

## CHAPTER 2-3 INFRACTIONS; FIELD BONDS; OTHER CIVIL VIOLATIONS AND FORFEITURES

### GENERAL PROVISIONS

2-3-1

#### **Findings**

Lawbreakers are using devices, items, substances, objects and vehicles on the Reservation in violation of federal law and this Law and Order Code and are taking, possessing and using the natural resources of the Reservation in violation of federal law and this Law and Order Code. These activities are interfering with law enforcement and endangering the peace, safety, morals and general welfare of all persons on the Reservation. It is the purpose of this Chapter to provide for a procedure for adjudicating infractions and other civil violations and forfeiture of objects used or possessed in violation of this Code.

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#### **Purpose**

These procedures are intended to be remedial and not punitive and should compensate the Tribes for the damage done to the peace, security, welfare and natural resources of the Colville Indian Reservation and for the actions taken by the Colville Tribes to protect the Reservation and its resources and people. These civil procedures are also intended to coerce individuals into obeying the Ordinances and regulations of the Colville Confederated Tribes and not to punish such individuals for violations of those Ordinances and regulations.

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#### **Application and Procedure**

(a) Unless otherwise provided by specific language found elsewhere in this Code, this Chapter shall apply to any general or traffic infraction, field bond procedure, civil offense or forfeiture action listed in this Code or regulation adopted thereunder.

(b) Unless other procedures are provided by this Chapter, the Civil Actions Chapter 2-2 of this Code shall govern all questions of procedure arising as a result of the enforcement of this Chapter.

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#### **Definitions**

(a) "Defendant" means the person against whom an action is filed under this Chapter.

(b) "Infraction" means a civil offense in which the remedy involved is a civil fine or penalty which has been pre-determined by the Business Council as provided by the subchapter "Infractions" of this Chapter. An infraction is not a crime and the punishment imposed therefore shall not be deemed for any purpose a penal or criminal punishment and shall not affect or impair the credibility of a witness or otherwise of any person convicted thereof.

(c) "Law Enforcement Officer" means an officer or agent of a law enforcement department, from the Colville Tribes, or a county or local government, who is certified as a police officer.

(Amended 7/11/02, Resolution 2002-417)  
(Certified 7/19/02)

(d) "Notice" means a notice of infraction as provided by this Chapter.

(e) "Regulatory Enforcement Officer" means the person or persons charged with the responsibility of enforcing Colville Tribal civil laws, regulations, and tribal resolutions promulgated pursuant thereto and shall include all Colville Tribal:

- (1) Law enforcement officers;
- (2) Parks and Recreation Program law enforcement personnel;
- (3) Fish and Wildlife Program law enforcement personnel; and

(4) Any other qualified individual authorized by Colville Tribal law to act as a Regulatory Enforcement Officer.

(Amended 7/11/02, Resolution 2002-417)  
(Certified 7/19/02)

**2-3-5**      **Final Judgment**

(a) A final judgment against the defendant in favor of the Colville Confederated Tribes as determined under this Chapter shall include:

- (1) The issuance of an infraction notice as provided by this Chapter, unless contested as provided by this Chapter;
- (2) A final court order in favor of the Tribes resulting from any infraction notice which is contested as provided by this Chapter;
- (3) A penalty imposed under this Chapter for any other civil violation of tribal law or regulation;
- (4) A determination by the Tribal Court that property is subject to forfeiture under this Chapter.

(b) Any final judgement under this section shall be an obligation of the defendant to the Colville Confederated Tribes and is subject to collection or execution. Such judgment shall become a lien upon any available real, personal or other property of the defendant located within the boundaries of the Colville Indian Reservation or within the jurisdiction of the Colville Tribal Court. When necessary, the Colville Tribes may bring suit in any court to reach property of the defendant located outside the boundaries of the Colville Indian Reservation or outside the jurisdiction of the Colville Tribal Court.

**2-3-6**      **Additional Remedies**

Nothing in this Chapter shall be deemed to preclude the Tribal Court, to the extent authorized by tribal law, from:

- (a) Issuing an injunction, by ordering the defendant to temporarily or permanently refrain from conducting the acts or actions that gave rise to a complaint;
- (b) Ordering the defendant to pay compensation or restitution to an individual or any other entity injured by the actions of the defendant. Compensation or restitution shall reflect the actual documented damages or loss suffered as determined by the Tribal Court and shall not include compensation for emotional distress, pain or suffering or other special damages; or
- (c) Imposing any other remedy for civil violations of tribal law or regulations.

**INFRACTIONS**

**Issuance\Response**

**2-3-40**      **Determination of Identification**

(a) Any regulatory enforcement officer who has reasonable grounds to believe that a person has committed a general or traffic infraction either in or out of the officer's presence, shall identify himself to such person and promptly request any identifying information necessary to carry out the enforcement procedures under this subchapter. In making such determination, the officer may demand identification and ask questions as the officer reasonably believes are necessary to making the determination.

(b) In the event a person cannot be or refuses to be identified as provided by this section, the regulatory enforcement officer shall issue and file a notice of infraction according to the procedures of this subchapter, substituting for the suspected violator's name a fictitious name such as John Doe. Upon determination of the

true name of any person designated by a fictitious name in a notice of infraction, counsel for the Tribes shall amend the complaint to reflect the person's true name.

(Amended 7/11/02, Resolution 2002-417)  
(Certified 7/19/02)

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**Notice of Infraction**

(a) A notice of infraction constitutes the basis for the enforcement of this subchapter and shall serve as the civil complaint under this subchapter and shall satisfy any and all requirements for the filing of a civil complaint under the Civil Actions Chapter 2-2 of this Code. The content of the notice shall include the following:

(1) A statement that the notice represents a determination that an infraction has been committed by the person named in the notice and that such person may contest the determination as provided in this subchapter;

(2) A statement that an infraction is a non-criminal offense for which imprisonment cannot be imposed as a sanction;

(3) A statement of the specific act or omission for which the notice was issued and the specific infraction alleged;

(4) A statement of the liquidated damages established for the infraction;

(5) A statement of the options provided in this subchapter for responding to the notice and the procedures necessary to exercise those options, including:

(A) A statement that, at any hearing to contest that an infraction took place, the Tribes has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and

(B) A statement that, at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction, the person will be deemed to have committed the infraction and may not subpoena witnesses;

(6) A statement that failure to respond to the notice within the time prescribed or to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances will result in the imposition of an additional fee representing the added expenses incurred by the Tribes, and the entering of an order against the person named;

(7) A statement that an order imposing a fine shall be a debt owed to the Tribes, and the judgment entered on the debt may be enforced civilly in Tribal Court;

(8) A statement that the defendant must respond to the notice within fifteen (15) days.

(b) A notice may be issued by:

(1) A regulatory enforcement officer when an infraction under this Code or regulation adopted thereunder is committed in the officer's presence or when it is issued subsequent to an investigation and the officer has probable cause to believe that the defendant has committed an infraction under this Code. When issued by a regulatory enforcement officer, there shall be no requirement that the officer's signature on the notice be witnessed by a member of the court staff or a licensed notary public regardless of the procedures for civil complaints under this Code;

(2) The Colville Tribal Court upon receipt of a written complaint by a regulatory enforcement

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officer, the tribal prosecutor or citizen stating the circumstances of the incident, from which the court determines that there is probable cause to believe that an infraction was committed.

(c) In the event the notice is issued by a regulatory enforcement officer, he shall serve a copy of the notice on the defendant by personal delivery to him when the defendant is present. When served with a notice by a regulatory enforcement officer, the defendant shall sign the promise to appear located on the notice and shall be released unless held for arrest, expulsion, federal prosecution or any other applicable procedures provided by this Chapter or this Code. When the notice is for a traffic infraction and the defendant is not present, the officer may serve the notice by issuing the notice to the registered owner of the vehicle involved and affixing it in plain view on the vehicle. In the event the defendant is not present and the infraction is for another civil regulatory violation other than a traffic infraction, the officer may serve the notice by certified mail, return receipt requested. Certification of service of the notice or other evidence of delivery satisfactory to the court shall be indicated on the face of the notice by the issuing officer. One copy of the notice shall be filed by the issuing officer with the tribal prosecutor, who shall file the notice with the court if the officer has not already filed the notice.

(Amended 7/11/02, Resolution 2002-417)  
(Certified 7/19/02)

2-3-42

#### **Response to Notice**

(a) If the defendant named in the notice of infraction does not contest the determination that an infraction took place as stated in the notice he shall within fifteen (15) days of the date of the notice respond by completing the appropriate portion of the notice and submit it either by mail or in person to the Tribal Court. A check or money order in the amount of the liquidated damage amount set out in the notice must be submitted with the response. When a response under this subsection is received, an appropriate notation shall be entered in the court's records. No further proceedings under this subchapter shall be initiated against any defendant who pays the liquidated damage amount as provided in this section and, unless held for forfeiture as provided by this Chapter, any bond held by the Court for such payment shall be returned.

(b) If the defendant named in the notice wishes to contest the determination that an infraction took place as stated in the notice or if the defendant named in the notice does not contest the determination that an infraction took place as stated in the notice, but wishes to explain mitigating circumstances surrounding the infraction, he shall, within fifteen (15) days of the date of the notice, respond by completing the portion of the notice requesting a hearing for such purpose and shall submit it either by mail or in person to the Tribal Court.

#### **Hearings\Remedies**

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#### **Hearings—Rules of Practice**

(a) All infractions that are not resolved pursuant to administrative procedures provided by this subchapter shall be determined by a hearing before the Colville Tribal Court pursuant to this part. Unless the defendant has made arrangements with the Clerk of the Court and scheduled a hearing date, the Court shall set a hearing date and notify the relevant law enforcement agency and the defendant of the time, place and date. Unless otherwise agreed by the parties, the date of the hearing shall be within thirty (30) days of the receipt of the notice in which the defendant contests the infraction and the notice from the Court setting the hearing shall be sent to the defendant within five (5) business days of the receipt of the notice that the infraction is contested.

(b) Any person subject to proceedings under this subchapter may be represented by counsel admitted to practice before the Colville Tribal Court. The Tribes shall not have any duty to either appoint counsel for or compensate a person for his attorney's fees. The prosecutor or in the case of conflict of scheduling or interest, such other counsel for the Tribes as the Business Council may designate, shall represent the Tribes in all actions under this subchapter. An attorney representing the Tribes may, but need not, appear in any proceeding under this subchapter.

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(c) Hearings held under this subchapter to contest the determination that the infraction took place shall be as follows:

- (1) A hearing shall be held without a jury;
- (2) The court shall consider the notice and any other written report made under oath submitted by the law enforcement officer who issued the notice, or whose written statement formed the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing, provided, the person named in the notice may subpoena witnesses, including the officer, and has the right to present evidence and examine witnesses in court. The regulatory enforcement officer is not required to attend the hearing but may do so if he or she chooses and shall do so if he or she is timely served by the defendant with a subpoena within five (5) business days of the scheduled hearing.
- (3) The burden of proof is on the Tribes to establish the commission of the infraction by a preponderance of the evidence;
- (4) After consideration of the evidence and argument the court shall determine whether the infraction was committed. Where the court finds that the infraction was not committed an order dismissing the case shall be entered in the court's records. Where the court finds that the infraction was committed an appropriate order shall be entered in the court's records;
- (5) Any person found to have committed an infraction may appeal the court's order in the same manner as other civil appeals as appropriate.

(e) Hearings held under this subchapter to explain mitigating circumstances shall be as follows:

- (1) A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be informal. The person named in the notice may not subpoena witnesses nor may the determination that an infraction was committed be contested;
- (2) After the court has heard the explanation of the circumstances surrounding the commission of the infraction the Court may affirm the liquidated damage amount established for the infraction or may reduce the liquidated damage amount as the circumstances dictate;
- (3) There shall be no appeal from the court's determination under this subsection.

(f) Additional procedures for hearings provided for under this subchapter may be established by rule of the Tribal Court.

(Amended 7/11/02, Resolution 2002-417)  
(Certified 7/19/02)

## 2-3-44

### **Liquidated Damages**

(a) As directed by the Business Council, the directors of the appropriate tribal department(s) shall prepare for the approval of the council, and from time to time shall review and, as necessary, propose revisions to a schedule of liquidated damages consisting of a dollar determination or dollar determinations calculated to closely approximate the cost of providing equitable restitution to the Tribes for the damage or loss which would be caused by any infraction(s) of this Code or regulation adopted thereunder. In calculating liquidated damages, the Business Council may consider, in addition to any other factors they reasonably deem relevant:

- (1) The cost to the Tribes of producing and/or protecting the tribal property or interest affected;

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- (2) The cost of replacing or restoring the tribal property or interest affected;
- (3) The costs of enforcement including the general overall costs and costs particularized to individual infractions where appropriate;
- (4) The loss to the Tribes of any revenue affected by the infraction;
- (5) Damages for trespass;
- (6) The costs incurred in representing the Tribes in an action under this subchapter.

(b) The director of the tribal department preparing or updating the Liquidated Damages Schedule shall post notice of the adoption of the schedule in a conspicuous place in Nespelem, Keller, Omak and Inchelium. Such notice shall provide that schedules will be available at the Tribal Police Department and in the case of schedules of liquidated damages for violations of the Fish, Wildlife and Recreation Chapter 4-1 of this Code, all outlets where fish and wildlife licenses are issued. Schedules of liquidated damages shall also be available at the office of the Code Reviser. Provided, the failure to have the schedule of liquidated damages at the office of the Code Reviser shall not affect the enforceability or the applicability of the liquidated damage amount.

(c) In the case of traffic infractions:

- (1) Liquidated damages for any one infraction may not exceed \$250.00;
- (2) Until such time as it is revised by the Council, the monetary deterrent schedule promulgated under the motor vehicle provisions of this Code shall serve as the Liquidated Damages Schedule.

(d) If, on a showing of good cause, the defendant is unable to pay the liquidated damage amount when due, the court shall grant one three (3) month extension, and may grant additional extensions of time in which such damages shall be paid or may allow payment in installments. The court may, in its discretion, waive, reduce, or suspend the liquidated damage amount prescribed for the infraction after a hearing. At the option of the defendant named in the notice, the court may, but need not allow performance of a number of hours of community service in lieu of payment of the liquidated damage amount. Work performance shall be credited against the liquidated damage amount at the rate of the then federal minimum wage per hour.

(e) Any liquidated damage amount assessed and determined due under this subchapter by the Tribal Court order for which a judgment has been entered or through failure to contest the amount shall be collected in the same manner as any other judgment entered in a civil action. In any action on collection, the court may award reasonable attorney's fees and costs to the prevailing party.

(f) Exclusive jurisdiction for the collection of a judgment shall be in the Colville Tribal Court. Provided, if the domicile of the defendant subject to a judgment under this section is off the Colville Indian Reservation, the Tribes may, but need not file the judgment in a court of competent jurisdiction where the person subject to the judgment is domiciled, and there collect the same.

**2-3-45**

**Liquidated Damage Presumption**

(a) Since in most instances the exact amount of damages caused to the Tribes by a particular infraction of this Code or regulation adopted thereunder will be difficult or impossible to determine, it shall be presumed by the court adjudicating an infraction of this Code that the amount fixed by the schedule of liquidated damage amount represents the damages owed to the Tribes as restitution if the defendant is found to be liable. This presumption may be rebutted by evidence which shows that the amount indicated by the schedule of liquidated damage amount is excessive, or special circumstances warrant a reduction of the

liquidated damage amounts in the particular case. In any case in which the presumption is successfully rebutted, the parties may introduce evidence to prove the actual damages as in any other civil case.

(b) All persons shall be deemed to have consented to the liquidated damages provision of this subchapter by their entry onto the Reservation, and where applicable, by their signature on a tribal permit or permits.

**2-3-46 Default Judgment**

(a) Unless otherwise provided by this part, the Tribal Court shall enter a default judgment against any defendant who is cited for an infraction of any provision of this Code or regulations promulgated under this Code and does not appear at the hearing or otherwise respond to the notice of infraction as provided in this subchapter. If a default judgment is entered, the court clerk shall, if feasible, issue notice of judgment to the defendant advising him that he must pay the judgment by a date certain which shall not be less than fifteen (15) days after the date of the notice. The notice shall state that failure to pay the judgment may result in forfeiture of a bond held pursuant to this Chapter, if any, and/or a civil proceeding in Tribal Court to collect the liquidated damage amount, and an additional fee of one hundred and fifty dollars (\$150.00). Before ordering collection of the liquidated damage amount and additional civil penalty, the Tribal Court shall find:

- (1) The notice of infraction was issued;
- (2) The defendant was informed of his duty to either pay the liquidated damage amount or enter an appearance; and
- (3) The defendant did not appear at the hearing or otherwise respond to the notice of infraction as provided by this subchapter.

(b) Any person who has:

- (1) Requested a hearing to contest the determination that an infraction was committed or requested a hearing to explain mitigating circumstances, and without good cause fails to appear at the hearing scheduled; or
- (2) Fails to respond to the notice shall be deemed to have conceded to the correctness of the determination of the infraction and the liquidated damage amount imposed on the notice.

**2-3-47 Disposition of Fees, Penalties, and Damages**

Unless otherwise provided by specific language found elsewhere in this Code, all fees resulting from all fines, costs, monies, penalties or damages collected for an infraction of this Code or regulations promulgated thereunder or any cash bond posted as provided by this Chapter shall be deposited in a special fund and shall be available for expenditure pursuant to a Business Council approved budget in connection with the conservation, restoration and protection of the property or interests of the Colville Indian Reservation and for Tribal Court Administration of this subchapter.

**2-3-48 Res Judicata/Collateral Estoppel**

No plea, finding or proceeding regarding any infraction adjudicated under this subchapter shall be used for the purpose of res judicata or collateral estoppel, nor shall any plea, finding or proceeding upon any infraction be admissible as evidence, in any civil proceeding.

**FIELD BONDS**

**2-3-80 Demand for Bond**

A law enforcement officer may demand that a defendant, who is alleged to have committed an infraction of

this Code or a criminal violation of the Fish, Wildlife and Recreation Chapter 4-1, post a bond if both subsections (a) and (b) below are met:

(a) The defendant:

- (1) Refuses to sign a notice of infraction or citation; or
- (2) Cannot be, or refuses to be, identified; or
- (3) Is not a tribal member and is not a permanent resident of the Reservation.

(b) The officer determines both that:

- (1) Seizure of the defendant's property is necessary to secure the important tribal interest of guaranteeing the presence within tribal jurisdiction of sufficient assets of the defendant to secure payment of restitution to the Tribes for any damages determined by the Court pursuant to this Chapter or the criminal procedures provisions of this Code to have resulted from an infraction of this Code or a criminal violation of the Fish, Wildlife and Recreation Chapter 4-1; and
- (2) There is a need for prompt action because it is likely that the defendant will leave the Reservation and the jurisdiction of the Colville Tribes with his property and not return, then the officer may demand that the defendant post a bond in an amount equal to the sum of the liquidated damages or bail for which he could be found liable by the Tribal Court pursuant to this Chapter or the criminal procedure provisions of this Code for the infraction(s) or criminal violation(s) the officer has alleged in the notice or citation.

(Amended 7/11/02, Resolution 2002-417)  
(Certified 7/19/02)

**2-3-81**

**Bond Notices**

(a) In all cases where it is feasible, the law enforcement officer shall prepare and issue a bond notice to the defendant, allow him to read it, and have him sign the bond notice before the officer takes possession of any bond property.

(b) The bond notice shall inform the defendant of:

- (1) The officer's authority under this subchapter to demand and, if necessary, seize the bond property;
- (2) The infraction(s) or criminal violation(s) alleged, the liquidated damage amount or bail for each, and the total amount;
- (3) The alternative methods of posting bonds as set forth in this subchapter;
- (4) The fact that failure to appear at the trial or hearing or failure to otherwise respond to the notice of infraction or citation as directed will result in entry of a default judgment and forfeiture of bond; and,
- (5) The fact that a property bond may be redeemed at any time during normal business hours at the Colville Tribal Court at Nespelem, Washington, by the posting of a cash bond, or payment of damages but that post judgment redemption must occur, if at all, within thirty (30) days of the entry of judgment unless an appeal is filed.

(c) Bond notices shall be prepared in duplicate and the original signed by the defendant shall be filed by the

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law enforcement officer with the copy of the notice of infraction or citation. A copy of the bond notice shall be given to the defendant.

(d) Bond notices shall contain the name and address of the defendant, the serial number of the notice of infraction or citation which has been issued, the date, and the signature and identification number of the issuing officer, and such other information as the Business Council deems necessary.

(e) The officer may seize bond property first and then issue a bond notice in any case in which he has reasonable grounds to believe that the delay caused by the bond notice procedure could:

- (1) Jeopardize the safety of the officer;
- (2) Lead to a breach of the peace;
- (3) Cause the officer to lose the opportunity to seize the bond property; or
- (4) Give the defendant the opportunity to flee the jurisdiction of the Tribes.

**2-3-82**

**Bond Alternatives**

(a) Cash Method: The defendant may post a cash bond with the law enforcement officer in the form of a personal check or money order made out to the order of the Confederated Tribes of the Colville Reservation, in the specified amount. The decision to accept a personal check shall be within the discretion of the officer who shall consider whether the alleged violator lives on the Reservation, has other ties with the Reservation, the nature of the infraction, and persons with Reservation ties who will vouch for the alleged violator.

(1) Upon receipt of the cash bond, the officer shall prepare a bond receipt for the amount received, which shall be on the official form provided by the Business Council for that purpose, and which shall contain the name of the defendant, the serial number of the notice of infraction or citation issued to him, the date, the bond amount, and the signature and identification number of the issuing officer. One copy of the bond receipt shall be issued to the defendant.

(2) The defendant shall sign the bond receipt and the law enforcement officer shall retain and file the signed copy with the filed copy of the notice of infraction or citation, and shall give the defendant a copy.

(3) If the law enforcement officer decides to accept a personal check or any other noncash form of payment, he may do so only as provided for by regulation of the Business Council, and under such conditions as provided by those regulations.

(b) Property Method: The defendant may post as bond with the officer any property which the officer reasonably believes is valued at an amount at least equal to the required bond amount.

(1) Upon receipt of bond property, the officer shall give to the person from whom he received it a bond receipt as provided by this section, except that instead of the cash amount received the receipt shall contain a completed description of the property including all serial and model numbers. The bond receipt shall also contain the officer's estimate of the value of the property.

(2) The defendant shall sign the bond receipt and the officer shall retain and file a signed copy as provided by this section.

(c) The defendant may choose between the following alternatives as to the disposition of his bond property:

(1) He may leave the property in the custody of the Colville Tribes until after the trial or hearing or forfeiture of the liquidated damage amount or bail at which time, if he has not been found liable to the Tribes it shall be returned to him. If he is found to be liable to the Tribes, is in default as provided by this Chapter or otherwise fails to appear, it will be held as security for payment of the judgment, and will be returned upon payment in full. If the payment in full is not received within thirty (30) days of the date of judgment or default, and if an appeal is not filed as provided by this Code, the property shall be sold at a public auction, and the amount received shall be applied to the judgment and the costs of sale and storage. Any excess shall then be returned to the judgement debtor; or

(2) He may redeem his property at any time during normal business hours at the Colville Tribal Court, Nespelem, Washington, by posting a cash bond in an amount equal to the sum of the liquidated damage mounts or bail for the infractions or criminal violations with which he is charged, or by paying damages as determined by the court. Redemption must occur, if at all, within thirty (30) days of the entry of judgment unless an appeal is filed.

**2-3-83 Seizure of Contraband**

Nothing in the field bond procedures shall affect or diminish the authority of a law enforcement officer to seize any item taken or used in violation of this Code or regulation promulgated thereunder.

**2-3-84 Cash Bond Trust Bond**

Within three (3) business days of being posted all cash bonds shall be deposited in a trust account established by the Colville Tribal Court for disposition as provided by this Chapter.

**2-3-85 Bond Property Storage**

All bond property shall be deposited with the Tribal Court for placement in secure storage within twenty-four (24) hours, excluding weekends and holidays, of being posted.

**2-3-86 Involuntary Summary Seizure of Bond Property**

Any law enforcement officer who has followed the procedures of this subchapter may use any reasonable force necessary to seize bond property from a defendant who refuses to comply with the bond procedures provided by this subchapter.

**OTHER CIVIL VIOLATIONS**

**2-3-120 Civil Action**

When any Ordinance or regulation of the Colville Confederated Tribes, other than an infraction violation, shall provide for the assessment of a civil fine or penalty against any person, association, partnership, company, or corporation for the violation of such tribal Ordinance or regulation, the Tribes shall proceed against such individual or group by civil complaint under the applicable civil action procedures of this Code. The Colville Confederated Tribes in such action shall have the burden of showing by a preponderance of the evidence that such person or group violated the applicable Ordinance or regulation.

**2-3-121 Civil Penalty**

If it is determined in a civil action under this subchapter that the defendant violated the applicable Ordinance or regulation, the court shall impose a civil penalty of not less than \$25.00 nor more than \$5000.00 against the defendant.

(Amended 7/11/02, Resolution 2002-417)  
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## **FORFEITURE**

### **2-3-150 Forfeiture, Generally**

Property shall be forfeited to the Colville Confederated Tribes pursuant to this subchapter when it is found to be "contraband." Contraband is defined as property which was or is:

(a) Being used to violate or possessed in violation of any law, Ordinance or regulation of the Colville Confederated Tribes; or

(b) Obtained by violation of any law, Ordinance or regulation of the Colville Confederated Tribes.

### **2-3-151 Search and Seizure of Contraband with Warrant**

Upon a presentation of a written or oral complaint based upon probable cause, supported by oath or affirmation, it shall be made to appear to the judge that contraband as defined in this subchapter is possessed or used on the Reservation, the judge shall issue a warrant directed to any law enforcement officer, commanding him to search for and seize any such contraband, to keep it safely and to make a return of the warrant within three (3) days showing all acts and things done thereunder, with a specification of all contraband seized and the name of the person in whose possession it was found, if any. No warrant for search and seizure of contraband shall be valid unless it contains a description of the property to be seized and bears the signature of a judge of the Tribal Court.

### **2-3-152 Search and seizure of Contraband without Warrant**

A law enforcement officer may search or seize contraband as defined in this subchapter without a warrant in circumstances under which warrantless searches and seizures are permitted by federal law. The officer shall keep such contraband safely and report the seizure to a judge of the Tribal Court within three (3) days after seizure, showing all acts and things done, with a specification of all contraband seized and the name of the person in whose possession it was found, if any.

### **2-3-153 Notice, Hearing, Disposal of Contraband**

(a) If the property seized under the provision of this subchapter is seized pursuant to a lawful arrest for violation of this Code, then upon conviction of the person arrested or upon a finding by a preponderance of the evidence of the judge that the property is contraband, the judge shall order the contraband to be destroyed immediately, or disposed of and all proceeds therefrom shall be the sole property of the Tribes. If the property may be adapted to any lawful use, it shall be forfeited to the Tribes for their use.

(b) If the property seized under the provision of this subchapter is not seized pursuant to a lawful arrest for violation of this Code, then a hearing shall be held within ten (10) days after such seizure, and notice of such hearing shall be given in writing to the person in whose possession the property was found, if any. If the owner or possessor of the property is not known, then such notice of hearing shall be posted for ten (10) days in a public manner on the premises from which the property was seized. Upon a finding by a preponderance of the evidence of the judge that the property is contraband, the judge shall order the contraband to be destroyed immediately, or disposed of, and all proceeds therefrom shall be the sole property of the Tribes. If the property may be adapted to any lawful use, it shall be forfeited to the Tribes for their use.

(c) If the property seized under the provisions of this subchapter is not found to be contraband pursuant to this section, it shall be immediately returned to the person(s) from whom it was taken. In such case, no storage, impoundment or other charges shall be assessed against the owner or person from whom the property was taken.

(Chapter enacted-original code 5/7/79)

(July 2002 version of Chapter 2-3)