

SHOALWATER BAY INDIAN TRIBE
CODE OF LAWS



TITLE 4
EXCLUSION

Amended by General Council August 3, 2019

General Council Resolution #08-03-19-57

Public Hearing Held July 26, 2019

Amended APRIL 27, 1987

Adopted December 14, 1978

SHOALWATER BAY TRIBE
CODE OF LAWS



TITLE 4 - EXCLUSION

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SHOALWATER BAY INDIAN TRIBE
CODE OF LAWS



TITLE 4 - EXCLUSION

CHAPTER 4.1 PURPOSE AND JURISDICTION

4.1.010 PURPOSE. This title is enacted to protect the natural resources of the Shoalwater Bay Tribe and to protect the peace and tranquility of the members of the Shoalwater Bay Tribe and their property.

4.1.020 JURISDICTION. The Shoalwater Bay Tribal Court shall have jurisdiction over all matters arising under this title. All means necessary to exercise that jurisdiction are delegated to the Tribal Court. In the exercise of jurisdiction under this title, if a course of proceeding is not specified, any suitable process may be adopted by the Tribal Court, in keeping with the spirit of the laws of the Tribe.

CHAPTER 4.2 GROUNDS FOR EXCLUSION

4.2.010 GROUNDS FOR EXCLUSION – NON-MEMBER. Any person who is not an enrolled member of the Shoalwater Bay Indian Tribe should have few expectations of access rights to the territory of the Shoalwater Bay Indian Tribe and may be excluded with broad discretion by the Tribe. Such persons may be excluded from the jurisdiction of the Tribe for reasons, including, but not limited to, the following:

- a) Commission of a crime under tribal, state, or federal laws, whether or not the person may be prosecuted by the Tribe;
- b) Repeated invasion of the privacy of the Reservation residents;
- c) Failure or refusal to pay any amounts due to the Tribe including taxes, rents, or other charges justly due after reasonable notice and opportunity to pay;
- d) Entry onto any tribal land for the purpose of hunting, fishing, trapping, timber cutting, driftwood collecting, without a valid Tribal permit;
- e) Any activity involving the taking of or damage to the property or natural resources of the tribe or of any resident of the Reservation;

- f) Trespass upon any tribal land, which has been closed to non-tribal members. Tribal land may be closed by order of the Shoalwater Bay Tribal Council and shall be identified as closed by the erection of "No Trespassing" signs in prominent locations on and at the boundaries of the closed areas;
- g) Evading arrest or prosecution for any offense committed in another jurisdiction;
- h) Failure to comply with any legal process, notice, subpoena, order, or other decree issued by the Shoalwater Bay Tribal Court, Tribal Council, or Tribal Administrative procedure panel;
- i) Removing or attempting to remove any child of a member of the Shoalwater Bay Tribe without proper authority;
- j) Disturbing grave sites, artifacts, or other sites and objects of historical or anthropological value without authorization from the Tribal Council;
- k) Failure to comply with any tribal law, policy or contractual obligation regarding employment practices;
- l) Repeated harassment of members of the Shoalwater Bay Tribe, tribal officials, or tribal employees;
- m) Presence within the jurisdiction of the Shoalwater Bay Tribe during a time when that person is legally required to be in school. This applies only to persons under the age of eighteen years who are not members of the tribe;
- n) Committing fraud or aiding or abetting in the commission of fraudulent activity;
- o) Inducing any enrolled member to enter into grossly inequitable contracts of any nature;
- p) Unauthorized possession of firearms;
- q) Unauthorized taking of any property from Shoalwater Bay territory;
- r) Failure to establish a legitimate purpose for presence on the territory of the Shoalwater Bay Tribe.

4.2.020 GROUNDS FOR EXCLUSION – TRIBAL MEMBER

1. Any Tribal Members subject to this chapter may be removed and excluded from the territory of the Shoalwater Bay Indian Tribe for any reason so indicated in Titles 4 and 4A of the Tribe's Code of Laws, including, but not limited to, any of the following reasons:

- a) Current status as a person convicted by a court of competent jurisdiction of molesting a child or of abusive sexual contact of a minor;
- b) Current status as a person convicted by a court of competent jurisdiction of a sex offense involving a minor and/or found to be a level two or three sex offender as those terms are defined under state or federal law or within the last ten years, conviction as a level one sex offender as that term is defined under state or federal law;
- c) Violation of the terms of his or her parole, or probation of a conviction by a court of competent jurisdiction, violation of terms of any sexual offense registration requirement. Violation or failure to comply with any court-mandated sex treatment program or violation of the terms of any civil commitment law, if such a violation could cause harm or threaten to cause harm to any child.
- d) Commission of any crime(s) under Tribal, Federal, State or Foreign laws, whether or not the person may be prosecuted by the Tribe for such crime(s).
- e) A person may be excluded where he or she is deemed to be an immediate danger to life, health, morals, property, or natural resources of the Shoalwater Bay Tribe, of Reservation residents, or of Tribal members, consistent with Title 4 of the Shoalwater Bay Code of Laws.

CHAPTER 4.3 RULES FOR EXCLUSION PROCEDURE

4.3.010 PETITION FOR EXCLUSION. The Shoalwater Bay Tribal Council by a unanimous vote from every elected member of the Council, may through their representative or Tribal Prosecutor, petition the Shoalwater Bay Tribal Court to begin exclusion procedures whenever the Chairman or Vice-Chairman has reason to believe that cause exists for the exclusion of any person.

4.3.020 NOTICE OF EXCLUSION PETITION. Upon finding that probable cause exists for excluding the person, the Court shall have notice of the exclusion petition served on the person in question. Such notice shall state the reason for the order and shall name a time, not less than ten (10) days, when the person may appear before the Shoalwater Bay Tribal Court for a hearing to show cause why he or she should not be excluded from the Shoalwater Bay Indian Reservation.

4.3.030 RIGHTS AT HEARING. The person proposed for exclusion shall be entitled at the hearing to present evidence and witnesses on his or her own behalf and to rebut evidence and cross-examine witnesses presented by the Tribe. He or she shall be entitled to have the assistance of counsel, admitted to practice before the Shoalwater Bay Tribal Court, at his or her own expense.

4.3.040 STANDARD FOR THE COURT'S DECISION. The Tribal Court may enter an order for exclusion if, based on the evidence presented, the Court is reasonably certain that:

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

4.3.050 FAILURE TO APPEAR AT THE HEARING. If the person does not appear at the hearing at the time and place scheduled, the Shoalwater Bay Tribal Court shall issue an order excluding the person under Section 4.3.060 of this Code. The order shall be effective for the period specified in the order or until revoked or modified by the Court.

4.3.060 ORDER OF EXCLUSION. The Court may orally advise the parties of its decision at the hearing or may issue an opinion no later than ten working days from the date of the hearing. In either case, the Court shall prepare a written order and cause it to be served on both parties, written orders for Exclusion shall include:

- a) The grounds for the decision;
- b) The date and time the individual or entity must remove himself;
- c) The duration the order is to be in effect;
- d) Any circumstances under which the individual or entity may be permitted to return. For example, payment of restitution, evidence of rehabilitation, visitation of children, visitation during certain times only, and a limited time to return to pick up belongings;
- e) A date by which the Tribal Court will review the order and circumstances or conditions attached, if the individual or entity requests a review.

4.3.070 SERVICE OF THE ORDER. A copy of the order shall be given to the person personally, or, in his or her absence, shall be mailed to his or her last known address, or served upon him or her by the Tribal Law Enforcement Officer.

4.3.080 ORDER OF EXCLUSION – ENFORCEMENT. The Court may request Tribal Law Enforcement to supervise the removal of the respondent. Tribal Law Enforcement, in its discretion and under its supervision, may allow the person to gather any necessary

belongings from the jurisdiction of the Tribe, prior to removal. If the respondent fails to voluntarily remove himself within the time limit stated in the order, Tribal Law Enforcement may physically remove him. Tribal Law Enforcement shall use only so much force as is reasonable to accomplish the removal.

4.3.090 EMERGENCY REMOVAL—PROCESS AND GROUNDS.

1. The Tribal Council upon a petition filed by the Tribal Prosecutor, Tribal Attorney or other designated representative and following notice to the affected individual, may ask the Tribal Court for emergency removal from the jurisdiction of the Shoalwater Bay Indian Tribe any individual subject to removal under this code upon a showing that an immediate danger to health, safety, natural resources or property exists and delay would result in irreparable harm.

The Tribal Council, in its discretion and under its supervision, may allow the person to gather any necessary belongings from the jurisdiction of the Tribe, prior to removal. The individual shall have the right to seek reconsideration of such removal pursuant to the requirements of this Title.

2. In addition to the above, the Tribal police may issue an Emergency Exclusion Order with notice to any individual excluding that person from the jurisdiction of the Shoalwater Bay Indian Tribe for no more than thirty (30) days if the Tribal Police believe that there is an immediate danger to health, safety, natural resources or property, that delay would result in irreparable harm and that there is no other means available to protect the Tribal Community.

If such an order is issued, a hearing shall be held at the next available Court date by the Tribal Court upon notice to the individual excluded. The Court may at the time of that hearing rule on the Tribe's request to extend the emergency exclusion for a longer period of time. The Tribal Court shall apply the standards for the hearing under Sections 4.3.03 and 4.3.04.

4.3.010 SEVERABILITY. If any provision herein is determined to be invalid, such adjudication shall not be held to affect or invalidate the remainder of the code, but shall be confined in its operation to the provision directly involved in the controversy in which such judgment was rendered.

CHAPTER 4.4 APPEAL

4.4.01 WHO MAY APPEAL EXCLUSION ORDER.

Any person subject to a Shoalwater bay Indian Tribe exclusion or removal order may appeal the final order to the SHOALWATER BAY TRIBAL COURT OF APPEALS.

4.4.02 RULES FOR APPEAL.

Appeals under this Title shall be governed by Title 19 of the Shoalwater Bay Code of Laws, the Appellate Code.

4.4.03 EXCEPTIONAL RULES FOR RECONSIDERATION OF EXCLUSION ORDER

If after a minimum Exclusion of five (5) years, an excluded person may file a Petition to Re-consider their Exclusion Order with the Tribal Court.

The Petition shall contain a description the behavior causing the Exclusion Order to be issued, a concise statement explaining why the Exclusion Order should be re-considered due to the significant, or extraordinary actions of the petitioner in keeping with the highest traditions of the Shoalwater Bay Tribe, and supporting documentation that evidences significant rehabilitated behavior.

The Clerk of the Court shall send a copy of any such Petition to Re-Consider an Exclusion Order to the Tribal Council and the Tribal Prosecutor upon the filing of any petition. The Tribal Council through its Tribal Prosecutor, Tribal Attorney or other designated representative may file a Motion in the Tribal Court that supports or opposes any re-consideration petition.

The Clerk of the Court shall schedule a re-consideration hearing for the next available Court date, wherein the petitioner and the Tribal Prosecutor, Tribal Attorney or other designated representative shall have an opportunity to present witnesses, and other evidence that is necessary and relevant to decide the case.

The Tribal Court may affirm an Exclusion Order on any rational basis. The Tribal Court may only re-consider and/or vacate an Order of Exclusion if based on clear and convincing evidence to include but not be limited to documentation, testimony, and any motions presented, determines that the excluded individual is no longer a danger to the health safety, or welfare of the Tribal Community.

IN THE SHOALWATER BAY TRIBAL COURT
FOR THE SHOALWATER BAY INDIAN TRIBE
SHOALWATER BAY, WASHINGTON

SHOALWATER BAY INDIAN TRIBE

Plaintiff

Vs

Respondent

Case No. SHO-EXC-

**PETITION FOR EXCLUSION
OR REMOVAL**

I, _____, the Chairperson / Vice-Chairperson of the Shoalwater Bay Tribal Council file this petition for the exclusion of _____ from the jurisdiction of the Shoalwater Bay Indian Tribe.

I.

The respondent is not a member of the Shoalwater Bay Indian Tribe.

II.

The respondent should be excluded because _____

The facts stated above are grounds for exclusion under the Shoalwater Bay Code, Section 4.2.010 _____

(a-r)

I have read this complaint and believe it to be true.

Date

Signature of Petitioner

Print Name

IN THE SHOALWATER BAY TRIBAL COURT
FOR THE SHOALWATER BAY INDIAN TRIBE
SHOALWATER BAY, WASHINGTON

SHOALWATER BAY INDIAN TRIBE

Plaintiff

Vs

Respondent

Case No. SHO-EXC-

**ORDER FOR EMERGENCY
REMOVAL OR EXCLUSION**

The Tribal Council of the Shoalwater Bay Indian Tribe enters this Order for
Emergency Removal or Exclusion of _____

I.

Reasons for Emergency Removal or Exclusion _____

II.

_____ may request a hearing before the Shoalwater
Bay Tribal Court. The request must be submitted to the Tribal Council within ten (10) days
after this order is received.

III.

If _____ does not request a hearing within ten (10)
days after this order is received, the order for removal or exclusion may become permanent.

IV.

_____ must leave the Reservation at this appointed
time _____, and at this appointed date _____

Date

Received:

Date

Chairperson / Vice-Chairperson

Respondent

IN THE SHOALWATER BAY TRIBAL COURT
FOR THE SHOALWATER BAY INDIAN TRIBE
SHOALWATER BAY, WASHINGTON

SHOALWATER BAY INDIAN TRIBE
Plaintiff

Case No. SHO-EXC-

Vs

ORDER OF EXCLUSION

Respondent

IT IS HEREBY ORDERED THAT _____

IS EXCLUDED FROM THE JURISDICTION OF THE SHOALWATER BAY INDIAN TRIBE.

I.

REASONS FOR EXCLUSION _____

II.

THE RESPONDENT, _____

IS HEREBY ORDERED TO LEAVE THE JURISDICTION OF THE SHOALWATER BAY INDIAN TRIBE AT THIS APPOINTED TIME _____ AND AT THIS APPOINTED DATE _____.

III.

DURATION THE ORDER IS TO BE IN EFFECT _____

IV.

CIRCUMSTANCES UNDER WHICH THE RESPONDENT MAY BE PERMITTED TO RETURN _____

DATE OF REVIEW, IF REQUESTED BY RESPONDENT _____

DATE

JUDGE

IN THE SHOALWATER BAY TRIBAL COURT
FOR THE SHOALWATER BAY INDIAN TRIBE
SHOALWATER BAY, WASHINGTON

SHOALWATER BAY INDIAN TRIBE

Plaintiff

Vs

Respondent

Case No. SHO-EXC-

**OPPORTUNITY TO
REQUEST HEARING**

This notice for the Opportunity to Request a Hearing before the Shoalwater Bay Tribal Court is presented to _____

I.

Reason(s) for the emergency removal of Respondent _____

II.

You may request a hearing before the Shoalwater Bay Tribal Court within ten (10) days after receiving this notice.

III.

Failure to request a hearing within the ten (10) day time limit may result in a permanent order for exclusion being entered by the Tribal Court against you, the Respondent.

Date

Chairperson / Vice-Chairperson

Received:

Date

Respondent

IN THE SHOALWATER BAY TRIBAL COURT
FOR THE SHOALWATER BAY INDIAN TRIBE
SHOALWATER BAY, WASHINGTON

SHOALWATER BAY INDIAN TRIBE
Plaintiff

Case No. SHO-EXC-

Vs

NOTICE OF EXCLUSION HEARING

Respondent

NOTICE OF HEARING IS GIVEN TO _____

I.

Time: _____

Date: _____

Place: SHOALWATER BAY TRIBAL COURT BUILDING, TOKELAND WA

II.

Reason(s) for the hearing _____

III.

You may be represented by counsel at your own expense.

IV.

You may present testimony of witnesses and other evidence on your behalf.

V.

Failure to attend the hearing may result in the Court entering a permanent order of exclusion from the territorial jurisdiction of the Shoalwater Bay Indian Tribe.

Date

Judge

IN THE SHOALWATER BAY TRIBAL COURT
FOR THE SHOALWATER BAY INDIAN TRIBE
SHOALWATER BAY, WASHINGTON

SHOALWATER BAY INDIAN TRIBE

Plaintiff

Vs

Respondent

Case No. SHO-EXC-

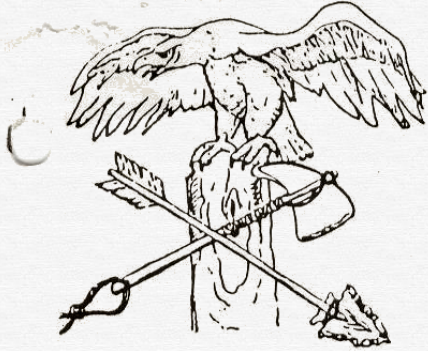
RETURN OF SERVICE

THIS NOTICE OF HEARING / NOTICE FOR THE OPPORTUNITY TO REQUEST A HEARING BEFORE THE SHOALWATER BAY TRIBAL COURT WAS SERVED UPON

THIS NOTICE WAS SERVED IN THE FOLLOWING MANNER _____

Date

Process Server / Law Enforcement



SHOALWATER BAY INDIAN TRIBE

Tokeland, Washington 98590

Telephone 267-6766

SHOALWATER BAY INDIAN TRIBE

RESOLUTION NO. 04-27-87-1D

WHEREAS, the Shoalwater Bay Tribe is a federally recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; and

WHEREAS, the Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe according to its Constitution; and

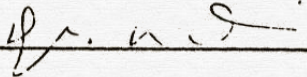
WHEREAS, the Shoalwater Bay Tribal Council has the power to establish procedures for the exclusion of non-tribal members under Article VI, section 1 (1) of the Constitution of the Shoalwater Bay Tribe; and

WHEREAS, the Shoalwater Bay Tribe is currently amending and codifying its laws, including the Exclusion Ordinance adopted by the Tribal Council on December 14, 1978

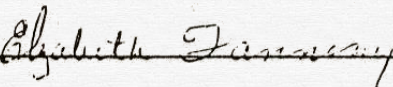
NOW THEREFORE BE IT RESOLVED, that the attached TITLE FOUR, EXCLUSION, SHOALWATER BAY TRIBE CODE OF LAWS is hereby adopted, effective on the date of this resolution.

C E R T I F I C A T I O N

The above resolution was passed at a regular Tribal Council meeting held on the 27th day of April, 1987 at the Shoalwater Bay Tribal Center at which a quorum was present by a vote of 3 FOR, 0 AGAINST, and 1 ABSTAIN.



ATTEST:





SHOALWATER BAY INDIAN TRIBE

P.O. Box 130 • Tokeland, Washington 98590
Telephone (360) 267-6766 • FAX (360) 267-6778

SHOALWATER BAY INDIAN TRIBE RESOLUTION #08-03-19-57

Amendments of Title 4 Exclusion & Title 4A Exclusion of Tribal Members

WHEREAS, the Shoalwater Bay Tribe is a federally recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; and

WHEREAS, the Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Tribe in accordance with their Constitution and By-laws; and

WHEREAS, the Shoalwater Bay Indian Tribe has inherent sovereign governmental powers to protect and promote the health, safety, and general welfare of the people of the Shoalwater Bay Indian Tribe; and

WHEREAS, the Shoalwater Bay Tribal Code of Laws Titles 4 Exclusion and 4A Exclusion of Tribal Member were in need of amendments that better protect the Shoalwater Bay Tribal members and reservation community. A public hearing was held July 26, 2019 regarding the amendments, there were no objections;

THEREFORE BE IT RESOLVED, the Shoalwater Bay GENERAL COUNCIL does hereby adopt the amendments to Title 4 Exclusion and Title 4A Exclusion of Tribal Members.

CERTIFICATION

The above Resolution was passed at an Annual meeting of the Shoalwater Bay GENERAL COUNCIL held August 3, 2019 at the Shoalwater Bay Tribal Gymnasium at which a quorum was present. 67 FOR 7 AGAINST 0 ABSTAIN

Charlene Nelson, Chairperson
Shoalwater Bay Indian Tribe

Lynn Clark, Secretary
Shoalwater Bay Indian Tribe