

CHAPTER 6-3 BUILDING CODE

6-3-1 Purpose

The Colville Business Council has determined that in order to adequately protect the health, welfare and safety of the Tribes, residents of the Colville Reservation and those individuals who may occupy buildings or conduct business on the lands of the Colville Reservation shall be regulated in the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area and maintenance of all buildings or structures, including manufactured and mobile homes within the boundaries of the Colville Reservation or otherwise within the civil regulatory jurisdiction of the Tribes' and as set forth in this Chapter.

In addition, the purpose of Chapter 6-3 Building Code is to establish an entity within the tribal government to promulgate regulations to ensure the safety and construction of buildings, including manufactured and mobile homes within the Colville Reservation; review and issue licenses and permits upon submission and approval of blueprints and other drawings; and to inspect buildings after construction for approval of the construction and the issuance of certificates of occupancy.

6-3-2 Definitions

(a) "Administrative Law Judge" means an individual possessing a license as a spokesperson, who is empowered to hear complaints and adjudicate cases arising from this Chapter.

(b) "Applicant" means the person or their designee who is responsible for submitting an application for a building permit and/or modification requests.

(c) "Building Code Unit" means the designated authority charged with the administration and enforcement of this Chapter.

(d) "Building Inspector" means the Building Official or designee possessing in conformity with the Building Code Unit's regulations who inspects the structural quality and general safety of buildings and ensures that federal, State, and local government construction projects comply with contract specifications.

(e) "Certificate of Occupancy" means the form or report that the Building Code Unit has issued that certifies that no violations of the provisions of this Chapter, implementing regulations, or other laws that are enforced are found, and that the building may be used and occupied as intended by the application for a building permit.

(f) "Modification" means an exception or exemption from the application of a building regulation granted by proper authority to provide relief from particular difficulties and unnecessary hardships.

6-3-3 Establishment of Building Code Unit

There is hereby created a Building Code Unit within the tribal government. The office shall have such persons as may be necessary (and consistent with the tribal budget process) to carry out the functions listed in this Chapter. The Building Code Unit may enter into contracts with architects, engineers, and other licensed professionals as necessary to assist it in undertaking reviews and inspections.

6-3-4 Authority

The Building Codes Unit is hereby authorized to:

(a) Promulgate receipt and review of all applications;

(b) Promulgate regulations with respect to applicable standards to be followed in the construction of buildings;

(c) Accept or reject requests for a building code modification, exception, or exemption when applicable;

(d) Review and inspect plans for all buildings within the Colville Reservation;

- (e) Inspect buildings and issue certificates of occupancy for buildings within the Colville Reservation;
- (f) To establish reasonable fees to help defray the costs of review, licensing, permitting, and inspections; and
- (g) To establish certification criteria for tribal building inspectors.

6-3-5 Use and Occupancy

(a) No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy.

(b) Issuance of a certificate of occupancy, or an approval for modification shall not be construed as an approval of a violation of the provisions of this Chapter or of other laws of this jurisdiction. Certificates presuming to give authority to violate or cancel the provisions of this Chapter or other laws of the jurisdiction shall not be valid.

6-3-6 Request for Modification—Process

(a) Application: An application for a modification or exception from a building standard shall be on forms provided by the Building Code Unit and shall include the following information:

- (1) The name and mailing address of the applicant;
- (2) The address and legal description of the location for which construction will take place;
- (3) The purpose for which the building will be used;
- (4) A copy of all necessary permits to commence new construction;
- (5) The estimated date on which construction will be commenced;
- (6) When applicable, the use is an existing use, the history of the use, including the names of any predecessors in title and the dates of their ownership, if known;
- (7) A description of the occupancy classification and required building methods authorized by this Chapter and regulations; and
- (8) A detailed description of the alternative method and how the proposed method meets or exceeds the health and safety standards of this Chapter.

(b) Standard: A modification, exception, or exemption request will only be granted if sufficient evidence is given by the applicant to the Building Code Unit and shows that the standard adopted by the Building Code Unit has been met.

(c) Notice of Decision: Within thirty (30) days from the date of application, the Building Code Unit shall provide the applicant with written notice of decision.

6-3-7 Application of the Colville Administrative Procedures Act

The Chapter 2-4 Colville Administrative Procedures Act shall apply to all proceedings by the Building Code Unit. However, with respect to the promulgation of rules, the director of the Building Code Unit shall have sole authority to adopt, subject to public review and comment, building codes, and the sole ability to issue modifications thereto.

The Business Council hereby delegates its rule-making authority under CTC § 2-4 to the Building Code Unit and any reference to Business Council under the rule-making procedures shall be a reference to the Building Code Unit.

6-3-8 Publication of Rules Annually

On or before January 1st of each year for implementation of the following year the director of the Building Code Unit shall publish annually any amendments, revisions, updates, or changes to rules or regulations necessary to enforce this Chapter utilizing Chapter 2-4.

6-3-9 Consultation

To the degree necessary the Building Codes Unit may consult with the tribal occupational health administration, fire marshal, and others in the development of regulations and the inspection of facilities. However, such reliance does not transfer any responsibilities for the issuance of any certificate of occupancies.

APPEALS—ADMINISTRATIVE LAW JUDGE

6-3-20 Appeals to Administrative Law Judge

Any applicant that is aggrieved by a decision of the Building Codes Unit director may appeal the decision to an Administrative Law Judge. The aggrieved party shall have twenty (20) days from the date the decision is issued, to file a notice of appeal of such decision. The appealing party's notice of appeal shall be submitted in writing to the Administrative Law Judge, and shall state the decision being appealed and have attached a copy of such decision appealed. The following provisions and the contested case provisions of Chapter 2-4 shall govern the procedures and conduct of the hearing.

6-3-21 Pre-Hearing Procedures

(a) Review of Building Code Unit Files: Any party to an appeal shall have the right to review the case file of the director by scheduling a visit to the Building Code Unit office during regular working hours at any point after receiving notice of a hearing.

However, the director shall have the right to excise proprietary information, the identity of confidential informants or other confidential information from the file, which will not be relied upon in the presentation of Building Code Unit case. Non-relevant, confidential information shall be excised in a manner that causes the loss of the least amount of information from the files.

(b) List of Witnesses: Ten (10) days prior to the hearing (or as soon as possible if the hearing is to be held within ten (10) days after notice), the respondent and the director shall submit to the Administrative Law Judge a list of witnesses each intends to call at the hearing, the approximate length of their testimony, and the subject matter and relevance of their testimony. The witness list shall also contain any requests for subpoenas to compel attendance of witnesses. The Administrative Law Judge may, in its discretion, deny subpoena requests where the party has failed to establish the relevance of the testimony.

(c) Pre-Hearing Interviews of Witnesses: The respondent and the director shall have the right to interview the witnesses of the other party, prior to the hearing. The director's witnesses shall be interviewed in the presence of the director or his delegate. The respondent's witnesses shall be interviewed under such reasonable conditions as are established by the respondent. Either party may appeal to the Administrative Law Judge if cooperation is not forthcoming on this matter and the Administrative Law Judge is empowered to require such steps as are necessary to resolve the problem.

(d) Subpoenas of Documents and Things: The director and respondent shall, no later than ten (10) days prior to the hearing provide the Administrative Law Judge with a list of items they wish to have subpoenaed and the relevance of each. The parties shall only request a subpoena duces tecum for documents and items that are not reasonably accessible through less formal means of production. The Administrative Law Judge may, in its discretion, deny subpoena requests where the party has failed to establish the relevance or need for the subpoena duces tecum.

(e) Postponements: Any request for a postponement of the hearing must be submitted in writing to the Administrative Law Judge no fewer than three (3) days prior to the hearing.

However, if the director and respondent mutually submit a request for a postponement because there is a possibility of settling the matter, the request for a postponement may be submitted at any time.

6-3-22 Conduct of Administrative Hearing

(a) The Administrative Law Judge will control the proceedings. The Administrative Law Judge will take whatever action is necessary to insure an equitable, orderly, and expeditious hearing. Chapter 2-4, the Colville Administrative Procedures Act, shall govern the conduct of the administrative hearing.

(b) Director: The director or the director's designee shall represent the Building Code Unit in all Administrative hearings even if the hearing was initiated by a complaint filed by a private individual. Provided, the complainant may retain independent counsel and submit testimony and be fully heard.

(c) Respondent: The respondent shall be present for the entire hearing and the respondent and the respondents' representative shall represent him during the proceedings.

(d) Attorneys: Either party may have an attorney present as an advisor, or a spokesman.

(e) Prohibition Against Reprisals: All parties shall have a right to testify on their own behalf, without fear of reprisal.

(f) Burden of Proof: The applicant or other party aggrieved by the director's decision, shall have the burden of proof by a preponderance of the evidence that the director was incorrect in finding the applicant in violation of this Chapter or the regulations adopted under it, or that any proposed penalty, sanction, award, or required action ordered by the director is incorrect or unwarranted.

6-3-23 Administrative Law Judge Decision

If after the appeal hearing the Administrative Law Judge determines the director was correct in finding the applicant violated the Chapter, and that the penalties and other remedies ordered are appropriate for the violations found by the director, the Administrative Law Judge shall enter an order affirming all or all parts of the director's decision which the Administrative Law Judge finds to be correct. The decision shall be in writing and issued within thirty (30) days after the hearing.

(a) Penalties and Remedies Authorized: If the action appealed is from a noncompliance order, the Administrative Law Judge may assess any or all of the following penalties against the non-complying applicant provided, that the Administrative Law Judge may not assess total monetary penalties or remedies in excess of the total amount of monetary penalties or damages issued by the director in the written noncompliance order.

(b) The notice shall be effective and enforceable immediately when the Administrative Law Judge enters its order.

(c) If the applicant fails to comply with the Administrative Law Judge order the director may petition the Colville Tribal Court for an order of enforcement. The Tribal Court shall assess attorney's fees and costs, and any other sanctions in addition to those contained in the Administrative Law Judge's order, that the court deems just and reasonable.

6-3-24 Appeals to Tribal Court

(a) An appeal to the Colville Tribal Court may be taken from any final order of the Administrative Law Judge by any party adversely affected thereby, including the complainant. Said appeal must be filed no later than twenty (20) days after the party receives a copy of the Administrative Law Judge's decision. The appeal shall be conducted pursuant to the provisions of section 2-4-19 governing Colville Tribal Court appeals of the orders of an administrative body; provided, that where this Chapter applies a specific rule or procedure, the specific rule or procedure shall govern over the general rules set out in Chapter 2-4. The parties to an appeal shall be the parties of record in the proceedings before the Administrative Law Judge.

(b) Any appeal must:

- (1) Set forth the order from which appeal is taken;
- (2) State with specificity the parts of the order being appealed and the specific grounds upon which reversal or modification of order is sought; and
- (3) Be signed by appellant.

(c) The order of the Administrative Law Judge shall not be held in abeyance pending the determination of the Colville Tribal Court. However, all monetary awards appealed shall be paid and held in an escrow account or covered through posting of a bond with the director pending a determination on appeal. For good cause shown, any party to an order of the Administrative Law Judge may petition the Court for an order requesting a stay of enforcement of all or part of the Administrative Law Judge's order pending the appeal.

6-3-25

Severability

If any provision, regulation, or application of this Chapter or the application thereof to any person or circumstances is held invalid, or inconsistent such invalidity or inconsistency shall not affect other provisions, regulations, or applications of this Chapter which can be given effect without the invalid provision, regulation, or application, and to this end this Chapter is declared to be severable.

(Chapter enacted 11/18/04, Resolution 2004-731)

Note: Pursuant to Resolution 2004-731 the following are rescinded: Resolution 1988-515, 9/1/88; Resolution 1991-447, 4/6/89; Resolution 1991-447, 12/5/91; Resolution 1991-448, 12/5/91; and Resolution 2001-493, 9/6/01.