

TITLE 46 – TRIBAL LANDS

CHAPTER I – EXCLUSION FROM THE NISQUALLY RESERVATION

46.01 SOVEREIGN POWER TO EXCLUDE

46.01.01 Persons Subject to Exclusion

Pursuant to the sovereign power of the Nisqually Indian Community to exclude individuals from the Nisqually Indian Reservation, any person, other than enrolled Nisqually Tribal members, and owners of real property on the Nisqually Indian Reservation, may be excluded for a period of up to five years if they have not first obtained permission from the Tribal Council to come onto the Nisqually Indian Reservation. Any person, other than an enrolled Nisqually Tribal member, may be permanently excluded for any conduct, which if such conduct has been committed by an Indian on the reservation, would have been a violation of this Code, even if they had previously been granted permission from the Tribal Council. A person may be excluded for committing an offense even if that offense was committed off reservation.

46.01.02 No Assertion of Criminal Jurisdiction over Non-Indians

In asserting its sovereign right to exclude persons from the Reservation, the Nisqually Indian Community is not asserting criminal jurisdiction over non-Indians for acts committed on the Nisqually Indian Reservation. All proceedings under this Title are Civil in nature and except when inconsistent with this Code are subject to the Rules of Civil Procedure for the Nisqually Tribal Court.

46.01.03 Exclusion Procedure

(a) Temporary Exclusion. Nisqually Tribal Police are authorized to issue a Notice of Temporary Exclusion to any individual subject to exclusion under this title. Upon issuing a Notice of Temporary Exclusion to an individual, the Nisqually Tribal Police have the authority to physically remove the person to the exterior boundaries of the Nisqually Indian Reservation. When issuing the Notice of Temporary Exclusion, the Tribal Police Officer shall give the excluded person notice of a hearing date before the Nisqually Tribal Court. That initial hearing date shall be within 60 days. A Temporary Exclusion shall only persist until the initial hearing date. At that hearing, the Court may extend the Exclusion, if the Prosecuting Attorney has filed a Petition for Exclusion or makes a motion to extend the temporary exclusion. A Temporary Exclusion may be issued by an Officer during the pendency of an Exclusion matter in the Tribal Court. A copy of the Notice of Temporary Exclusion along with a Police Report detailing the removal shall be filed with the court and provided to the Prosecuting Attorney within 72 hours.

(b) Petition for Exclusion. A Petition for Exclusion shall be signed by the Prosecuting Attorney and shall assert the basis for the Exclusion, the requested duration for the Exclusion and any exceptions requested. Unless the Respondent received notice of the initial hearing as part of a Temporary Exclusion

under (a) above, upon receipt of the Petition for Exclusion, the Clerk shall issue a summons for an Initial hearing and have the Respondent served a copy of it along with the Petition. Notice shall be personally delivered, unless under the circumstances of the particular case, the Tribal Court allows notice by publication in a newspaper of general circulation in Thurston County

(c) Initial Hearing. At the Initial Hearing, if the Respondent fails to appear, after having been served actual or constructive notice of the hearing, or consents to the Exclusion; the Court shall grant the exclusion on the terms requested by the Prosecuting Attorney. If the Respondent appears in person and contests the Exclusion, the Judge shall set a date by which a written answer is due and set a trial date. The Judge shall review the documents submitted by the Prosecuting Attorney and based solely upon those documents determine if there is probable cause to believe that the Respondent is a person subject to exclusion under this Title. If there is such probable cause, the Judge shall enter an order excluding the person, on the terms requested by the Prosecuting Attorney, until the Trial date.

(d) Trial. The Trial shall be to the Bench and the standard shall be a preponderance. There is no right to a jury trial. The Respondent shall bear the burden to prove they are an enrolled member of the Nisqually Tribe, that at the time the petition was filed they either owned or resided at real property that a family member owned on the reservation, or have obtained permission to be on the reservation from the Tribal Council. If seeking an exclusion of over five years, the Prosecuting Attorney shall bear the burden of proving that the respondent engaged in conduct that if such conduct had been committed by an Indian on the reservation, would have been a violation of this Code. The Respondent shall be at the Trial or a default shall be issued against them and the Tribe shall be entitled to the relief requested in the Petition.

(e) Determination. If the Court finds that the Respondent is a person subject to exclusion, the Court shall exclude the Respondent to the maximum amount allowed under this code, unless the Prosecuting Attorney requests a shorter duration. The Court may grant any exceptions to the exclusion requested by the Prosecuting Attorney or that justice demands including those in section 4, below. If the Court finds that the Respondent is not a person subject to exclusion the Court shall enter an order denying the petition and in that order indicate limitations, if any, on the Tribal Police's authority to temporary exclude under subsection (a) above.

(f) Appeals. The Determination of the Court after trial is a final order, and may be appealed. Any such appeal is governed by Title 24.

46.01.04 Rights of the Respondent.

(a) Attorney. Respondent may be represented by an attorney at their own expense. Even if represented by an attorney, the Respondent must be personally present at the Initial Hearing and at the Trial.

(b) Real Property. In the event that the Respondent (or their spouse) owned real property at the time the Petition was filed, the exclusion order shall include an exception for the real property and at least one means of access to the property. If, at the time the petition was filed, the Respondent resided on property owned by a family member, the Judge may include an exception for that real property and a means of access to the property.

(C) Repetitive Temporary Hearings. A person who has been subject to more than two temporary exclusions, may at the initial hearing request that the case proceed to trial. The Court shall grant that request upon a preliminary showing that the person is not subject to exclusion. Absent a Petition being

filed, the sole purpose of the trial shall be for the Court to determine what if any limits on future temporary exclusions should be ordered. No other remedy shall be available to the Respondent.

46.01.05 Enforcement

If the Court determines that an individual is excluded, Tribal Police officers, in accordance with that determination, have the authority to physically remove said person to the exterior boundaries of the Nisqually Indian Reservation.

46.01.06 Reconsideration or Amendment

- (a) Reconsideration. After a period of one year, a Respondent who was previously determined to be a person subject to exclusion, may move the Court to reconsider the determination. The Respondent shall file the motion along with all supporting documentation with the court and serve a copy upon the Prosecuting Attorney. At a hearing set by the Clerk of the Court, the Respondent shall bear the burden of proof as to all aspects. In the order on reconsideration, the Court may authorize and set limitations upon future Motions to Reconsider. Unless so authorized, a Respondent may not file subsequent Motions for Reconsideration.
- (b) Amendment. A respondent may make an ex parte motion to the court demonstrating a material change in circumstances. If the Court in reviewing the motion makes a determination that a material change in circumstances has occurred, the Court may set a hearing. The Respondent must then serve the Prosecuting Attorney at least 5 days before the hearing. At the hearing the court may allow exceptions to the exclusion order as justice demands or as agreed to by the Prosecuting Attorney.
- (c) Limitations. In ruling on either a Motion for Reconsideration or for an Amendment, the Court shall not consider a real property interest acquired after the original petition was filed.
- (d) Appeals. Denials of Motions for Reconsideration and/or Amendment shall not be considered final orders and shall not be subject to appeal. The granting of a Motion for Reconsideration and/or Amendment shall be considered a Final order and may be appealed by the aggrieved party. Such appeal shall be governed by Title 24 except that the relief shall be limited to a return to the Order as it stood before the Motion being appealed.