

WARM SPRINGS TRIBAL CODE

CHAPTER 300

EXCLUSION OF PERSONS NOT LEGALLY ENTITLED TO RESIDE ON THE RESERVATION

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I. GENERAL

300.001 Enacting Statements.

- (1) WHEREAS, the Treaty between The Confederated Tribes and the Federal government known as the Treaty with the Tribes of Middle Oregon entered into on June 25, 1855, provides in Article I that the Warm Springs Reservation:

"... shall be set apart, and, so far as necessary, surveyed and marked out for their exclusive use; nor shall any white person be permitted to reside upon the same without the concurrent permission of the agent and Superintendent."; and
- (2) WHEREAS, the Tribal Council of The Confederated Tribes of the Warm Springs Reservation of Oregon is the governing body of such Tribe; and
- (3) WHEREAS, the Tribal Council is charged with the duty of safeguarding and promoting the peace, safety, morals, health and general welfare of the members of The Confederated Tribes, regulating the use and disposition of property upon the Reservation and providing for the maintenance of law and order on the Reservation; and
- (4) WHEREAS, Pursuant to Article V, Section 1(h) the Tribal Council has the power to exclude from the territory of The Confederated Tribes persons not legally entitled to reside therein; and
- (5) WHEREAS, the Tribal Council as the governing body for The Confederated Tribes is responsible for interpreting legal documents relating to the Tribes, including the Tribal Constitution and the Treaty referred to above; and
- (6) WHEREAS, persons are increasingly acting in disregard of tribal ordinances, state laws and federal laws and engaging in acts and conduct creating financial, health, psychological and social problems for tribal members on the Reservation; and
- (7) WHEREAS, the Tribal Council in the exercise of its sovereign and traditional powers is desirous of establishing a reasonable procedure to determine the

necessity of excluding persons from the Reservation and thereafter a reasonable procedure for carrying out such exclusion in the event that it is necessary; and

- (8) WHEREAS, the Tribal Council expressly finds that the procedures set forth in this ordinance are intended to provide an orderly means of excluding persons from this Reservation for the benefit of the Tribes and its members and are not intended to confer specific rights on persons subject to exclusion or in any way restrict or modify the terms of the treaty referred to above; now, therefore,
- (9) BE IT RESOLVED, by the Tribal Council of The Confederated Tribes of the Warm Springs Reservation of Oregon pursuant to Article V, Sections 1(h), (i) and (l) and (u) of the Constitution, that the following Ordinance #53 is hereby amended and adopted as follows:

II. ORDINANCE 53

ESTABLISHING PROCEDURES FOR DETERMINING THE NECESSITY OF AND CARRYING OUT THE EXCLUSION OF PERSONS NOT LEGALLY ENTITLED TO RESIDE ON THE WARM SPRINGS RESERVATION OF OREGON.

300.010 Definitions.

- (1) "Exclusion" means the removal and/or the barring of entry of persons from the territory of The Confederated Tribes.
- (2) "Territory of The Confederated Tribes" means all lands within the exterior boundaries of the Warm Springs Indian Reservation and all lands outside the Warm Springs Indian Reservation owned by The Confederated Tribes, or by the United States in trust for The Confederated Tribes or its members.
- (3) "Confederated Tribes" mean The Confederated Tribes of the Warm Springs Reservation of Oregon.
- (4) "Tribal Council" means the Tribal Council serving as the governing body of The Confederated Tribes.
- (5) "Nonresident/nonmembers" means those persons who neither reside on the territory of The Confederated Tribes nor are members of The Confederated Tribes.
- (6) "Resident nonmembers" means persons that reside on the territory of The Confederated Tribes or are immediate family members of persons that reside on the Warm Springs Reservation or are employees of The Confederated Tribes and are not members of The Confederated Tribes.
- (7) "Members" mean members of The Confederated Tribes of the Warm Springs Reservation of Oregon.

- (8) "Persons legally entitled to reside on the territory of The Confederated Tribes" means the following persons:
- (a) Employees of the federal government that need to reside on the territory of The Confederated Tribes in order to perform their official duties.
 - (b) Members of The Confederated Tribes.
- (9) "Reside" means to maintain a residence on the territory of The Confederated Tribes.
- (10) "Superintendent" means the Superintendent of the Bureau of Indian Affairs Warm Springs Agency.

300.015 Tribal Prosecutor. The Tribal Prosecutor shall be responsible for presentation of evidence on behalf of The Confederated Tribes at hearings on exclusion before the Warm Springs Tribal Court.

300.020 Licenses, Easements, Grants, and Rights-of-Way. Nothing in this Chapter shall restrict the ability of nonmembers, who are entitled to do so, to lawfully use licenses, easements, grants, or rights-of-way of record within the territory of The Confederated Tribes. However, those persons not using these licenses, easements, grants, and rights-of-way in accordance with their grant or general tribal law, shall be subject to exclusion by the Tribal Court after notice and an opportunity to be heard under the terms of this Chapter. Such licenses, easements, grants, and rights-of-way include, but are not limited to, U.S. Highway 26, utility easements, BPA transmission line easements, FERC licenses, and the provisions of McQuinn Act [PL92-427, 86 Stat. 719, Section 4(g) and (h)] dealing with public campgrounds and roads.

III. EXCLUSION OF NONRESIDENT NONMEMBERS

300.300 Policy With Regard to Exclusion of Nonresident Nonmembers. With the exception of some employees of the Bureau of Indian Affairs and the Indian Health Service, nonresident nonmembers have few expectations of access to the territory of The Confederated Tribes. In addition, because nonresident nonmembers are often beyond the effective judicial control of The Confederated Tribes, the Tribes have an interest in retaining the ability to rapidly and effectively remove such persons from their territory. Such persons entering the territory of The Confederated Tribes for the purpose of trafficking in illegal drugs and contraband have become an increasing problem. Because these persons are not legally entitled to reside on the Reservation, and the Reservation was specifically set apart for the exclusive use of The Confederated Tribes by the Treaty of 1855, the Tribal Council has determined that it is in The Confederated Tribes best interests to allow the exclusion of nonresident nonmembers on grounds substantially less than those that would be needed to institute criminal charges, criminal investigation or disciplinary action.

300.310 Exclusion of Nonresident Nonmembers. Nonresident nonmembers may be excluded from the territory of The Confederated Tribes by reason of commission of one or more of the following acts either within or without the territory of The Confederated Tribes:

- (1) Breach of the peace.
- (2) Repeated public drunkenness.
- (3) Entering an area of the Warm Springs Reservation in violation of any order of the Warm Springs Tribal Council or the Superintendent of the Warm Springs Indian Agency designating such area as closed because of fire hazard or for any other reason.
- (4) Failure or refusal to pay any taxes, rents, or other charges justly due The Confederated Tribes after reasonable notice and opportunity to pay.
- (5) Unauthorized cutting of timber or vegetation.
- (6) Any act causing physical loss or damage of any nature to tribal property or property of any enrolled member.
- (7) Crime, as defined by state, federal or tribal law.
- (8) Violation of any tribal ordinance.
- (9) Trespass on trust or fee patent lands.
- (10) Committing frauds, employing confidence games, or engaging in usury.
- (11) Inducing any enrolled member to enter into grossly inequitable contracts of any nature.
- (12) Defrauding any enrolled member of just compensation for his labor or service of any nature done at the request of the nonmember.
- (13) Unauthorized possession of firearms.
- (14) Contagious disease.
- (15) Unauthorized taking of any property from the Reservation.
- (16) Use, possession or sale of any drug, narcotic drug, or controlled substance as defined by the State Uniform Controlled Substances Act.
- (17) Failure to establish a legitimate purpose for presence on the territory of The Confederated Tribes.

300.315 Evaluation of Grounds for Exclusion by The Tribal Court.

- (1) If the grounds for exclusion are ones unlikely to adversely affect the health, safety, or morals of residents of the territory of The Confederated Tribes,

exclusion may be ordered if it is found to be more likely than not that the grounds for exclusion exist.

- (2) If the grounds for exclusion constitute a threat to the health, safety, or morals of residents of the territory of The Confederated Tribes, exclusion may be ordered on the reasonable suspicion that the grounds for exclusion are present.

300.320 Immediate Exclusion of Nonresident Nonmembers. Any nonresident nonmember committing one of the grounds of exclusion set forth in WSTC 300.310(1) through (16) in the presence of a tribal or federal official may be immediately excluded from the territory of The Confederated Tribes without further proceedings. If the official is not a law enforcement officer he should report the matter to a law enforcement officer who may then carry out the exclusion.

300.325 Tribal Council or Superintendent Exclusion. The Tribal Council by motion or resolution, or the Superintendent, may order the exclusion of any nonresident nonmember from the territory of The Confederated Tribes at any time, with or without cause.

300.330 Notice of Proposed Exclusion to Nonresident Nonmembers. Except in the case of immediate exclusion pursuant to WSTC 300.320 or Tribal Council or Superintendent exclusion pursuant to WSTC 300.325, a judge of the Warm Springs Tribal Court shall cause notice to be served personally or by registered mail upon any nonresident nonmember whenever the court believes cause may exist for exclusion of the nonresident nonmember. The notice shall state the reason for the proposed exclusion and shall name a time and place where the nonresident nonmember may appear before the Warm Springs Tribal Court to show cause why he or she should not be excluded from the territory of The Confederated Tribes. The hearing shall be not less than five (5) days after service of the notice or mailing of the notice, whichever is later, provided that if the judge shall have reasonable cause to believe an emergency exists, and the notice so states, the hearing may be held after twenty-four (24) hours from the time of service or mailing, whichever is later.

300.340. Hearing on Exclusion of Nonresident Nonmembers Before Warm Springs Tribal Court. After notice to the nonresident nonmember proposed for exclusion, the Warm Springs Tribal Court shall hold a hearing to decide whether the nonresident nonmember shall be excluded from the territory of The Confederated Tribes. The nonresident nonmember shall be given an opportunity to present his or her defense at such hearing. The nonresident nonmember may not be represented by counsel. After the hearing, if the Court finds just cause or after the time set for the hearing, if after notice the nonresident nonmember does not appear, the Court may order him or her excluded from the territory of The Confederated Tribes, or may permit him or her to remain upon the territory of The Confederated Tribes on such conditions as the Court sees fit to impose. All order of exclusion shall remain in force until revoked by the Warm Springs Tribal Court unless the order specifically provides otherwise.

300.345 Appeals by Nonresident Nonmembers. No appeal may be taken from the order of the court issued pursuant to WSTC 300.340.

IV. EXCLUSION OF RESIDENT NONMEMBERS

300.400 Policy With Regard to Exclusion of Resident Nonmembers. There are relatively few resident nonmembers on the territory of The Confederated Tribes. They typically include employees of the Bureau of Indian Affairs, essential employees of the Tribes, persons married into the Tribes, or with some other family relationship with a tribal member. Because the exclusion of such persons may have a direct effect on tribal operations or on the families of tribal members, the standards for exclusion of such persons are more stringent. These standards are intended to balance the interest of the Tribes in excluding persons for a variety of reasons against adverse impacts on the families or departments of those persons excluded. Again, the clear right of the Tribes to exclude such persons under the Treaty and Tribal Constitution is affirmed and any procedural standards established by this Chapter should not be interpreted as an infringement upon those rights.

300.410 Exclusion of Resident Nonmembers. Resident nonmembers may be excluded from the territory of The Confederated Tribes by reason of commission of one or more of the acts either within or without the territory of The Confederated Tribes enumerated in WSTC 300.310 (1) through (16).

300.415 Evaluation of Grounds for Exclusion by The Tribal Court. A resident nonmember may be excluded if it is found to be more likely than not that the grounds for exclusion exist.

300.420 Immediate Exclusion of Resident Nonmembers. Any resident nonmember who commits an act or threatens to commit an act that would cause serious injury to any person in the presence of a tribal or federal official may be immediately excluded from the territory of The Confederated Tribes without further proceedings.

300.425 Tribal Council or Superintendent Exclusion of Resident Nonmembers. Tribal Council, by motion or resolution, or the Superintendent, may order the exclusion of any resident nonmember that is not legally entitled to reside on the territory of The Confederated Tribes from the territory of The Confederated Tribes at any time, with or without cause.

300.430 Notice of Proposed Exclusion to Resident Nonmember. Except in the case of immediate exclusion pursuant to WSTC 300.420, or Tribal Council or Superintendent exclusion pursuant to WSTC 300.425, a judge of the Warm Springs Tribal Court shall cause notice to be served personally or by registered mail on any resident nonmember whenever the court believes cause may exist for exclusion of the resident nonmember. The notice shall state the reason for the proposed exclusion and shall name a time and place where the resident nonmember may appear before the Warm Springs Tribal Court to show cause why he or she should not be excluded from the territory of The Confederated Tribes. The hearing shall be not less than five (5) days after service of the notice or mailing of the notice, whichever is later, provided that if the judge shall have reasonable cause to believe an emergency exists, and the notice so states, the hearing may be held after twenty-four (24) hours from the time of service or mailing, whichever is later.

300.440 Hearing on Exclusion of Resident Nonmembers Before Warm Springs Tribal Court. After notice to the resident nonmember proposed for exclusion, the Warm Springs Tribal Court shall hold a hearing to decide whether the resident nonmember shall be excluded from the territory of The Confederated Tribes. The resident nonmember shall be given an opportunity to present his or her defense at such hearing. The resident nonmember may not be represented by counsel. After the hearing, if the Court finds just cause or after the time set for the hearing, if after notice the resident nonmember does not appear, the Court may order him or her excluded from the territory of The Confederated Tribes, or may permit him or her to remain upon the territory of The Confederated Tribes on such conditions as the Court sees fit to impose. All orders of exclusion shall remain in force until revoked by the Warm Springs Tribal Court unless the order specifically provides otherwise.

300.445 Appeals by Resident Nonmembers. An appeal may be taken from the order of the court issued pursuant to WSTC 300.440 in accordance with the provisions of WSTC Chapter 204.

V. ENFORCEMENT

300.800 Proceedings for Enforcement of Orders of Exclusion. If any person ordered excluded from tribal territory pursuant to this Chapter does not promptly obey the order, any federal or tribal law enforcement officer may immediately physically remove the person excluded from the territory of The Confederated Tribes. In addition, the matter may be referred to the Superintendent at the Warm Springs Agency, the United States Attorney, the State District Attorney, and/or the tribal attorneys' office, who shall take such legal action as may be necessary to compel compliance with the order.

300.810 Entry of Persons onto Reservation for Exclusion Hearing. In cases in which a person is afforded a hearing before the Tribal Court, the judge shall notify the person of a place on Reservation boundary where he or she may reenter in the company of a Bureau of Indian Affairs or Warm Springs Tribal law enforcement officer for the purpose of attending the exclusion hearing before the Tribal Court. The officer shall accompany the person while he or she is on the Reservation, coming to, and leaving the Reservation.

VI. PENALTIES

300.900 Criminal Penalties. Any Indian that knowingly violates an order of exclusion issued pursuant to this Chapter shall be deemed guilty of an offense and may be subjected to a fine not to exceed \$5,000 and jail term not to exceed one (1) year.

300.910 Civil Penalties. Any person that knowingly violates an order of exclusion issued pursuant to this Chapter commits a civil infraction punishable by a fine not to exceed \$500. The trial of any such infraction shall be by the court without a jury, and the prosecution shall have the burden of proving the alleged infraction by a preponderance of the evidence. There shall be no appeal from a judgment involving such an infraction.

300.920 Seizure of Security. In the discretion of the citing officer, citing a defendant pursuant to this Chapter, the officer may seize such property in the possession of the defendant

as the officer deems reasonably necessary to secure payment of any fine which may be levied upon the defendant upon conviction of the infraction or crime. The officer shall, at the time of seizure, give to the defendant a receipt accurately describing the items seized. The officer shall further advise the defendant of his right to post security pursuant to WSTC 200.725. The seizure and disposition of security pursuant to this Chapter shall be conducted in accordance with the provisions of WSTC 200.700 through WSTC 200.750.

CERTIFICATION

The undersigned, as Secretary-Treasurer of the Confederated Tribes of the Warm Springs Reservation of Oregon, hereby certifies that the Tribal Council is composed of 11 members, of whom 8 constituting a quorum were present at a meeting thereof, duly and regularly called, noticed, convened and held this 10th day of February, 1988; and that the foregoing ordinance was passed by the affirmative vote of 7 members, the Chairman not voting; and the foregoing ordinance has not been rescinded in any way.

Larry Calica
Secretary-Treasurer

APPROVED:

Approved pursuant to authority re delegated to the Area Director by the Commissioner of Indian Affairs in 10 BIAM 3.1 (Dated June 3, 1975).

Bernie Topash
Superintendent

Area Director

Date