) De novo review by the Tribal Court is not permitted. Appeals shall be limited to a review of the evidence before the KDRB.

(4) The Tribal Court shall set aside the decision of the KDRB only if it finds the decision to be: a) unsupported by evidence; b) arbitrary and capricious; or c) an abuse of discretion by the KDRB.

(5) The Tribal Court may not award damages separate from those identified in this Section (Section 33-3), including but not limited to attorneys fees.

SECTION 33-4: BUILDING CODES

33-4.01 BUILDING CODE AND RELATED PLANS

The Tribe adopts and incorporates by reference the following building codes and standards (as amended from time to time) as if set out in full as a part of the Land Use and Development Code. All new

construction and development located on the Kalispel Indian Reservation shall be designed and built consistent with the version of the following Building Codes and Plans which are in effect as of the date a permit application is filed with the Kalispel Development Company.

Determination of the adherence to and consistency with these codes of any given project or development is the sole right and responsibility of the Tribe. The Tribe reserves the right to waive or exempt projects from building codes and standards pursuant to Section 33-2.07 of this Chapter.

(1) The International Building Code, Standards, and amendments adopted by the State of Washington and referenced within Washington Administrative Code (WAC) 51-50, together with Appendix J, the Washington State Building Code Council amendments, and the applicable references to the National Fire Protection Association (NFPA) and all adopted amendments thereof.

(2) The International Residential Code, Standards and amendments, as adopted by the State of Washington and referenced within WAC 51-51.

(3) The International Mechanical Code, Standards and amendments, as adopted by the State of Washington and referenced within WAC 51-52.

(4) The International Fire Code, Standards and amendments, as adopted by the State of Washington and referenced within WAC 51-54A.

(5) The International Plumbing Code, Standards and amendments, as adopted by the State of Washington and referenced within WAC 51-56.

(6) The Kalispel Tribe Comprehensive Plan.

(7) Any applicable Kalispel Tribe sub-area Master Plans

(8) Other federally mandated standards and regulations that are required by the Tribe.

SECTION 33-5: PERFORMANCE ZONING

33-5.01: DESCRIPTION AND INTENT

A Site Plan shall be required for all construction and development permits which shall illustrate compliance with the Performance Measures of this section. Review and approval of a Site Plan shall be the sole authority of the Tribe. Through the application of performance zoning, the Tribe hopes to encourage development that embraces the Tribe's vision, is compatible with the existing built environment, promotes any master plans for the area, and is culturally and architecturally appropriate. The Tribe encourages different uses to co-locate within an area as long as the development meets the Tribe's land use goals. The Tribe encourages compatibility, multi-modal transportation, open space,

superior design and other standards that result in sustainable development.

33-5.02: PERFORMANCE MEASURES

(1) Compatibility with Adopted Master Plan(s). Proposed uses, site designs, circulation, and other characteristics shall be consistent with the area's master plan. Deviations from the master plan may be deemed acceptable as long as the proposed deviations do not undermine or circumvent the overall vision and stability of the master plan.

(2) Site Plan Integration. Development of diverse, walkable, compact, vibrant, mixed-use spaces assembled in an integrated and sustainable manner is highly encouraged. This development approach results in thriving communities that provide diverse housing, work places, shops, entertainment, open space, and civic facilities essential to the daily lives of the residents and visitors, all an easy commute of each other.

(3) Design. All new construction shall incorporate appropriate uses, site designs, architectural standardsand other defining characteristics that complement and enhance the existing developments located within the overall property. To facilitate a better understanding of the Tribe's architectural design expectations, please refer to the Tribe's Design Guidebook. This Guidebook is available for review at the offices of KTEA.

(4) Transportation Systems. New development should allow for multiple modes of transportation on site with access to surrounding infrastructure, accounting for pedestrian, bicycle, vehicular and public transportation. The use of wide sidewalks, designated pedestrian/bicycle paths and facilities throughout the site, well-lit public areas, and limited conflict between vehicles and pedestrians/bicyclists is highly encouraged. Developments should allow for current and future connectivity through construction of such facilities as part of the development of their project. Connectivity should encourage vehicular, pedestrian, and bicycle modes and should follow the general connectivity described within the overall master plan if applicable. Secondary access should be provided whenever possible and feasible to allow access for emergency services.

(5) Sustainability. All new development shall be developed in a sustainable manner. Sustainable measures may include building construction methods (e.g., LEED certification), site design methods (e.g., indigenous landscaping, use of pervious landscapes), and uses that promote sustained economies, environmental protection and social benefits.

(6) Cultural Appropriateness. The Kalispel Tribe has a strong connection to its culture and heritage. To help promote this identity, all new development should incorporate measures that complement this

heritage. Design standards including materials, colors, landscaping, lighting, use of water features and other artistic measures should all be an integral component of development.

SECTION 33-6: AVIATION OVERLAY

33-6.01 PURPOSE AND INTENT

The Tribe establishes this chapter to accommodate special circumstances that occur within the vicinity of airports and to discourage incompatible uses near Fairchild Air Force Base ("Fairchild AFB"). The following standards and requirements have been formulated consistent with the goals, policies, and traditions of the Kalispel Tribe and informed by and based on the recommendations presented in the Fairchild AFB 2010 Joint Land Use Study. Fairchild AFB has identified aviation operational characteristics that are unique and necessitate a modified approach to the regulation of nearby land uses, including those developed by or for the Kalispel Tribe.

33-6.02 APPLICABILITY

The following standards apply to land within the Kalispel Indian Reservation declared by the Tribe to be within an "Airport Overlay Zone" (see **Figure 1**). The Airport Overlay Zone serves as an overlay district that applies additional standards and requirements to properties located within any and all underlying zoning designations or standards.

(1) Conflicts. Where any conflict may exist between the standards of the overlay zone or the underlying zone, the most restrictive requirement applies.

(2) Approval. Final approval of any permit within the Airport Overlay Zone shall include a determination by the approving body (see Section 33-1.05 above) that the proposed use will not result in negative impacts to Fairchild AFB and that the proposed project meets or exceeds the standards presented in this Chapter.

33-6.03 ACCIDENT POTENTIAL ZONES (APZs)

(1) APZs are described by the Fairchild Air Installation Compatible Use Zone Study (AICUZ) for the purpose of restricting land uses which may be hazardous to the operational safety of Fairchild AFB aircraft or, conversely, may threaten the safety of the occupants on underlying land uses. Three APZs are established by the AICUZ, as follows:

(A) Clear Zone. The Clear Zone at each end of the Fairchild runway extends 1,500 feet on eachside of the runway centerline (for a total of 3,000 feet) for a length of 3,000 feet outward from the runway threshold. The Clear Zone does not occur on the Kalispel Indian Reservation.

(B) Accident Potential Zone I (APZ I). APZ I is 3,000 feet wide, centered on the extended centerline

of the runway and extending from the outermost edge of the clear zone for a length of 5,000 feet. APZ I does not occur on the Kalispel Indian Reservation.

(C) Accident Potential Zone II (APZ II). APZ II is 3,000 feet wide, centered on the extended centerline of the runway and extends from the outermost edge of APZ I for a length of 7,000 feet. APZ II does not occur on the Kalispel Indian Reservation.

(2) Land Use Restrictions in APZs. At the time of enactment of this Chapter, the Tribe holds no lands located within the APZs. Therefore, no special restrictions upon land uses as a result of APZs or their influence is required.

33-6.04 HEIGHT RESTRICTIONS

(1) General. The Department of Defense Unified Facilities Criteria (UFC) 3-260-01, as may be amended from time to time, is hereby adopted and incorporated by reference as if set out in full herein as the law of the Tribe. Structures may not be constructed, altered, or maintained which would penetrate military airspace nor may vegetation be allowed to grow into or project into military airspace established by the UFC 3-260-01. As part of any approval by the KDRB or Tribal Business Committee, it shall be shown that no proposed structure would violate this airspace and, if required, conditions of approval shall be applied to require maintenance of vegetation to prevent its growth into this airspace.

(2) Imaginary Surfaces. Federal Aviation Regulations (FAR) Part 77 and the standards of United Facilities Criteria 3-260-01, as may be amended from time to time, is hereby adopted and incorporated by reference as if set out in full herein as the law of the Tribe. No structure or vegetation shall be constructed or allowed to grow above the height requirements established by FAR Part 77 and known generally as "Imaginary Surfaces," for either Fairchild AFB.

(3) Exceptions

(A) General Exception. An exception to height restrictions of this section may be granted to a proposal for improvements that would exceed the Part 77 imaginary surfaces only if an applicant provides to the Tribe the following:

(i) An indication in writing from Fairchild AFB that the proposed improvement will not adversely affect current or future military operations; AND

(ii) Written proof that the applicant has complied with the Federal Aviation Administration (FAA) Form 7460-1 review process (Notice of Proposed Construction or Alteration), including documentation from the FAA that the review process is complete and that the FAA

has no objections to the proposed development.

(B) Aviation and/or Navigation Exception. An exception to the height restrictions of this section may be granted if either of the following criteria is met:

(i) The improvement is an air navigation facility, airport visual approach or landing aid, or meteorological device of a type approved by the FAA.

(ii) The improvement is a military service and support improvement, with a fixed location and height which are necessary and incidental to base operations as certified in writing by Fairchild AFB.

33-6.05 MILITARY INFLUENCE AREAS

Military Influence Areas (MIA) are hereby established by the Tribe as integral components of the Airport Overlay Zone. Kalispel Reservation lands within MIAs is subject to the regulations specified in this section as well as any other regulations adopted by the Tribe for the land, as described in this Code. For those properties which underlie more than one MIA, only that portion of the property that underlies a given MIA shall be subject to the special requirements of that area.

(1) Established MIAs. The following MIAs are established by this Code, described generally herein and depicted on **Figure 1** of this Code.

(A) MIA 1. MIA 1 encompasses the entirety of Spokane County and indicates areas within which actions by the County and/or Cities and towns may have some impact on Fairchild AFB. No special regulations or requirements are established within this area.

(B) MIA 2. MIA 2 encompasses an area within 5 miles of the Fairchild AFB runway and indicates the area over which military flights are common. Land use decisions within this area include coordination with the Joint Land Use Study (JLUS) Commission (see Section 33-6.06(2) below). The Kalispel Tribe participates in the JLUS Commission on a regular basis.

(C) MIA 3. MIA 3 is an area wherein land uses and development densities may begin to have the potential to adversely impact Fairchild AFB operations. This MIA applies land use restrictions and use densities to protect the health, safety, and welfare of the general public and assure that uses will not conflict with Fairchild AFB operations and prevent concentrations of people in harm's way. The shape of MIA 3 corresponds to the 65-70 Ldn noise contour of Fairchild AFB, which is itself based on an evaluation of military aircraft over flight patterns using Scenario 3 of the Fairchild AFB Joint Land Use Study.

(D) MIA 4. MIA 4 is similar in nature to MIA 3; however it corresponds with the 70 Ldn and greater

noise contour of Fairchild AFB. As such, more restrictive requirements apply within the MIA 4 area, as described below. The shape of MIA 4 corresponds to the 70 Ldn noise contour of Fairchild AFB, which is itself based on an evaluation of military aircraft over flight patterns using Scenario 3 of the Fairchild AFB Joint Land Use Study.

(2) Compatible Uses and Density. This section specifies uses and densities allowed within the MIAs as illustrated in **Figure 1**. For the purposes of this subsection, net density shall be calculated by dividing the building code occupancy of all structures on Reservation land within the MIAs by the acreage of Reservation land within the MIAs, not including property that has been dedicated as right-of-way. The use and density restrictions are as follows:

(A) Residential. Residential uses are permitted within MIA 3 provided that the remaining requirements of this section are met, including noise attenuation and occupant notification. Residential uses are not permitted within MIA 4.

(B) High-Intensity Non-Residential Uses. High-intensity uses are permitted within MIA 3 and MIA 4 provided that they do not exceed 180 persons per net acre. Examples of high-intensity uses may include religious institutions, theaters, auditoriums, arenas, concert halls, amphitheaters, meeting halls, gymnasiums, skating rinks, bowling alleys, arcades, community centers, universities and colleges, museums, public libraries, funeral homes, outdoor spectator sports, racetracks and speedways, amusement parks, water feature parks and facilities, campgrounds, fairgrounds, circuses, carnivals, eating and drinking establishments, farmers markets, retail sales and services, shopping centers, hotels, motels, auction events, offices, businesses with a large number of employees, bus and rail passenger terminals, and mass shelters.

(i) Notwithstanding any other provision in this section, non-aviation related museums, libraries, racetracks, hotels, motels, resorts, group camps, non-aviation related colleges and universities, participant sports and recreation, amusement parks, recreational vehicle parks, entertainment uses, cultural facilities, public assembly facilities (concert halls, theaters, stadiums, amphitheaters, arenas, community centers, churches, and similar facilities) are not permitted within MIA 3 or MIA 4.

(C) Low-Intensity Non-Residential Uses. Low-intensity non-residential uses are permitted within MIA 3 and MIA 4 provided that they do not exceed 180 persons per net acre. Examples of low-intensity non-residential uses include agricultural uses (that do not attract wildlife that may be hazardous to aircraft operations); kennels; animal clinics; sales of motorcycles, automobiles, trucks, marine craft, manufactured homes, and recreation vehicles; commercial parking; quick

vehicle service; maintenance and repair shops; towing services; taxicab terminals; wholesale sales; ministorage; warehouses; non-labor intensive manufacturing; printing and publishing; cemeteries; trails; rail lines; roads; and underground utilities.

(D) Critical Community Infrastructure. Critical community infrastructure includes facilities whereby damage or destruction of which would cause significant adverse effects to public health and welfare within or beyond the immediate vicinity of the facility. Examples include police stations, fire stations, emergency communication facilities, power plants, and wastewater treatment facilities. Critical community infrastructure is permitted within the MIA 3 and MIA 4.

(E) Hazardous Uses. Hazardous uses are those that release discharge into the air such as smoke, steam, or particulates that may impair pilot visibility, uses that require the storage of large quantities of hazardous materials that have the potential to exacerbate an aircraft accident, or uses that attract wildlife hazardous to aircraft operations. Hazardous uses are permitted within MIA 3 and MIA 4, provided the consultation requirement of this Chapter is adhered to (Section 33-6.06(2) below).

(3) **Noise Attenuation**. For any new structures constructed within MIA 3 or MIA 4, the project proponent shall provide documentation and construction standards that would ensure that interior noise levels will not likely exceed 45 dB.

(A) Exemptions. The following uses are exempt from this requirement:

(i) Industrial uses; and

(ii) Storage, basements, corporate yards, infrastructure, and/or utility uses that are not generally occupied for long periods of time.

If a portion of an exempt use will be occupied for lengthy periods of time in a given day, such as offices incorporated into industrial land uses, the reduction standard for new structures shall apply for those areas only.

(B) The building permit application for a structure subject to this Section shall include such additional information as deemed necessary specifying noise reduction features and materials necessary to achieve the required noise reduction. Information regarding noise reduction features and materials shall be prepared and certified by a Washington State registered engineer, architect, or acoustical expert recognized by an acoustical design-related association.

(C) Upon completion of construction and prior to issuance of a certificate of occupancy, the project proponent's inspector shall submit to the Tribe a signed certification specifying that the required

noise reduction features and materials have been completed/installed in substantial conformance with the approved construction documents

(4) **Reconstruction, Remodeling, or Additions**. The noise reduction required of new structures shall apply to reconstruction, remodeling, or additions to existing structures when the value of the improvements equals or exceeds 50 percent of the value of the existing structure as specified by the Spokane County Assessor or other Tribe approved source. This does not apply to structures that have been damaged by misfortune or act of God and which will be repaired or rebuilt similar to the original condition.

(5) **Occupant Notification**. For any land use constructed or substantially updated within the MIA 3 or 4 which will be leased or rented to entities other than the Tribe, notice shall be provided in writing by the Tribe to the lessee that they are located within an area of known military aircraft operations and that these operations are outside the Tribe's control or influence. The notice must include the following statements:

"This property is located in close proximity to Fairchild Air Force Base and is routinely subject to aircraft overflight activity. Occupants may experience inconvenience, annoyance, or discomfort from noise, smell, or other effects of military aircraft operations."

(6) Prior to issuance or renewal of a Certificate of Occupancy, recipients of such notice shall furnish to the Tribe a written and signed statement that they understand the status and proximity of the Base and that they waive any opportunity to complain about aircraft noise or other related impacts and hold the Tribe and Fairchild AFB harmless from related impacts.

(A) Sublease. For those properties leased by the Tribe and then sub-let to occupants, the same notice required above shall be furnished by the lessee to each sub-lessee/tenant and written proof of submittal of the notice shall be held by the lessee for the life of the sub-lease. Written evidence shall be provided to the Tribe upon request.

33-6.06 IMPACTS TO AIRCRAFT OPERATIONS

(1) It is the intent of the Tribe to minimize or eliminate the following impacts to aircraft from development or improvement of properties within the Airport Overlay Zone:

(A) Interference with the operations of radio communications or electronic facilities at Fairchild AFB or between Fairchild AFB and airborne aircraft;

(B) Improvements that make it difficult for pilots to distinguish between airport lights and other lights;

(C) The creation of glare which could impair pilot vision;

(D) Improvements that impair pilot visibility in the vicinity of Fairchild AFB;

(E) Any use that endangers the landing, takeoff, or maneuvering of aircraft;

(F) Creation of a bird attractant that could interfere with aircraft operations (including the construction of large areas of standing water); and

(G) The creation of a fire accelerant or secondary explosion hazard in the unlikely event of an aircraft accident or incident.

(2) Courtesy Consultation with Fairchild AFB

(A) Prior to approving a building permit for any uses within the Airport Overlay Zone, the Tribe shall ask Fairchild AFB to comment on the proposed improvements to ensure that any concerns regarding the following are addressed:

(i) Light and glare effects to aircraft;

(ii) Height restrictions and/or completion of the FAA Form 7460-1 process;

(iii) Bird strike potential;

(iv) Sight obscuring emissions; or

(v) Other reasonable conditions or impacts that could affect military operations or aircraft safety.

(B) The Tribe shall request that Fairchild AFB reply with any concerns in writing within 15 calendar days of submitting the request. Extensions to this time may be granted by the Tribe as warranted. If Fairchild AFB does not comment or request an extension to comment, the Tribe will assume it has no concerns or objections regarding the project.

(C) Following consultation with Fairchild AFB, the Tribe shall apply any conditions it deems necessary to address the concerns of Fairchild AFB while upholding the Tribe's vision and mission as well as the Tribal Code.

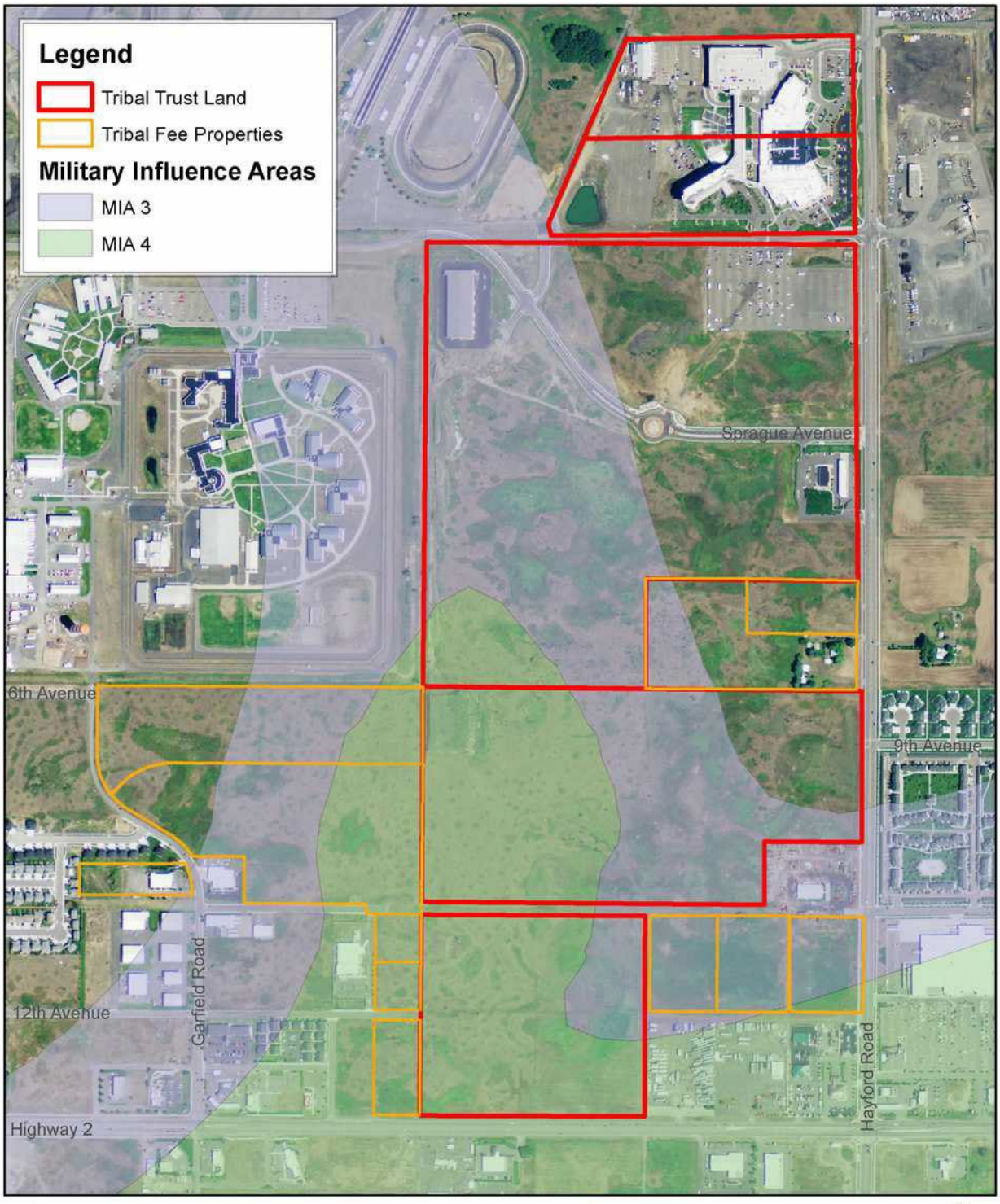

Figure 1
Military Influence Areas

This Chapter has been reserved by council resolution 2015-02

CHAPTER 34 -RESERVED

CHAPTER 35 - SOVEREIGN IMMUNITY

SECTION 35-1: GENERAL PROVISIONS

35-1.01 PURPOSE

The Kalispel Tribe has a compelling interest in protecting the Tribe's integrity as a sovereign nation. The assertion of the Tribe's sovereign immunity is an exercise of the Tribe's inherent authority as a sovereign nation. Therefore, the purpose of this Chapter is to acknowledge and preserve the Tribe's sovereign immunity, and to recognize the conditions under which the Tribe may exercise its authority to waive its sovereign immunity.

35-1.02 DEFINITIONS

(1) "Officer," as used in this Chapter, includes members of the Kalispel Business Committee and senior management of the Tribe and its agencies, arms, entities, or enterprises.

(2) "Reservation" means all the lands owned by Kalispel Tribe of Indians as defined in KLOC 1-2.03.

(3) "Sovereign Immunity" or "Immunity," as used in this Chapter, means that lawsuits or other actions against the Tribe and/or its agencies, arms, entities, enterprises, employees and officers are prohibited, unless the Tribe or Congress has expressly waived its immunity.

(4) "Tribe" means the Kalispel Tribe of Indians.

35-1.03 SOVEREIGN IMMUNITY OF THE TRIBE

The Kalispel Tribe of Indians and its Tribal agencies, arms, entities, and enterprises are immune from suit for any acts or omissions both within and without the Kalispel Reservation, except as provided for in the Kalispel Law and Order Code (KLOC), by Resolution duly passed, or otherwise approved by the Kalispel Business Committee.

35-1.04 SOVEREIGN IMMUNITY OF TRIBAL OFFICERS AND EMPLOYEES

All Kalispel Tribal officers and employees, including employees of Tribal agencies, arms, entities, and enterprises, within the scope of their duties, are immune from suit for any acts or omissions both within and without the Kalispel Reservation, except as provided for in the KLOC, by Resolution duly passed, or otherwise approved by the Kalispel Business Committee.

35-1.05 SEVERABILITY

Should any word, section, clause, paragraph, sentence, or provision of this Chapter be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of any part of this Chapter which can be given effect without the invalid part or parts.

SECTION 35-2: WAIVER OF SOVEREIGN IMMUNITY

35-2.01 WAIVING SOVEREIGN IMMUNITY

All waivers of sovereign immunity shall be explicit and in writing, and fully comply with all Tribal and Federal law requirements for the waiver of such immunity. Immunity from suit or action may only be waived by the Kalispel Business Committee. The Kalispel Business Committee, as the governing body for the Kalispel Tribe, has the authority to delegate the power to waive sovereign immunity to a specifically identified Tribal officer, employee, or position. This delegation shall be limited only to the waiver of immunity under a specific circumstance, purpose, or situation, and shall not include a general waiver of the immunity of the Tribe or of other Tribal agencies, arms, entities, enterprises, officers and employees.

35-2.02 EXISTING WAIVERS OF IMMUNITY

Nothing contained in this Chapter shall have the effect of invalidating an otherwise valid waiver executed by the Tribe or Tribal entities in accordance with existing law at the time of enactment.

35-2.03 NO GENERAL WAIVER

Nothing contained in this Chapter shall be construed as a general waiver of the sovereign immunity of the Tribe or the Tribe's entities or political subdivisions.

SECTION 36 -1: GENERAL PROVISIONS

36-1.01 POLICY

The Kalispel Tribe recognizes that Utility services are vitally important to the economy and general welfare of the Tribe, Tribal Members, and Reservation residents. Utility services have a direct effect on the health and welfare and the economic security of the Kalispel Tribe through the provision of essential power, communications, and other utility services. Regulating the Utility services provided on the Reservation is an important expression of Tribal sovereignty and an inherent part of the authority of the Tribe.

36-1.02 PURPOSE

The purpose of this Chapter is as follows:

(1) To provide rules and regulations for Utility services provided on the Reservation, and assure that Tribal values and standards are used in the provision of Utility services;

(2) To assure the protection and conservation of Tribal lands and resources in infrastructure decisions;

(3) To outline the obligations and requirements of Utilities on the Reservation;

(4) To provide a process for customers or others to resolve complaints when Utilities have not met their obligations; and

(5) To preempt all state or local laws and regulations, to the greatest extent allowed under federal law and to the fullest legal authority under Tribal law.

36-1.03 JURISDICTION:

The Kalispel Tribe has exclusive jurisdiction over all Utility service facilities and equipment within the Reservation, and the activities of Utilities conducted or otherwise occurring within the Reservation. It is the Tribe's intent that this Chapter preempt any state or local law purporting to regulate utilities located or operated on, or providing services within the Reservation.

36-1.04 SOVEREIGN IMMUNITY

The sovereign immunity of the Kalispel Tribe is not in any way waived or limited by this Chapter, or by any civil suit commenced pursuant to this Chapter. Such sovereign immunity shall extend to the Tribe, its Tribal Business Committee, its corporations chartered under Section 17 of the Indian Reorganization Act of 1934, 25 USC Section 477, any subordinate organization or Kalispel governmental corporation chartered and duly empowered pursuant to Chapter 17 of the Kalispel Law and Order Code (KLOC), as amended, and all Tribal officials, employees, staff, and agents, as to all actions taken in, or concerning, the administration or enforcement of this Code, and as to all actions taken pursuant to authority of any

Tribal Court order authorized by this Code.

All waivers of sovereign immunity shall be explicit and in writing, and fully comply with all Tribal and Federal law requirements for the waiver of such immunity.

36-1.05 RIGHT OF INTERPRETATION

Any difference in interpretation or application of these regulations shall be resolved by the Tribal Council, or its designee, subject to the procedures established by the remainder of this Chapter.

36-1.06 LEASING AUTHORITY

KLOC Section 32-2.01 and 25 U.S.C. Section 415(b) provides the legal authority for the Kalispel Tribe; its corporations chartered under Section 17 thereof, 25 USC Section 477; or any subordinate organization or Kalispel governmental corporation chartered and duly empowered pursuant to the Law and Order Code of the Kalispel Tribe of Indians, Chapter 17, as amended under Kalispel Resolution No. 2008-02, and approved by the Secretary, to control the leasing of Tribal property on the Reservation.

36-1.07 SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion(s) shall be deemed separate, distinct, and independent provision(s), and such holding shall not affect the validity of the remaining portions of the Chapter.

36-1.08 DEFINITIONS

The following definitions shall apply to this Chapter:

(1) "Tribe" or "Tribal" shall refer to the Kalispel Tribe.

(2) "Tribal Council" means the Kalispel Business Committee

(3) "Reservation" means territory described in the Kalispel Law and Order Code, Section 1-2.03, as amended.

(4) "Utility services" shall refer to the provision on the Reservation of public use services for which a fee is charged to the Tribe, a Tribally owned business, or any Tribal member such as electric service, natural gas service, garbage, water, propane service, telephone, cellular telephone, fiber optic, cable television, or any other means of communications services using electronic devices. Tribal Council may restrict or expand the applicability of these regulations to any utility service which falls under this definition.

(5) "Utility" means a provider of Utility services.

36-2.01 OBLIGATIONS OF UTILITIES

As a condition for carrying on commercial Utility services on the Reservation and as a condition for the operation and maintenance of facilities on the Reservation to conduct those commercial transactions, all Utilities shall be bound by the following obligations.

(1) Obligation to Provide Utility Services: Until the Kalispel Utility Commission ("Commission") approves different rates and/or regulations or provides written notice that a Utility service maybe discontinued, all Utilities are obligated to continue to provide safe and efficient Utility services at rates uniform with similarly situated customers within the State of Washington.

(2) Quality and Reliability of Service: Until the Commission approves different regulations, all Utilities shall establish and maintain safe, reliable, reasonably sufficient, and efficient service, uniform with service provided to similarly situated customers within the State of Washington. Upon notice to the provider, the Commission may order different standards of service quality and reliability, or different rules of service, where such standards are in the best interest of the Tribe. The Commission may also approve changes in rates as necessary and just for meeting such different standards.

(3) Tribal Employment: Where applicable, Utilities shall comply with Tribal laws, policies, and procedures for hiring of Tribal members.

(4) Metering and Billing:

Until the Commission approves different regulations, the following shall apply to all service providers on the Reservation:

(A) Meters shall at all times be calibrated and maintained in a manner uniform to similarly situated customers within the State of Washington, so that accurate measurement of services is maintained. Evidence of such calibration shall be provided to the Commission upon request. The Commission shall have authority to audit the measurement of all Utility services provided.

(B) Customer billing shall be in a format uniform to billing issued to similarly situated customers within the State of Washington, which provides information to customers in a manner that is easy to understand and which promotes conservation of resources.

(5) New Utility Service: Utilities providing new Utility services on the Reservation shall provide 60 days written notice to the Commission prior to the start of the new service. Utilities providing new Utility services are subject to all provisions of this Chapter, unless specifically stated otherwise.

(6) Disconnection or Discontinuation of Service: Until the Commission approves different regulations, Utilities shall maintain reasonable public policies for disconnection or discontinuation of service to customers, uniform with disconnection or discontinuation policies and procedures in place for

similarly situated customers in the State of Washington. Such policies shall be sensitive to weather conditions and medical status of customers, and shall provide for reasonable notice prior to disconnection, except in the case of emergencies.

(7) Recordkeeping and Provision of Data: Until the Commission approves different regulations, Utilities shall maintain records and continue federal reporting practices uniform with obligations in place in the State of Washington. Utilities shall furnish to the Commission, in such form and such detail as the Commission shall request, all tabulations, computations, and all other information required by it to carry into effect any of the provisions of this Chapter and shall make answers to the best of their knowledge, to all questions submitted by the Commission. Whenever requested, Utilities shall deliver to the Commission copies of any and all maps, profiles, contracts, agreements, franchises, reports, books, accounts, papers and records in its possession or in any way relating to its property or affecting its business containing evidence relating to the merits of or pertinent to the hearing of any issue pending before the Commission.

(8) Inventory of Physical Properties: Upon request, Utilities shall file with the Commission an inventory of physical properties on the Reservation, designating the exact location of its property. Such inventory shall show in detail the cost of construction together with the depreciation charges incident thereto since construction, or may show the replacement cost of such properties, if in the opinion of the Commission the original cost and depreciation charges cannot be obtained. In the event any Utility refuses to file such inventory, or the inventory so filed is inaccurate, the Commission may send its agents upon the ground and make an inventory. The entire cost of making such inventory by the agents of the Commission shall be paid by the Utility.

(9) Improvements: Utilities shall make improvements to their existing plant, scales, equipment, apparatus, facilities or other physical property on the Reservation, or erect new structures in a manner and within the time specified by the Commission upon a finding of the Commission, after the opportunity to be heard by the provider, that such improvement, addition, extension, repair or change promotes the safety, security, health and welfare or convenience of the Tribal community or the general public.

(10) Interconnection Standards and Obligations: Until the Commission approves different regulations, Utilities shall maintain reasonable public policies for interconnection to their facilities, uniform with policies in place in the State of Washington, unless otherwise indicated in this Chapter. No provider shall disapprove an interconnection that meets national standards of safety and reliability. The Tribe and its subsidiaries shall have the right to interconnect wholesale or retail facilities to the facilities of any Utility under the same terms and conditions as the provider interconnects to its own facilities.

(11) Joint Use of Equipment: To the extent consistent with safety policies and to the extent providers' facilities are not impaired, Utilities shall permit the use of their conduits, subways, tracks, wires, poles, pipes or other equipment or any part thereof by any other Utility for a fee that is reasonable and consistent with other similar fees.

(12) Safety and Maintenance: Utilities shall promote and safeguard the health and safety of its employees, customers, the Reservation, and the general public. Until the Commission approves different regulations, Utilities shall install, use, maintain, and operate appropriate safety or other devices and appliances, uniform with obligations in place in the State of Washington, as well as require the performance of any other act necessary for the health or safety of its employees, customers, the Reservation or the general public.

(13) Authority to Enter Premises: Utilities shall allow members of the Commission and their agents to enter upon any utility property on the Reservation for the purpose of examining, testing, or exercising any of the other powers provided for in this Chapter, and to set up and use on such property any apparatus and appliances necessary therefore. The agents and employees of such Utility shall have the right to be present at the making of such examination and tests.

(14) Environmental Obligations: Utilities shall protect the environment as is set forth in other Federal and Tribal laws or regulations.

(15) Notice and Maintenance Obligations: Utilities shall give notice to the Tribe prior to entering the Reservation for maintenance purposes. Such notice shall include a description of the maintenance to be performed and the time line for the procedures. In the case of an emergency, best efforts shall be made to provide such notice. Utilities shall allow Tribal representatives to accompany them during maintenance. Utilities shall follow and abide by any procedures for protection of cultural plants, cultural places, and the environment that the Tribe may establish. Utilities shall consult with Tribal representatives prior to trimming trees or clearing rights of ways.

(16) Rate Obligations: All rates for standard services shall be publicly available to customers by Utilities.All charges made, demanded or received by any Utilities for any product or commodity furnished orto be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is declared unlawful.

(17) Rate Changes: Utilities shall provide notice to the Commission of all proposed changes to rates, charges, rentals, or tolls which may affect service on the Reservation. Utilities shall also provide notice to all Reservation customers of any proposed changes which will affect the customer. Such notices shall be provided at least 30 days before the effective date of the proposed change. Within 45

days of notice, the Commission shall have power, either on its own motion or upon compliant, to hold a hearing concerning the reasonableness and justness of the proposed change. Pending such hearing and decision, the Commission may suspend implementation of such change, not to exceed ten months from the time the change is proposed to go into effect. If the change is to increase any rate, charge, rental, or toll, the Utility shall have the burden of proof to show that such an increase is reasonable and just.

36-2.02 SERVICE TERRITORIES

Service territories within the Reservation for Utilities may be established through Resolution by the Commission. Such territories may only be altered through the authority of the Tribal Council. The establishment or alteration of a service territory should include a description of the Utility services and locations, the customers affected, the effective date of the service territory, a description of any facilities issues or land rights issues and the resolution of those issues, and any other relevant information. Information regarding an establishment or alteration of a service territory shall be made available in advance to Utilities impacted by these changes.

36-2.03 FAILURE TO COMPLY WITH TRIBAL CODE

The Commission may deny any Utility the right to provide Utility services on the Reservation upon continued or egregious failure to comply with Tribal laws or for other good cause shown after a hearing.

36-3: ENFORCEMENT OF UTILITY REGULATIONS

36-3.01 REGULATORY AUTHORITY

The Kalispel Utility Commission ("Commission") shall have regulatory authority over Utilities and Utility services on the Reservation.

36-3.02 EXEMPTIONS

Utilities may petition the Commission to grant exemptions to the regulations outlined in this Chapter. The Commission may grant the exemption to regulation if the action is in the public interest and is otherwise consistent with the underlying regulation. The Commission may also require that a hearing be held, as outlined in this Section.

36-3.03 COMPLAINT

If a customer alleges that a Utility has not met its obligation under this Chapter, it is encouraged that reasonable discussions be had between the utility customer and Utility.

Customers also have a right to file a formal complaint to the Commission regarding a Utility. Complaints against a Utility may be made by the Commission of its own motion, or by a customer of the Utility.

A customer compliant shall be in writing, directed to the Commission, and include the following:

(1) Name and address of the complainant;

(2) Name and address of the Utility complained against;

(3) Information on the alleged act or omission done by a Utility in violation of this Chapter, or other provisions of the Kalispel Law and Order Code, including dates and locations of such acts or omissions.

36-3.04 HEARINGS

Procedures under this Section apply to hearings by the Commission. Such proceedings are an opportunity for discussion between the Commission and involved parties regarding complaints and exemptions to regulations, petitions, or other matters before a decision is issued by the Commission. During this process, the Commission shall provide notice to interested parties, allow parties and the public to comment in writing on the issues and may request additional information or documents from the parties, and call and question witnesses.

When required by this Code, the Commission shall schedule a hearing within thirty (30) calendar days after receiving all requested documentation. The time to hold a hearing may be extended if necessary, but may not exceed 60 calendar days.

36-3.05 NOTICE

Notice of the hearing shall be given to the Utility complained of and the complainant (if any) no less than ten (10) business days prior to the hearing. Notice of the hearing shall be via personal service or certified mail, return receipt requested, to the address provided by the Utility and complainant.

36-3.06 DECISIONS BY THE KALISPEL UTILITY COMMISSION

After an opportunity to be heard by all sides, a ruling may be issued by the Commission. The Commission shall have authority to enforce the terms and conditions of this Chapter by assessing fines and penalties as are just and reasonable, designed to compensate the Tribe or customers, or designed to prevent additional breaches of such terms and conditions, and are consistent with other Tribal laws. All such rulings, fines, penalties or denials shall be enforceable by the Tribal Court pursuant to Tribal law.

36-3.07 APPEALS TO THE TRIBAL COURT

(1) Any decision made by the Commission should be considered a final and conclusive decision, unless a party with standing appeals the decision to the Kalispel Tribal Court.

(2) Appeals from a Commission final decision shall be heard by the Kalispel Tribal Court under the lawsof the Kalispel Tribe. A party must file a written notice of appeal within 30 calendar days of the Commission ruling.

(3) De novo trial by the Tribal Court is not permitted. Appeals shall be limited to a review of the

evidence before the Commission.

(4) The Tribal Court shall set aside the decision of the Commission only if it finds the decision to be: a)unsupported by evidence; b) arbitrary and capricious; or c) an abuse of discretion by the Commission.

(5) The Tribal Court may not award damages separate from those identified in this Section, includingbut not limited to attorneys fees.

SECTION 36 -5: STATE TAXES PROHIBITED

36-5.01 STATE TAXES PROHIBITED

Utilities are hereby prohibited from assessing, or including within invoices or bills sent to the Tribe, a Tribal business, or a Tribal member, for service provided within the Reservation, any tax, tariff, or collection established or imposed by the State of Washington and not explicitly approved or ratified by the Kalispel Utility Commission.

SECTION 36-6: KALISPEL UTILITY COMMISSION

36-6.01 KALISPEL UTILITY COMMISSION

(1) Appointments

(A) The Kalispel Utility Commission ("Commission") shall consist of three Commissioners appointed by the Tribal Council.

(B) The Commissioners shall be appointed, and may be reappointed, by the Kalispel Tribal Council. A certificate from the Secretary of the Tribal Council as to the appointment or reappointment of any Commissioners shall be conclusive evidence of the due and proper appointment of the Commissioner.

(C) All Commissioners shall be Kalispel Tribal Members or direct descendants.

(2) Term of office

The term of office shall be three years and staggered. When the Commission is first established, two Commissioners' term shall be designed to expire in one year, and the other to expire in two years. Thereafter, all appointments shall be for three years, except that in the case of a prior vacancy, an appointment shall be only for the length of the unexpired term. Each Commissioner shall hold office until his successor has been appointed and has qualified.

(3) Resignations

Any Commissioners may resign at any time by delivering a written resignation to the Secretary of the Tribal Council. Such resignation shall be effective on the date stated in the resignation, or effective immediately, if no date is given.

(4) Officers

The Tribal Council, by majority vote, shall appoint Commissioners to the positions of Chair, Vice-Chair, and Secretary of the Commission. The Commission shall define the duties of these positions in its bylaws.

(5) Removal From Office

Commissioners may be removed for cause by resolution of the Commission or by the Tribal Council. Cause for removal includes, but is not limited to, negligently or willfully engaging in misconduct in the performance of his or her duties; acting with self interest to the detriment of the Tribe; and engaging in criminal acts. Failure to attend three meetings without excused absences shall also be considered sufficient cause for removal.

(6) Compensation

Commissioners shall be reimbursed for approved expenses incurred while attending meetings or in furtherance of business objectives, and the Commission may, at its discretion, propose a fee to be paid to Commissioners (subject to approval by the Tribal Council) on a per-meeting attended or annual basis.

(7) Voting Quorum

A majority of the full Commission (regardless of the existence of vacancies) shall constitute a quorum for the transaction of business, and no Commission action shall be taken by a vote of less than a majority of such full Commission. No Commissioner may vote on any matter in which that Commissioner has a financial interest directly or indirectly which is specific and peculiar to that Commissioner. The fact that any Commissioner is a customer of a utility appearing before the Commission does not of itself create a financial interest for that Commissioner.

(8) Recordkeeping

The Secretary shall keep minutes of each Commission meeting and make the minutes available promptly after each meeting to the Tribal Council and to such other officials as may be designated from time to time.

(9) Financial Records and Reports to the Tribal Council

The Commission shall ensure that full and accurate financial records are kept, and shall make periodic reports to the Commission or the Tribe. The Commission Chair shall make a formal report to the Tribal Council not less than once per year and in each report shall include a summary of the budget which the Commission has approved for the coming fiscal year.

(10) Bylaws

Commissioners shall adopt such bylaws as the Commission deems necessary and appropriate.

36-6.02 POWERS AND DUTIES OF THE COMMISSION

(1) Implementation of Chapter

The Tribal Council hereby delegates the oversight responsibility for implementing and administering this Chapter to the Commission.

(2) Jurisdiction over Utilities and Utility Services

The Commission shall have jurisdiction over Utilities and Utility Services, and shall have the power to:

(A) Regulate Utilities and Utility services on the Reservation.

(B) Review all matters pertaining to Reservation Utilities and Utility Services; make recommendations to the Tribal Council regarding the need for Tribal action through change in the KLOC or other appropriate measures; and otherwise carry out the responsibilities given the Commission under this Chapter.

(C) Require Utilities to conform to this Chapter, and orders of the Commission not contrary to law.

(D) Investigate all methods and practices of Utilities subject to the provisions of this Chapter.

(E) Require copies of reports, rates, classifications, schedules, and time tables in effect and used by such Utilities, and all other information desired by the Commission relating to such investigations and requirements to be filed with the Commission.

(F) Hold adjudicative proceedings as prescribed by this Chapter.

(G) Retain and use the services of the Tribe's Legal Office, or other attorneys designated by the Tribal Council upon a contract approved by the Tribal Council.

(H) Use the services of Tribal accountants, or other accountants designated by the Council upon a contract approved by the Tribal Council.

(I) Consult with subject matter experts working for the Tribe, or other consultants designated by the Tribal Council upon a contract approved by the Tribal Council.

(J) With Tribal Council's approval, delegate to an individual Commissioner, or Tribal employee, such functions as may be necessary to administer this Chapter efficiently; provided that the Commission may not delegate its power to hear or rule upon any complaints filed with the Commission pursuant to this Chapter.

(K) Establish, and amend as appropriate, a schedule of application fees for the various types of applications required under this Chapter. The fees shall be reasonably related to the expense of governmental administration in processing an application and implementing and enforcing this Chapter, including establishing and maintaining the tribal resources needed to do so. (L) Exercise all other authority delegated to it by law, or as may be reasonably necessary in the implementation of any provisions of this Chapter.