

TITLE 1

OPEN MEETINGS AND CONDUCT OF OFFICIALS

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**TITLE 1
OPEN MEETINGS & CONDUCT OF OFFICIALS**

CHAPTER I - OPEN PUBLIC MEETINGS

1.01.010 Legislative Declaration

The legislature finds and declares that the Tribal Council, its subcommittees, boards, committees, departments, and all other divisions of the Nisqually Indian Tribe exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

The people of this Tribe do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

HISTORICAL AND STATUTORY NOTES

Chapter 1.01, 1.05, 1.100 adopted by Tribal Council Resolution 86-2006, September 11, 2006.

1.01.020 Definitions

As used in this chapter unless the context indicates otherwise:

- (a) "Public agency" means:
Any Tribal Council, commission, subcommittee, committee, department, educational institution, or other governmental division which is created by or pursuant to statute, other than courts and the legislature. The Red Wind Casino is not a public agency. Corporations formed under Nisqually Tribal Code 8.50 et seq. are a Public Agency for purposes of this Title;
- (b) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body, or any subcommittee thereof when the subcommittee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.
- (c) "Action" means the transaction of the official business of a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. "Final action" means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

- (d) "Meeting" means meetings at which action is taken.
- (e) "Subcommittee" means a subgroup of the Tribal Council consisting of less than a quorum of Tribal Council members assigned to a specific area of governance and reporting back to the full Tribal Council.
- (f) "Chairman" shall mean the elected or appointed head of the Governing body.

HISTORICAL AND STATUTORY NOTES

Subsection (a) of this section amended by Resolution __- 2010.

Subsection (f) added to this section by Resolution __-2008 dated November 10, 2008.

1.01.030 Meetings declared open and public

All meetings of the governing body shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter. Meetings notices shall be posted, in a manner calculated so the public can, with reasonable effort, have notice at least twenty-four hours prior to the meeting, except as otherwise provided in this chapter. In all cases, the notice shall clearly state the agenda of the meeting, location and time. Nothing in this Title shall limit the power of the Public Agency from altering the agenda at the time of the meeting, by vote or consensus.

HISTORICAL AND STATUTORY NOTES

This section amended by Resolution __- 2010.

1.01.040 Conditions to attendance not to be required

A member of the public shall not be required, as a condition to attendance at a meeting of a governing body, to register his name and other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his attendance.

1.01.050 Interruptions--Procedure

In the event that any meeting is interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are interrupting the meeting, the members of the governing body conducting the meeting may order the meeting room cleared and continue in session or may adjourn the meeting and reconvene at another location selected by majority vote of the members. In such a session, final disposition may be taken only on matters appearing on the agenda. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the

governing body from establishing a procedure for readmitting an individual or individuals not responsible for disturbing the orderly conduct of the meeting.

1.01.060 Ordinances, rules, resolutions, regulations, etc., adopted at public meetings--
Notice--Secret voting prohibited

- (a) No governing body shall adopt any ordinance, resolution, rule, regulation, order, directive or other measure with the force of law except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void. Telephone "poll votes" are prohibited and shall be considered a "secret ballot".
- (b) No governing body of a public agency at any meeting required to be open to the public shall vote by secret ballot. Any vote taken in violation of this subsection shall be null and void, and shall be considered an "action" under this chapter.
- (c) No governing body shall meet when there is not a quorum. No governing body shall adopt any ordinance, resolution, rule, regulation, order, directive or other measure with the force of law without a quorum.
 - (i) A quorum of the Nisqually Tribal Council shall consist of at least four Council members, one of which shall be either the Chairman or Vice-chairman. For commissions and committees, a quorum shall consist of a majority of officials appointed or elected to the commission or committee.
 - (ii) The quorum requirement may be suspended by unanimous vote of the governing body if no quorum is available for two consecutive regularly scheduled meetings. The suspension of the quorum shall be for only that meeting and shall not apply to special meetings or meetings other than those regularly scheduled.

HISTORICAL AND STATUTORY NOTES

This Section amended by Resolution 92-2006.

This Section amended by Resolution 101-2006.

1.01.070 Times and places for meetings--Emergencies--Exception

The governing body shall provide the time for holding regular meetings by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body. Unless otherwise provided for by Resolution, meetings of the governing body need not be held within the boundaries of the territory over which the public agency exercises jurisdiction. If at any time any regular meeting falls on a holiday; such regular meeting shall be held on the next business day. If, by reason of fire, flood, earthquake, or other like emergency, there is a need for expedited action by a governing body to meet the emergency, the presiding officer of the governing body may provide for a meeting site other than the regular meeting site and the notice

requirements of this chapter shall be suspended during such emergency. It shall not be a violation of the requirements of this chapter for a majority of the members of a governing body to travel together or gather for purposes other than a regular meeting or a special meeting as these terms are used in this chapter: PROVIDED, That they take no action as defined in this chapter.

1.01.080 Special meetings

A special meeting may be called at any time by the presiding officer of the governing body or by a majority of the members of the governing body by delivering written notice personally, by mail, by fax, or by electronic mail to each member of the governing body; and by conspicuously posting written notice at the Tribal Center, Rez Mart and other public areas. Such notice must be delivered personally, by mail, by fax, or by electronic mail at least twenty-four hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings by the governing body. Such written notice to a member of the governing body may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.

1.01.090 Executive sessions

- (a) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting, but an executive session may be held for only the following reasons:
 - (i) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;
 - (ii) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;
 - (iii) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;
 - (iv) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

- (v) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;
- (vi) To discuss with legal counsel representing the governing body matters relating to enforcement actions, or to discuss with legal counsel representing the governing body litigation or potential litigation to which the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the governing body.

This subsection (a)(vi) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (a)(vi), "potential litigation" means matters protected by RPC 1.6 concerning:

- (A) Litigation that has been specifically threatened to which the governing body, or a member acting in an official capacity is, or is likely to become, a party;
- (B) Litigation that governing body reasonably believes may be commenced by or against it, or a member acting in an official capacity; or
- (C) Litigation or legal risks of a proposed action or current practice that the governing body has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

(b) Before convening in executive session, the presiding officer of the governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer.

1.01.100 Violations--Personal liability--Penalty--Attorney fees and costs

- (a) Each member of the governing body who attends a meeting of such governing body where action is taken in violation of any provision of this chapter applicable to him, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars. The civil penalty shall be assessed by a judge of the Nisqually court and an action to enforce this penalty may be brought by any person. A violation of this chapter does not constitute a crime and assessment of the civil penalty by a judge shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.
- (b) Any person who prevails against a public agency in any action in the courts for a violation of this chapter shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. Any public agency who prevails in any action in the courts for a violation of this chapter may be awarded reasonable expenses

and attorney fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause.

1.01.110 Violations--Mandamus or injunction

Any person may commence an action either by mandamus or injunction for the purpose of stopping violations or preventing threatened violations of this chapter by members of a governing body.

1.01.120 Chapter controlling--Application

If any provision of this chapter conflicts with the provisions of any other statute, the provisions of this chapter shall control: PROVIDED, That this chapter shall not apply to:

- (a) The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation, or profession or to any disciplinary proceedings involving a member of such business, occupation, or profession, or to operate any mechanical device or motor vehicle where a license or registration is necessary; or
- (b) Contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or
- (c) That portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.

1.01.900 Short title.

This chapter may be cited as the "Nisqually Open Public Meetings Act".

TITLE 1
OPEN MEETINGS & CONDUCT OF OFFICIALS
CHAPTER II - CONDUCT OF OFFICIALS

1.05.010 Short title.

This chapter may be cited as the “Conduct of Officials Act”.

1.05.012 Conduct in Conformity With Applicable Rules and Laws

Tribal officials shall at all times conduct themselves so as to reflect credit upon the Nisqually people and government; and comply with all applicable laws of the Nisqually Indian Tribe with respect to their conduct in the performance of the duties of their respective office or employment.

HISTORICAL AND STATUTORY NOTES

Section number changed from 1.05.010 to 1.05.012 during 2009 reformatting.

1.05.015 Definitions

- (a) “Employment” means professional services and other services rendered, whether for monetary or other pecuniary gain, and whether as an employee of the Tribe, consultant or other independent contractor.
- (b) “Tribal official” means any elected official of the Nisqually Indian Tribe.

1.05.020 General Prohibitions; Conflicts of Interest

- (a) No Tribal official shall use, or attempt to use, any official or apparent authority of their office or duties which places, or could reasonably be perceived as placing their private economic gain or that of any special business interests with which they are associated, before those of the general public, whose paramount interests their office or employment is intended to serve.
- (b) It is the intent of NTC 1.05.020 that Tribal officials of the Nisqually Indian Tribe avoid any action which could result in, or create the appearance of:
 - (i) using public office for private gain;
 - (ii) giving preferential treatment to any special interest organization or person;
 - (iii) impeding governmental efficiency or economy;
 - (iv) losing or compromising complete independence or impartiality of action;
 - (v) making governmental decisions outside official channels and NTC 1.01 et. seq.

- (vi) adversely affecting the confidence of the people in the integrity of the government of the Nisqually Indian Tribe.
- (c) No Tribal official shall use or disclose confidential information gained in the course of or by reason of their official position or activities, to further their own economic interest or that of anyone else.
- (d) It shall be punishable as a misdemeanor and declared an act of dishonesty for Tribal officials to:
 - (i) have direct or indirect financial or other economic interests or engage in such other employment or economic activity which, as determined in accordance with the provisions of this chapter and other applicable laws, necessarily involves inherent substantial conflict, or appears to have such substantial conflict, with their responsibilities and duties as Tribal officials of the Nisqually Indian Tribe;
 - (ii) engage in, directly or indirectly, financial or other economic transactions as a result of, or primarily depending upon, information obtained through their public office or employment;
 - (iii) acquire any economic or other financial property, contractual or other economic interest at a time when they believe or have reason to believe, that it will directly and substantially affect or be so affected by their official actions or duties.
- (e) Subject to the restrictions and conditions set forth in this chapter, Tribal officials are free to engage in lawful financial transactions to the same extent as the general public. Governmental bodies and agencies of the government of the Nisqually Indian Tribe may, however, adopt further restrictions upon such transactions or employment in light of special circumstances.
- (f) No business or other entity shall employ a Tribal official if such employment is prohibited by or otherwise violates any provision of this chapter.

1.05.030 Abstention From Official Action

- (a) When a Tribal official is required to take official action on a matter in which that Tribal official has a personal economic interest, that Tribal official shall:
 - (i) prepare and sign a written statement describing the matter requiring action and the nature of the potential conflict, as soon as such Tribal official is aware of the conflict and they shall deliver copies of the statement to the responsible party for inclusion in the official record of any vote or other decision or determination; and
 - (ii) abstain from sponsoring, influencing or in any manner attempting to influence any vote, official decision or determination which would favor or advance such person's personal economic interest in such matter; and
 - (iii) abstain from voting or otherwise participating in the official decision or determination of such matter, unless otherwise directed by the authorized

presiding official of the governmental body making the decision or determination, or otherwise legally required by law, or unless such person's vote, position, recommendation or participation is contrary to their economic interest.

- (b) Unless otherwise provided by applicable law, the abstention by such person from voting or otherwise participating in the official determination or decision shall not affect the presence of such person for purpose of establishing a quorum necessary for a governmental body, agency or commission to take such action or vote upon such matter.

1.05.040 Tribal Government Contracts; Restrictions and Bid Requirements

(a) No Tribal official or any member of that official's immediate family shall be a party to, nor have an interest in the profits or benefits of any governmental contract of the Nisqually Indian Tribe or of any investment of funds of the Nisqually Indian Tribe, unless the contract or the investment meets the following requirements:

- (i) the contract is let by notice and competitive bid or procurement procedures as required under applicable laws, rules, regulations and policies of the Nisqually Indian Tribe, for necessary materials or services for the governmental agency or entity involved; and
- (ii) the contract or investment was made in the continuous course of a business commenced before the Tribal official assumed their current term of office; and
- (iii) the entire transaction is conducted at arm's length, with the governmental agency's full knowledge of the interest of the Tribal official or a member of the official's immediate family; and
- (iv) the Tribal official has taken no part in the determination of the specifications, deliberations or decisions of a governmental agency with respect to the public contract; and
- (v) the Tribal official is not a member, office holder, employee or otherwise directly associated with the same governmental agency or entity primarily responsible for letting, performing, receiving, regulating or otherwise supervising the performance of the contract.

The requirements of NTC 1.05.040 (a) shall not apply to the negotiation, execution, award, transfer, assignment or approval of mineral or non-mineral leases, permits, licenses and like transactions other than contracts involving the investment, award or payment of government funds; provided, that such leases, permits, licenses and like transactions shall be subject to all other provisions of this section and to all other applicable laws, rules and regulations of the Nisqually Indian Tribe and its governmental bodies; and provided that NTC 1.05.040 (a) shall likewise fully apply to all contracting and other activities, conducted thereunder, which are subject to this chapter. Provisions in accordance with the purposes and intent of this chapter shall be incorporated as part of the rules, regulations and guidelines applicable to the negotiation, approval and assignment of such leases, permits, licenses and like transactions.

- (b) In the absence of bribery or a purpose to defraud, a Tribal official or a member of their immediate family shall not be considered as having an interest in a public contract or the investment of public funds, when such a person has a limited investment interest of less than ten (10%) percent of the ownership of net assets, or an interest as creditor of less than ten (10%) percent of the total indebtedness of any business or other entity which is the contractor on the public contract involved or in which public funds are invested, or which issues any security thereof.

1.05.050 Restrictions on Assisting or Representing Other Interests Before Government Bodies for Compensation

No Tribal official except an employee of a governmental body duly established and authorized for such purposes by the Nisqually Indian Tribe shall represent or otherwise assist any person or entity other than the Nisqually Indian Tribe or a governmental body or political subdivision thereof, for compensation, before any governmental body where the matter before the governmental body is of a nonministerial nature. This section shall not be construed to prohibit the duties of elected or appointed Tribal officials to represent their constituents' interests before government agencies or entities nor the performance of ministerial functions, including but not limited to the filing or amendment of tax returns, applications for permits and licenses, and other documents or reports. It does, however, prohibit representation of such other interests for any fee or compensation in seeking to obtain any legislation, contract, payment of any claim or any other governmental benefit.

1.05.060 Restrictions on Assisting or Representing Other Interests Subsequent to Termination of Public Office

- (a) No former Tribal official or partner, employee or other associate thereof shall, with or without compensation, after the termination of such public office or employment, knowingly act as agent or attorney for or otherwise represent any other person or entity (except the Nisqually Indian Tribe, its governmental bodies or political subdivisions) by formal or informal appearance nor by oral or written communication, for the purpose of influencing any governmental body of the Nisqually Indian Tribe or any officer or employee thereof, in connection with any proceeding, contract, claim, controversy, investigation, charge or accusation, in which such former Tribal officer or employee personally and substantially participated, through approval, disapproval, recommendation, rendering of advice, investigation or otherwise, while so acting or employed.
- (b) With respect to any such matter which was actually pending among such former Tribal official's responsibilities, but in which such person did not participate as set forth in NTC 1.05.060 (1), the prohibitions set forth hereunder shall apply for the period of two (2) years following the termination of such public office or employment.

- (c) Nothing in this chapter shall prevent a former Tribal official from appearing and giving testimony under oath, nor from making statements required to be made under penalty of perjury, nor from making appearances or communications concerning matters of a personal and individual nature which pertain to such former Tribal official or are based upon such person's own special knowledge of the particular subject involved, not otherwise privileged from disclosure by other applicable law; and provided further, that no compensation is thereby received other than that which is regularly provided for witnesses by law or regulation.
- (d) The Nisqually Indian Tribe, its governmental bodies and political subdivisions shall not enter into any contract with, nor take any action favorably affecting or economically benefiting in any manner differently from members of the public at large, any person, business, governmental or other entity, which is assisted or represented personally in the matter by a former Tribal official whose official act, while a Tribal official, directly contributed to the making of such contract or taking of such action by the Nisqually Indian Tribe or any governmental body or political subdivision thereof.
- (e) Nothing contained in this subsection shall prohibit a former Tribal official from being retained or employed by the governmental entity which he or she formerly served.

1.05.070 Unauthorized Compensation or Benefit for Official Acts.

- (a) No Tribal official shall accept or receive any benefit, income, favor or other form of compensation for performing the official duties of their office, beyond the amount or value which is authorized and received in their official capacity for performing such duties.
- (b) This subsection shall not be construed to prohibit the receipt of authorized compensation for the performance of other distinct and lawful public duties by Tribal officials.
- (c) No Tribal official, however, shall accept any benefit, income, favor or other form of compensation for the performance of the duties of any other office or employment not actually performed or for which such official is not otherwise properly authorized or entitled to receive.

1.05.080 Unauthorized Personal Use of Property of the Nisqually Indian Tribe

No Tribal official shall use any property of the Nisqually Indian Tribe or any other public property of any kind for other than as authorized and approved for official purposes and activities. Such persons shall properly protect and conserve all such property, equipment and supplies which are so entrusted, assigned or issued to them.

1.05.090 Staff Misuse Prohibited

No Tribal shall employ, with funds of the Nisqually Indian Tribe, any unauthorized person or persons, nor persons who do not perform duties commensurate with such compensation, and shall utilize authorized employees and staff only for the official purposes for which they are employed or otherwise retained.

1.05.100 Anti-Nepotism

No Tribal official shall employ, appoint, or otherwise cause to be employed, nor nominate, nor otherwise influence the appointment or employment to any public office or position with the Nisqually Indian Tribe or any governmental or political subdivision thereof, any person or persons related by blood or marriage within the third degree, nor any member of the same household as said Tribal official. Assignment of such persons to duties, positions, governmental offices or other entities shall in all instances be made in strict compliance with the current provisions of the Personnel Policies and Procedures of the Nisqually Indian Tribe, as amended from time to time.

1.05.110 Restrictions Against Gifts or Loans to Influence Official Acts

- (a) Except as otherwise provided herein, or by other applicable law, no Tribal official shall solicit or accept for themselves or another, any gift, including economic opportunity, favor, service, or loan (other than from a regular lending institution on generally available terms) or any other benefit of an aggregate monetary value of one hundred dollars (\$100.00) or more in any calendar year, from any person, organization or group which:
- (i) has, or is seeking to obtain, contractual or other business or financial relationships or approval from any governmental office or entity with which the Tribal official is associated; or
 - (ii) conducts operations or activities which are regulated or in any manner supervised by any governmental office or entity with which the Tribal official is associated; or
 - (iii) has any interest which, within two (2) years, has been directly involved with, or affected by, the performance or non-performance of any official act or duty of such Tribal official or of the government office or entity with which the Tribal official is associated or which the Tribal official knows or has reason to believe is likely to be so involved or affected.

1.05.120 Permitted Gifts, Awards, Loans, Reimbursements and Campaign Contributions

NTC 1.05.110 shall not be construed to prohibit:

- (a) an occasional nonmonetary gift, insignificant in value;
- (b) gifts from and obviously motivated by family or social relationship, as among immediate family members or family inheritances;
- (c) food and refreshments customarily made available in the ordinary course of meetings where a Tribal official may properly be in attendance;
- (d) an award, traditional gift, or honor customarily and publicly presented;
- (e) a political campaign contribution, in accordance with all applicable election laws and provided that such gift or loan is actually used in the recipient's political campaign for elective office or a governmental body or political subdivision thereof and provided further that no promise or commitment regarding the official duties of office or employment is made in return for such contribution.

**TITLE 1
OPEN MEETINGS & CONDUCT OF OFFICIALS**

CHAPTER III - CONSTRUCTION AND SEVERABILITY

1.100.910 Construction

The purposes of this Title are hereby declared remedial and shall be liberally construed.

1.100.920 Severability

If any provision of this Title, or its application to any person or circumstance is held invalid, the remainder of the Title, or the application of the provision to other persons or circumstances is not affected.