

# Fort Peck Tribes

## Comprehensive Code of Justice



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## **Fort Peck Tribes Comprehensive Code of Justice**

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**Fort Peck Tribal Court**  
**807 Court Avenue - P.O. Box 1027**  
**Poplar, MT 59255**



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**Chapter 1. Definitions**

**Sec. 101. Definitions.**

For the purposes of all Titles of this Code, unless the context clearly requires otherwise, the following definitions shall apply:

(a) “Reservation”, “Fort Peck Reservation”, “Fort Peck Indian Reservation”, shall mean the Fort Peck Indian Reservation, Montana, as defined in the agreement of December 28 and December

31, 1885, confined by the Act of May 1, 1888, 25 Stat. 113, Chap. 212.

(b) “Tribes”, “Fort Peck Tribes”, and “Assiniboine and Sioux Tribes”, shall mean the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation.

(c) “Executive Board” and “Tribal Executive Board” shall mean the Fort Peck Tribal Executive Board, the governing body of the Tribes.

(d) “Chairman” and “Tribal Chairman” shall mean the Chairman of the Executive Board.

(e) “Tribal Court” shall mean the Fort Peck Tribal Court, created by Title 2 of this Code.

(f) “Court of Appeals” shall mean the Fort Peck Court of Appeals, created by Title 2 of this Code.

(g) “Superintendent” shall mean the Superintendent of the Fort Peck Indian Agency.

(h) “Code” and “Comprehensive Code” shall refer to this Code, the Comprehensive Code of Justice of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation.

(i) “Title”, “Chapter” or “Section” shall refer to Titles, Chapters, or Sections of this Code. Titles, Chapters or Sections may be referred to by name and number.

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**Title 2 - Courts**

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## Chapter 1. The Fort Peck Tribal Court

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### Sec. 101. Creation of the Court.

There is hereby established the Fort Peck Tribal Court as a court of record.

### Sec. 102. Composition of the Court.

The Court shall consist of one (1) chief judge, three (3) associate judges and one (1) lawyer judge whose duties shall be regular and permanent. The judges shall be appointed by the Tribal Executive Board. The Tribal Executive Board also may appoint special judges as required.

**(AMENDED AS PER RESOLUTION NO. 2417-85-4, DATED 04/29/85 AND AS PER RESOLUTION NO. 2417-85-5, DATED 04/29/85.)**

### Sec. 102.1. Exercise of civil and criminal jurisdiction.

**(THIS SECTION HAS BEEN REPEALED AS PER RESOLUTION NO. 1617-86-10, DATED 10/13/86.)**

### Sec. 103. Records of the Court.

The Court shall keep a record of all proceedings of the Court, showing the title of the case, the

names and addresses of the parties, attorneys and witnesses; the substance of the complaint; the dates of all hearings or trials; the name of the judge; the findings of the Court or verdict of the jury and judgment; the preservation of testimony for perpetual memory by electronic recording, or otherwise; together with any other facts or circumstances deemed of importance to the case. A record of all proceedings leading to incarceration shall be submitted to the Superintendent, Fort Peck Agency, to be made a part of the records of the Agency Office as required by 25 U.S.C. 200. Unless specifically excepted by this Code, the records of the Courts shall be public. In criminal cases, upon inquiry by members of the public, the Court shall furnish the name of the offender, the offense, and the sentence imposed.

**(AMENDED AS PER RESOLUTION NO. 1287-86-7, DATED 07/28/86.)**

### Sec. 104. Rules of Court.

The Chief Judge may prescribe written rules of court, consistent with the provisions of this Code, including rules establishing the time and place of court sessions.  
(AMENDED AS PER RESOLUTION #28-0158-2015-12; DATED 12/15/2015)

### Sec. 105. Services to Court by Tribal or Federal employees.

The Court may request and utilize social service, health, education or other professional services of tribal employees as requested, and of federal employees as authorized by the Secretary of the Interior or his/her authorized representative.

### Sec. 106. Criminal Jurisdiction of the Court.

(a) *Generally.* The Fort Peck Tribal Court is vested with jurisdiction to enforce all provisions of this Code, as amended from time to time, against any person violating the Code within the boundaries of the Fort Peck Tribes' Indian country. The Court is also vested with the power to impose protection orders against non-Indians in accordance with the provisions of this Code.

(b) *Criminal jurisdiction over non-Indian domestic or dating violence.* The Fort Peck Tribal

Court is vested with jurisdiction to enforce all provisions of this Code against a non-Indian who has committed an act of dating violence or domestic violence against an Indian victim within the Fort Peck Tribes' Indian country provided the non-Indian has sufficient ties to the Fort Peck Tribes.

(1) A non-Indian has sufficient ties to the Fort Peck Tribes for purposes of jurisdiction if they:

(A) Reside in the Fort Peck Tribes' Indian country;

(B) Are employed in the Fort Peck Tribes' Indian country; or

(C) Are a spouse, intimate partner, or dating partner of either:

(i) A member of the Fort Peck Tribes, or

(ii) A non-member Indian who resides in the Fort Peck Tribes' Indian country.

(c) *Criminal jurisdiction over non-Indian protection order violations.* The Fort Peck Tribal Court is vested with criminal jurisdiction to enforce all provisions of this Code related to violations of protection orders against a non-Indian who has sufficient ties to the Tribes as identified in Section 106(b)(1) and who has violated a protection order within the Fort Peck Tribes' Indian country provided the protected person is an Indian, and the following conditions are met:

(1) The protection order was issued against the non-Indian,

(2) The protection order is consistent with 18 U.S.C. 2265(b), and

(3) The violation relates to that portion of the protection order that provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, the protected person.

**(AS PER RESOLUTIONS NOS. 27-201-2013-12, DATED 12/23/2013; 27-788-2014-06, DATED 6/09/2014)**

#### **Sec. 107. Civil jurisdiction of the Court.**

The Court shall have jurisdiction over any action where one party to the action shall be an Indian, or a corporation or entity owned in whole or

in substantial part by an Indian or the Tribes or a corporation or entity chartered by the Tribes; and

(a) The cause of action arises under the Constitution or laws of the Tribes; or

(b) An Indian party to the action resides on the Fort Peck Reservation.

#### **Sec. 108. Jurisdiction over persons outside Reservation.**

In a case where it otherwise has jurisdiction, the Court may exercise personal jurisdiction over any person who does not reside on the Fort Peck Indian Reservation if such person, personally or through an agent:

(a) Transacts any business on the Reservation, or contracts or agrees anywhere to supply goods or services to persons or corporations on the Reservation; or

(b) Commits an act on the Reservation that causes injury.

#### **Sec. 109. Jurisdiction over suits commenced by Tribes.**

Notwithstanding any other provision of this Code, the Tribal Court shall have jurisdiction of all civil actions commenced by the Assiniboine and Sioux Tribes of the Fort Peck Reservation, or by any agency or officer thereof expressly authorized to file suit by the Fort Peck Tribal Executive Board.

#### **Sec. 110. Tribes immune from suit.**

The Tribes shall be immune from suit. Nothing in the Code shall be construed as consent of the Tribes to be sued.

#### **Sec. 111. Suits against Tribal officials.**

The Court shall have jurisdiction over all suits in which Tribal officials or employees are defendants, except habeas corpus proceedings authorized by 25 U.S.C. 1303.

(a) Suits for money damages. No elected official or judge of the Tribes shall be subject to suit for any action taken in the course of his/her official duties, or in the reasonable belief that such action was within the scope of his/her official duties.

(b) No employee of the Tribes shall be subject to suit for money damages for any action taken in the course of his/her official duties, or in the reasonable belief that such action was within the scope of his/her official duties, unless it is clearly established that such action was taken with malicious intent and in bad faith. The Court shall have jurisdiction over actions seeking declaratory and equitable relief against tribal employees, but the Court shall not grant any relief against tribal employees except after service of process has been made as prescribed in this Code and proof of service has been received by the Court.

**Sec. 112. Jurisdiction over suits concerning ownership of trespassing livestock.**

The Court shall have jurisdiction over any action under Chapter 1 or Chapter 2 of Title 18, (Livestock), to resolve ownership of trespassing livestock.

**Sec. 113. Review of administrative decisions.**

(a) The Court shall have exclusive jurisdiction over all appeals from actions by agencies or offices of the Tribes, where such appeals are authorized by this Code, except where a provision of the Code vests such jurisdiction in the Court of Appeals.

**(AMENDED AS PER RESOLUTION NO. 2644-95-2, DATED 02/13/95.)**

(b) Notwithstanding Section 110 of this Title, the Tribes hereby waive their immunity from suit in Tribal Court for appeals under subsection (a). Relief against the Tribes shall be limited to that specified in the provisions of the Code authorizing the appeal. In no event shall the Tribes be liable for money damages, except that the Tribal Court may order refunds of taxes or fees erroneously collected where such relief is specifically authorized by the provision of the Code under which the appeal is taken.

**(AMENDED AS PER RESOLUTION NO. 1903-84- 12, DATED 12/11/84.)**

**Chapter 2. Fort Peck Court of Appeals**

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**Sec. 201. Creation of Court of Appeals.**

There is hereby created a Fort Peck Court of Appeals.

**Sec. 202. Jurisdiction of Court of Appeals.**

The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court, appeals of administrative decision where a provision of this Code expressly vests such jurisdiction in the Court of Appeals, and from final decisions of the Tribal Alcohol Licensing and Regulation Commission (Commission). The Court of Appeals shall review de novo all determinations of the Tribal Court on matters of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence. The Court of Appeals, or the Chief Justice alone, shall have jurisdiction:

(a) To take all necessary steps to preserve and protect the jurisdiction of the Court;

(b) During the pendency of any criminal appeal, to release the appellant on his/her own recognizance or on bail pursuant to Section 206(e) of this Code; and

(c) To make any order appropriate to preserve the status quo or to protect any ultimate judgment of the Court of Appeals.

**(AMENDED AS PER RESOLUTION NO. 2644-95-2, DATED 02/13/95, and RESOLUTION NO. 2646-97-4, DATED 04/25/97.)**

**Sec. 203. Composition of Court of Appeals.**

The Tribal Executive Board shall appoint a Chief Justice and two (2) associate justices, none of whom shall be judges of the Tribal Court.

**Sec. 204. Records of Court of Appeals.**

The Court of Appeals shall keep a record of all proceedings of the Court, showing the title of the case, the name and addresses of all parties and attorneys, the briefs, the date of any oral argument, the names of the justices who heard and decided the case, and the judgment, together with any other facts and circumstances deemed of importance to the case. A record of all proceedings leading to incarceration shall be submitted to the Superintendent, Fort Peck Agency, to be made a part of the records of the Agency Office as required by 25 U.S.C. 200. Unless specifically excepted by this Code or rule of court, all decisions and opinions of the Court shall be published in a format that shall be available to the public at the Tribal Office.

**Sec. 205. Right of Appeal.**

(a) Criminal cases. The defendant in a criminal case shall have an appeal as of right from a judgment of conviction. The Tribe shall have no right of appeal from a jury verdict of "not guilty" in criminal cases, but shall have a right of appeal from a judgment of "not guilty" rendered by the Tribal Court without a jury. Appeals in criminal cases shall be taken as provided in Section 206.

(b) Civil cases. Any party who is aggrieved by a final order or judgment of the Tribal Court may file a petition requesting the Court of Appeals to review that order or judgment as provided in Section 207.

(c) Unless the Court stays an order pursuant to Section 206(e) or Section 207(e) of this Title, all final orders of the Court shall be carried out while appeals are pending.

**(AMENDED AS PER RESOLUTION NO. 1287-86-7, DATED 07/28/86; AMENDED AS**

**PER RESOLUTION 26-736-2012-05, DATED 05/15/2012.)**

**Sec. 206. Procedure on appeal of criminal cases.**

(a) Time to appeal and how to appeal. An appeal must be taken within fifteen (15) days from the judgment appealed from by filing a written notice of appeal with the clerk of the Fort Peck Tribal Court. No extension of the fifteen (15) day period shall be granted. Upon request, the clerk of the Tribal Court shall prepare the notice of appeal.

(b) Bond. The Court shall set the amount of a bond to be filed with the notice of appeal. The maximum amount of the bond is fifty dollars (\$50.00). The Court may reduce or waive the bond if it finds the appellant is indigent.

(c) Notice of appeal. The notice of appeal shall specify the party or parties taking the appeal, shall designate the judgment, or part thereof appealed from, and shall contain a short statement of reasons for the appeal. The clerk shall mail a copy of the notice of appeal to all parties other than parties taking the appeal.

(d) Designation of parties. The party taking the appeal is an appellant. All other parties are appellees.

(e) Release on bond pending appeal. In criminal cases the defendant may be continued on release or be released on bail, as provided by Title 6, Chapter 4, Section 402(c) of this Code, by the Tribal Court. The appellant may petition the Court of Appeals, or Chief Justice thereof, to review any decision of the Tribal Court taken under this Section.

**Sec. 207. Procedure on decision for review in civil cases.**

(a) Time to petition and how to petition. A party to a civil case may petition for review. Upon appellant's request, the Tribal Public Defender shall prepare the petition for review. The petition for review must be taken within fifteen (15) days from the date of entry of the final order or judgment appealed from by filing such petition with the clerk of the Tribal Court together with the



docket fee and any bond required pursuant to this Section. No extensions of the fifteen (15) day period shall be granted.

(b) Contents of petition for review. The petition for review shall specify the parties taking the appeal, shall designate the final order or judgment, or part appealed from, and shall contain a short statement why the petition should be granted. The clerk shall mail a copy of the petition for review to all parties other than the petitioner. Other parties shall have fifteen (15) days to respond to the petition for review, after which time the Court of Appeals or the Chief Justice thereof shall grant the petition and allow the appeal to be heard or shall deny the petition.

(c) Designation of parties. The party taking the appeal is the appellant. All other parties are appellees.

(d) Docket fee and bond. The petition for review shall be accompanied by a docket fee of fifty dollars (\$50.00) and a bond to be set by the Court. The maximum amount of the bond is fifty dollars (\$50.00). The Court may waive or reduce the bond and the docket fee if it finds that the appellant is indigent.

(e) Stay on appeal. In civil cases the petitioner may request the Trial Court to stay the judgment pending action on the petition and on the appeal if the petition is granted, and either party may request the Tribal Court to grant or stay an injunction pending appeal. The Court may condition a stay or injunction pending appeal on the depositing of cash or bond satisfactory to the Tribal Court. The appellant's bond shall be sufficient to cover the damages awarded by the Tribal Court together with interest. The cash or bond may be deposited at or after the time petition is filed. The stay shall be effective when the deposit of cash or bond is approved by the Tribal Court. The appellant may petition the Court of Appeals, or the Chief Justice thereof, to review any decision of the Tribal Court under this Section.

**Sec. 208. Judgment against surety.**

Any surety to a bond thereby submits himself/herself to the jurisdiction of the Tribal Court, and irrevocably appoints the clerk of the Court as

his/her agent upon whom any papers affecting his/her liability on the bond may be served. The liability of a surety may be enforced on motion without the necessity of an independent action. The motion and such notice of motion as the Court prescribes may be served on the clerk of Court who shall forthwith mail copies to the surety at his/her last known address.

**Sec. 209. Record on appeal.**

(a) Within 5 days after a notice of appeal is filed in a criminal case or a petition for review is filed in a civil case, the clerk of the Tribal Court shall certify and file with the Court of Appeals all papers comprising the record of the case.

(b) The transcript of the criminal or civil case will be produced in written or electronic format and available to the parties at a cost to be determined by the Tribal Court Administrator.

**(AMENDED AS PER RESOLUTION NO. 26-737E-2012-5; DATED 05/15/2012.)**

**Sec. 210. Briefs and memoranda.**

Within thirty (30) days after the notice of appeal is filed, or a petition for review is granted, or within such other time as the Court allows, the appellant may file a written brief, memorandum or statement in support of his/her appeal. An original and one (1) copy for each appellee shall be filed with the clerk who shall mail one (1) copy, registered or certified mail, return receipt requested, to each appellee. The return receipt shall then be filed with the clerk. The appellee shall have fifteen (15) days after receipt of the appellant's brief, memorandum or statement, or such other time as the Court of Appeals allows, within which to file an answer brief, memorandum or statement if he/she desires. An original and one (1) copy for each appellant shall be filed with the clerk who shall mail one (1) copy, registered or certified mail, return receipt requested, to each appellant. The return receipt shall be filed with the clerk. No further briefs, memoranda or statements shall be allowed without leave of Court.

**Sec. 211. Oral argument.**

The Court of Appeals shall assign all criminal cases for oral argument. The Court may in its discretion assign civil cases for oral argument or may dispose of civil cases on the briefs without argument.

**Sec. 212. Separate docket for Court of Appeals.**

The judges of the Court of Appeals, or the Chief Justice thereof, shall prescribe all necessary rules concerning:

- (a) The operation of the Court of Appeals.
- (b) The time and place of meeting of the Court of Appeals.

The rules shall be approved by the Fort Peck Tribal Executive Board prior to becoming effective and shall be consistent with the provisions of this Code.

**Chapter 3. Justices and Judges**

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**Sec. 301. Qualifications.**

To be eligible to hold the office of justice or judge, a person must have an Associate of Arts degree or Bachelor of Arts or Science degree from an accredited college in law and criminal justice or similar field of study, or 4 years judicial experience; be at least 25 years of age; not have been convicted of a felony; not have been dishonorably discharged from the Armed Forces; be physically capable of carrying out the duties of the office; have successfully completed a judge’s qualifying examination administered as prescribed by the Tribal Executive Board; and

**in the opinion of the Fort Peck Tribal Executive Board be of sound judgment and good character and possess a reputation for honesty, fairness and impartiality.**

**To be eligible to hold the position of Chief Justice, a person must also have a degree in law from an accredited law school and be a member in good standing of the bar of any state or federal court. Between equally qualified candidates for a position as judge or justice, preference shall be given to an Indian candidate.**

**Any person otherwise qualified may be appointed as a justice on a probationary basis prior to taking the judges qualifying examination. Any such person shall take and pass the judges qualifying examination during his/her probationary period.**

**(AMENDED AS PER RESOLUTIONS NOS. 2417-85-4, DATED 04/29/85; 17-85-11, DATED 11/12/85; 292-85-12, DATED 12/23/85; 1617-86-10, DATED 10/13/86; 2582-91-9, DATED 9/9/1991; 2157-2001-9, DATED 9/10/2001; 736-2004-6, DATED 6/2/2004; 28-0761-2016-06, DATED 6/13/2016.)**

**Sec. 302. Terms, appointment and election.**

(a) Judges shall be elected for a term of 4 years unless removed for cause as hereafter provided.

(b) Justices shall be appointed for a term of 4 years commencing with a date fixed by the Tribal Executive Board unless removed for cause as hereinafter provided.

(c) The Chief Justice and the associate justices of the Court of Appeals, prescribed by Chapter 2 of this Title, and the Lawyer judge of the Tribal Court, prescribed by Chapter 3 of this Title, shall be appointed by a two-thirds vote, taken by secret ballot, of those members present at a meeting of the Fort Peck Tribal Executive Board at which a

quorum is present. Any vacancy under this subsection shall be filled by a two-thirds vote, taken by secret ballot, of those members present at a meeting of the Fort Peck Tribal Executive Board at which a quorum is present.

(d) Following the effective date of this section, and any unexpired appointment made by the Executive Board prior to the adoption of this section, the Chief Judge and the associate judges of the Tribal Court, prescribed by Section 102 of this Title, shall be elected from a list of qualified candidates by a majority of the eligible voters voting at the general election. Any judge so elected shall serve a term of four years, unless such judge is removed or leaves office. Thereafter, judges shall be elected at the general elections held on odd-numbered years.

A qualified candidate for judge under this subsection is a person who has been certified by the Election Commission prescribed by Title 5 to be an adult member of the Tribes and eligible voter of the Tribes and meets the qualifications set forth in Title 5, Section 201 of this Code, and who meets the qualifications of Title 2, Section 301 as determined by the Executive Board. Qualified candidates shall be certified by the Election Commission and Executive Board on or before the close of candidate registration for the general election. The Executive Board shall prescribe a process for the submission and screening of an applicant for a judicial position.

Any vacancy under this subsection shall be filled by a two-thirds vote, taken by secret ballot, of those members present at a meeting of the Fort Peck Tribal Executive Board at which a quorum is present. Each judge appointed to fill a vacancy by the Executive Board shall serve a term until the next tribal general election held on an odd-numbered year.

**(RESOLUTION NO. 27/2002/2015-07; DATED 7/13/2015).**

### **Sec. 302-A. Special Appointments.**

In such cases where justices or judges have been disqualified or where the needs of the Fort Peck Tribal Court or the Fort Peck Court of Ap-

peals require, the Tribal Executive Board may appoint a person otherwise qualified to sit as a special judge or justice. Such special appointment shall not exceed 90 days.

Special appointments shall be by majority vote of those members of the Tribal Executive Board at which a quorum is present. Upon determination of the Tribal Executive Board, the judge's qualifying examination may or may not be waived.

**(AMENDED AS PER RESOLUTION NOS. 3257-95-5, DATED 5/16/1995; 26-1445-2012-09, DATED 9/24/2012; 27-325-2014-02, DATED 2/10/2014.)**

### **Sec. 303. Appointment of judge following removal, death or resignation.**

In such case where a judge or chief judge has resigned from office, died in office or been removed from office, a judge shall be appointed by two-thirds vote, taken by secret ballot, of those members present at a meeting of the Fort Peck Tribal Executive Board at which a quorum is present to complete the term of the judge who resigned from office, died in office or has been removed from office.

A judge appointed in this manner, shall meet the eligibility requirements for the office of judge or chief judge.

**(RESOLUTION NO. 27-2002-2015-07; DATED 7/13/2015)**

### **Sec. 304. Compensation and bond.**

Compensation of all justices and judges shall be fixed by the Tribal Council or the United States depending on which pays the compensation. The rates of compensation may not be decreased during their term of office. The Chief Justice and Chief Judge shall be bonded by a surety bond satisfactory to the Tribal Executive Board or the United States depending on which pays the compensation. Judges and justices shall receive compensation only for the days they sit as members of the Court of Appeals or Tribal Court or otherwise perform the duties of their office.

**Sec. 305. Oath of office.**

Before entering upon the duties of office, each judge shall take the following oath or affirmation:

"I, ....., do solemnly swear (or affirm) that I will administer justice and do equal right without respect to persons and will truly, faithfully, and impartially discharge and perform all duties incumbent upon me as (Justice)(Judge) according to the best of my abilities and understanding. So help me God."

**Sec. 306. Removal.**

(a) Initiation of charges. Upon written charges of specific misconduct, or physical or medical inability to carry out the duties of office, made by any member of the Tribal Executive Board, adopted by a majority vote of a meeting of the Tribal Executive Board at which a quorum is present, the Board shall initiate proceedings to remove a justice or judge from office. Misconduct as used in this Section shall mean:

(1) Conviction of a felony or a misdemeanor involving dishonesty or acts offensive to the morals of the community;

(2) Abusive or clearly incompetent performance of duties in office; or

(3) Failure to perform the duties of office;

(4) Any other substantial violations of the Code of Ethics for judges and justices of the Fort Peck Tribal Courts.

**(AMENDED AS PER RESOLUTION NO. 2084-89- 3, DATED 03/13/89.)**

(b) Hearing of charges. All charges shall be in writing and served on the judge personally, or by certified or registered mail, return receipt requested, not less than ten (10) days prior to a hearing before the Tribal Executive Board on the charges. The Tribal Executive Board by a majority vote at a meeting at which a quorum is present may direct that a justice or judge shall be suspended from duty for a period not to exceed twenty (20) days between the time charges are authorized and the date of hearing on the charges. A justice or judge so charged shall be given an opportunity to answer by written or oral presentation before the Tribal Executive Board, to have the charges proven only by sworn testimony of

witnesses and documentary evidence, have the right to cross-examine witnesses, and have the right to be represented by counsel at his/her own expense at the hearing. After the hearing, a justice or judge may be removed by a vote, taken by secret ballot, of a two-thirds (2/3) majority of the Tribal Executive Board at a meeting at which a quorum is present. A decision by the Tribal Executive Board to remove a justice or judge shall be final.

**Sec. 307. Disqualification.**

A justice or judge shall be disqualified in any proceeding in which his/her impartiality might reasonably be questioned, in which he/she has any personal bias or prejudice concerning any party, in which he/she or a member of his/her immediate family might be a witness, has any interest, or has any personal knowledge of any disputed evidentiary facts concerning the proceeding, or has acted or is acting as a lawyer or lay counselor in the proceeding, or in which he/she might otherwise appear to be biased or prejudiced. The Lawyer Judge must determine all disqualifications in the Tribal Court. In cases where the Lawyer Judge disqualifies himself/herself, the case shall be assigned, by the Chief Judge, to a judge other than the Lawyer Judge. As used in this Section, immediate family shall include spouses, grandparents, parents, children, grandchildren, brothers, sisters and in-laws.

**(AMENDED AS PER RESOLUTION NO. 1616-86- 10, DATED 10/13/86.)**

**Sec. 308. Duties.**

(a) The Lawyer Judge, in his/her duties as a judge, shall supervise the other judges of the Court. He/she shall, as needed, advise the other judges of the Court on the law. Except as provided in Section 307 (Disqualification), he/she shall also be responsible for assignment of all civil and criminal cases to the judges of the Court. When the position of Lawyer Judge is vacant or when the Lawyer Judge is absent from duty for a prolonged period, the Chief Judge shall be responsible for assignment of civil and criminal cases to the judges of the Court. The Chief Judge

is hereby authorized to delegate supervisor authority to other judges of the Tribal Court, and/or the Court Administrator, as necessary.

(b) If a judge does not have a Juris Doctorate, they must complete 40 hours of training annually, with a minimum of 5 of those hours in research and writing.

(c) The Lawyer Judge shall ensure that every judge has a performance evaluation annually and that a probationary judge has a performance evaluation every quarter.

(d) In responding to a judicial complaint, the Lawyer Judge or Chief Judge shall be guided by the disciplinary procedures set out in Chapter 5 of the Fort Peck Tribal Personnel Policies and Procedures Manual until such time when the Tribal Executive Board adopts a judicial review policy and procedure.

(1) The Lawyer Judge or Chief Judge may suspend a judge for 10 days without pay for insubordination.

**(AMENDED AS PER RESOLUTION NOS. 2417-85-5, DATED 04/29/1985; 1616-86-10, DATED 10/13/1986; 2280-89-4, DATED 04/24/1989; 2156-2001-9, DATED 09/10/2001; 26-1253-2012-08, DATED 08/13/2012; 27-446-2014-03, DATED 03/10/2014)**

## **Chapter 4. Court Administration**

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### **Sec. 401. Office of Clerk.**

The Tribal Executive Board shall appoint a chief clerk of court and such assistant clerks of court as may be required, to be compensated at a rate fixed by the Tribal Executive Board or by the United States, depending on which pays the compensation. The chief clerk shall be bonded.

### **Sec. 402. Qualifications.**

To be eligible to serve as chief clerk of court, a person

(1) Must be at least twenty one (21) years of age;

(2) Must be of high moral character and integrity;

(3) Must be a high school graduate or equivalent;

(4) Must be proficient in typing;

(5) Must never have been convicted of a felony;

(6) Must never have been dishonorably discharged from the Armed Services;

(7) Must be physically able to carry out the duties of the office; and

(8) Must be a member of the Tribes. To serve as an assistant clerk of court, a person must satisfy all the foregoing requirements except that an assistant clerk shall be at least eighteen (18) years of age, and preference shall be given to persons able to speak the Assiniboine and Sioux languages.

### **Sec. 403. Duties.**

(a) The clerk shall render assistance to the courts, to the authorized law enforcement officers of the Reservation, and the Indians of the Reservation, in drafting complaints, subpoenas, warrants, notices of appeal, and any other documents incidental to the lawful functions of the courts. The clerk shall attend and keep written records of all proceedings of the courts, administer oaths and collect fines, costs, fees and other moneys. The clerk shall be bonded and shall account to the authority of all moneys collected, and the amount of the bond of the clerk shall be fixed by the Tribal Executive Board or the United States, depending on which pays the compensation.

(b) The clerk shall complete 16 hours of continuing education annually, preferably through the Fort Peck Community College, at the Court Administrator's discretion.

**(AMENDED AS PER RESOLUTION NO. 2153-2001-9, DATED 09/10/01.)**

**Sec. 404. Tribal Court Administrator.**

A Tribal Court Administrator shall be appointed by the Tribal Executive Board to be compensated at a rate fixed by the Tribal Executive Board or the United States, depending on which pays the compensation.

**Sec. 405. Qualifications.**

To be eligible to serve as the Tribal Court Administrator, a person

- (1) Must be at least twenty five (25) years of age;
- (2) Must be of high moral character and integrity;
- (3) Must be a college graduate or equivalent;
- (4) Must never have been convicted of a felony;
- (5) Must never have been dishonorably discharged from the Armed Services; and
- (6) Must be physically able to carry out the duties of the office.

Preference shall be given in selection of the Tribal Court Administrator to members of the Tribes, and to persons able to speak and understand the Assiniboine and Sioux languages.

**Sec. 406. Compensation and bond.**

The Tribal Court Administrator shall be bonded. The compensation of the Tribal Court Administrator and amount of the bond shall be fixed by the Tribal Executive Council or the United States, depending on which pays the compensation.

**Sec. 407. Oath of office.**

Before entering upon the duties of office, the Tribal Court Administrator shall take the following oath or affirmation:

"I, ..., having been appointed Tribal Court Administrator of the Tribal Court, do solemnly swear (or affirm) that I will truly, faithfully, and impartially discharge all duties of my office to the best of my abilities and understanding. So help me God."

**Sec. 408. Duties.**

The Tribal Court Administrator shall be responsible for the planning and management of the administration of the Fort Peck Court of Appeals and Fort Peck Tribal Court. He/she shall supervise all employees of the Court, as designated by the Tribal Executive Court, except for judges and justices. The Tribal Court Administrator shall plan, prepare and manage the budget, acquisition of supplies and services, the necessary financial accounting practices of the courts, and shall oversee all record keeping and reporting of the courts, and shall adjudicate court complaints.

**(AMENDED AS PER RESOLUTION NO. 2154-2001-9, DATED 09/10/01; RESOLUTION NO. 2281-89- 4, DATED 04/24/89. AND RESOLUTION NO. 435-2006-3, DATED 03/14/06)**

**Sec. 409. Termination of services.**

Termination of services of a Tribal Court Administrator, chief clerk of any assistant clerk shall be by a majority vote of the Tribal Executive Board at a meeting at which a quorum is present.

**Sec. 410. Court Complaint Procedure.**

(a) Any complaint to be properly noted against any court employee shall be filed with the Court and shall be reviewed by the Court Administrator. The Court Administrator shall have ten (10) days from the date of the filing of the complaint in which to investigate the complaint, and an additional fifteen (15) days in which to produce a final evaluation of the complaint and to take whatever action deemed necessary by the Court Administrator.

(b) Any complaint against an employee of the court shall be filed within ten (10) days from the date of the specific action and include:

- (1) The name of the complainant (person filing the complaint);
- (2) The name of the court personnel against whom the complaint is brought;
- (3) A detailed description of the specific action of court personnel; and
- (4) The date, time and place of action.

(ADOPTED AS PER RESOLUTION NO. 2155-2001-9, DATED 09/10/01).

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**Sec. 501. Qualifications for admissions as attorney or lay counselor.**

(a) Attorneys. No person may practice as an attorney before the Tribal Court or Court of Appeals unless admitted to practice and enrolled as an attorney of the Tribal Court upon written application. Any attorney at law who is a member in good standing of the bar of any state or federal court shall be eligible for admission to practice before the Tribal Court upon approval of the Chief Judge, and successful completion of a bar examination administered as prescribed by the Tribal Executive Board.

(b) Lay counselor. Any person who meets qualifications established in this Section shall be eligible for admission to practice before the Court as a lay counselor upon written application and approval of the Chief Judge. To be eligible to serve as a lay counselor, a person

- (1) Must be at least twenty one (21) years of age;
- (2) Must be of high moral character and integrity;
- (3) Not have been dishonorably discharged from the Armed Services;
- (4) Must have successfully completed a bar examination administered as prescribed by the Tribal Executive Board;
- (5) Must not have been convicted of a felony in any jurisdiction.

(AMENDED AS PER RESOLUTION NO. 904-90-6, DATED 06/25/90.)

(c) Any person whose application to practice as an attorney or lay counselor is denied by the Chief Judge may appeal that determination to the Fort Peck Court of Appeals within fifteen (15) days of the denial. The Fort Peck Court of Appeals shall request a statement of the reasons for the denial from the Chief Judge, and after receiving such statement shall review the application and any other record which was before the Chief Judge and may, in its discretion, hear oral argument by the applicant. The Court of Appeals shall determine de novo whether the applicant shall be admitted, and its determination shall be final.

**Sec. 502. Roll of attorneys and lay counselors.**

A roll of attorneys and lay counselors admitted to practice before the Court shall be maintained by the clerk of court.

**Sec. 503. Right to counsel.**

Any person at his/her own expense may have assistance of counsel in any proceeding before the Tribal Court. The Tribal Court in its discretion may appoint counsel to defend any person accused of a crime.

**Sec. 504. Disbarment.**

(a) The Tribal Court or the Court of Appeals may disbar an attorney or lay counselor from practice before the courts, or impose suspension from practice for such time as the Court deems appropriate, pursuant to rules adopted by the Court, provided that the Court shall give such attorney or lay counselor reasonable prior notice of the charges against him/her and an opportunity to respond to them. The rules shall include significant violations of the Code of Ethics of the Assiniboine and Sioux Tribes of the Fort Peck Reservation as grounds for disbarment.

(AMENDED AS PER RESOLUTION NO. 2982-87- 8, DATED 08/10/87.)

(b) Any person who is disbarred or suspended by the Tribal Court may appeal that determination to the Fort Peck Court of Appeals within fifteen (15) days of the disbarment or suspension.

The Fort Peck Court of Appeals shall request a statement of the reasons for the disbarment or suspension from the Chief Judge, and after receiving such statement shall review the record which was before the Tribal Court and may, in its discretion, hear oral argument by the applicant. The Court of Appeals shall determine de novo whether the applicant shall be disbarred or suspended and its determination shall be final.

(c) Any person who is disbarred or suspended by a justice of the Court of Appeals may appeal that determination to the Fort Peck Court of Appeals within fifteen (15) days of the disbarment or suspension. The appeal shall be determined by those justices of the Court not involved in the initial determination. The Court shall request a statement of the reasons for the disbarment or suspension from the justice who took the initial action, and after receiving such statement shall review the record which was before the justice and may, in its discretion, hear oral argument by the applicant. The Court of Appeals shall determine de novo whether the applicant shall be disbarred or suspended and its determination shall be final.

**(AMENDED AS PER RESOLUTION NO. 1905-84-12, DATED 12/11/84.)**

(d) Any person who has been disbarred or suspended in excess of one (1) year from the practice of law before the Fort Peck Tribal Courts may re-apply for admission before the Chief Judge of the Fort Peck Tribal Court. If the Chief Judge had previously disbarred or suspended the applicant, then the application shall be filed with an Associate Judge of the Tribal Court. The person must submit a statement for readmission to the appropriate judge of the Tribal Court. After receiving such statement, the appropriate judge shall determine whether there is good cause for the applicant to be readmitted to practice before the Fort Peck Tribal Courts. If the applicant for readmission is denied by the judge, the applicant may appeal such decision to the Fort Peck Court of Appeals within ten (10) working days from receipt of such denial in writing. The decision of the Court of Appeals shall be final.

**(AMENDED AS PER RESOLUTION NO. 903-90-6, DATED 06/25/90.)**

**Sec. 505. Members of the Tribal Executive Board shall not practice as attorneys or lay counselors or attempt to influence Tribal Court decisions.**

No member of the Tribal Executive Board shall practice before or in any manner attempt to influence any decision of the Tribal Court or Court of Appeals during his/her term of office. Attempts to influence Tribal Court decisions shall be grounds for removal from office under Section 2(b), Article 6 of the Tribes' constitution and by-laws.

**Chapter 6. Tribal Court Prosecutor and Public Defender**

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**Sec. 601. Office of tribal court prosecutor.**

There shall be a tribal court prosecutor, and such assistant prosecutors as the Tribal Executive Board may determine.

**Sec. 602. Qualifications.**

To be eligible to serve as tribal court prosecutor or assistant prosecutor, a person shall

- (1) Have an Associate of Arts degree or Bachelor of Arts degree from an accredited college in law and justice or similar field of study;



- (2) Be at least twenty-one (21) years of age;
- (3) Be of high moral character and integrity;
- (4) Not have been dishonorably discharged from the Armed Services;
- (5) Be physically able to carry out the duties of the office;
- (6) Have successfully completed a bar examination administered as prescribed by the Tribal Executive Board;
- (7) Must be a Fort Peck Tribal member capable of maintaining good relationships with the Tribal Courts;
- (8) And must have training in Fort Peck Tribal Court Law and Assiniboine and Sioux culture.

**(AMENDED AS PER RESOLUTION NO. 2152-2001-9, DATED 09/10/01, AND RESOLUTION NO. 25-87-11, DATED 11/09/87.)**

Special Tribal Prosecutors may be appointed as required by Resolution of the Tribal Executive Board. Such person(s) appointed as Special Tribal Prosecutor must meet the qualifications set forth in this Section except that such person(s) need not be Fort Peck Tribal members.

**(AMENDED AS PER RESOLUTION NO. 639-90-4, DATED 04/23/90).**

**Sec. 603. Appointment and compensation.**

The tribal court prosecutor shall be appointed by a two-thirds (2/3) vote of the Tribal Executive Board taken at a meeting at which a quorum is present. Assistant tribal prosecutors shall be appointed by a majority vote of those voting at a meeting of the Tribal Executive Board at which a quorum is present. The Tribal Executive Board shall establish rates of compensation of the tribal court prosecutor and any assistants.

**Sec. 604. Oath of office.**

Before entering upon the duties of office, the tribal court prosecutor and assistant prosecutors shall take the following oath of affirmation:

"I, . . . ., do solemnly swear (or affirm) that I will truly, faithfully and impartially discharge all duties of my office as prosecutor to the best of my abilities and understanding. So help me God."

**Sec. 605. Term of office.**

**Repealed as per Resolution No. 145-2009-12; Dated 12/14/2009.**

**Sec. 606. Duties.**

The tribal court prosecutor and assistant prosecutors shall, in the name of the Tribes, prosecute criminal cases in Tribal Court. The prosecutors shall review and approve all criminal complaints, unless signed by a law enforcement officer having personal knowledge of the violation, shall supervise the gathering of evidence by law enforcement officers to make sure each case is promptly and fairly presented, shall represent the Tribes at arraignments, and shall be authorized to dismiss any criminal complaint that is not supported by sufficient evidence or is improvidently brought. The tribal court prosecutor and assistant prosecutors shall represent juveniles in Juvenile Court proceedings where parents or guardians are charged with neglect, abuse or abandonment, or where the custody of a child is disputed. The tribal court prosecutor shall make recommendations from time to time to the Tribal Executive Board on the administration of justice on the Reservation.

**Sec. 607. Termination of services of tribal court prosecutor.**

**Repealed as per Resolution No. 145-2009-12; Dated 12/14/2009.**

**Sec. 608. Office of tribal public defender.**

The Tribal Executive Board may appoint a tribal public defender and any assistants it deems necessary by majority vote of those voting at a meeting of the Tribal Executive Board at which a quorum is present.

**Sec. 609. Qualifications.**

(a) To be eligible to serve as Tribal public defender or assistant defender, a person shall:

- (1) Be at least 21 years of age;
- (2) Be of high moral character and integrity;
- (3) Not have been dishonorably discharged from the Armed Services;

(4) Be physically able to carry out the duties of the office; and

5) Successfully completed, during their probationary period, a bar examination administered as prescribed by the Tribal Executive Board.

(b) A public defender who has a Juris Doctor degree from an ABA accredited law school, passed the Fort Peck Bar Exam, taken the oath of office and passed a background check, is sufficiently qualified under the Indian Civil Rights Act to represent a defendant imprisoned more than one year and any defendant charged under the Tribes' Special Domestic Violence Criminal Jurisdiction.  
(AMENDED AS PER RESOLUTION NO. 28-0945-2016-07; DATED JULY 26, 2016)

**Sec. 610. Compensation.**

The Tribal Executive Board shall establish rates of compensation for the tribal public defender and assistants.

**Sec. 611. Oath of office.**

Before entering upon the duties of office, the tribal public defender and assistant defenders shall take the following oath or affirmation:

"I, ....., do solemnly swear (or affirm) that I will truly, faithfully and impartially discharge all duties of my office as defender to the best of my abilities and understanding. So help me God."

**Sec. 612. Term of office.**

**Repealed as per Resolution No. 145-2009-12;  
Dated 12/14/2009.**

**Sec. 613. Duties.**

The tribal public defender and assistants shall, without charge, represent persons accused of crimes in Tribal Court with consent of the defendant. Representation shall be provided at all stages of the proceeding following the filing of a complaint, and the tribal public defender shall take all necessary steps to investigate the facts of any case and shall have access to all Tribal and BIA social services personnel.

**Sec. 614. Termination of services of tribal public defender.**

**Repealed as per Resolution No. 145-2009-12;  
Dated 12/14/2009.**

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 3 – Government Organization**

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## **Chapter 1. Assiniboine and Sioux Tribal Flag**

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### **Sec. 101. The Assiniboine and Sioux Tribal Flag.**

The Assiniboine and Sioux Tribal Flag shall consist of a sky blue field, containing two (2) Indian chiefs in war bonnets holding a buffalo robe. The words "Fort Peck Tribes" shall appear on the buffalo robe, the word "Assiniboine" on the left hand war bonnet and the word "Sioux" on the right hand war bonnet.

### **Sec. 102. Display of the flag.**

(a) The Assiniboine and Sioux Tribal Flag shall be displayed, except on days when the weather is inclement, within, on or near the main building or entrance of the Tribal Office.

(b) The Assiniboine and Sioux Tribal Flag may be displayed within buildings, or outside where it shall be displayed only from sunrise to sunset, and only on flagstaves or staffs affixed to buildings. The flag may be otherwise displayed in an appropriate manner on special occasions.

### **Sec. 103. Manner of display.**

(a) The manner in which the Assiniboine and Sioux Tribal Flag is displayed with or near the Flag of the United States shall be in conformance with laws governing the display of the Flag of the United States.

(b) The Assiniboine and Sioux Tribal Flag should be displayed in a proper and respectful manner, conspicuously placed and well secured. When the Flag is displayed otherwise than being flown from a staff, it should be displayed flat, whether indoors or out, or so suspended that its folds fall as free as though the Flag were staffed.

(c) The Assiniboine and Sioux Tribal Flag should be hoisted briskly and lowered ceremoniously.

(d) The Assiniboine and Sioux Tribal Flag should be displayed above any flags on a single

staff, except the United States Flag, and if several Flags are displayed together, the Assiniboine and Sioux Tribal Flag should occupy the place of central or greatest prominence, except when the United States Flag is displayed, in which case the Assiniboine and Sioux Tribal Flag should be displayed immediately to the left and slightly lower than the United States Flag.

(e) The Chairman of the Assiniboine and Sioux Tribes is hereby authorized to order that the Assiniboine and Sioux Tribal Flag be displayed at half-staff, whenever appropriate, and to prescribe the length of time the Flag should be so displayed. The Flag, when displayed at half-staff, should first be hoisted to the peak of the staff for an instant and then lowered to the half-staff position. The Flag should again be raised to the peak of the staff before it is lowered for the day.

### **Sec. 104. Proper methods of handling, storage and destruction.**

(a) The Flag should never touch anything beneath it, such as the ground, the floor, water, or merchandise, and should always be kept or placed in a clean container or wrapping used for the purpose of keeping the Flag.

(b) The Flag should never be used as drapery of any sort whatsoever, never festooned, drawn back, nor up, in folds, but always allowed to fall free.

(c) The Flag should never be fastened, displayed, used or stored in such a manner as will permit it to be easily torn, soiled or damaged in any way.

(d) The Flag should never have placed upon it, nor any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, or drawing of any nature.

(e) The Flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard, or used as any portion of a costume or athletic uniform. Advertising signs should not be fastened to a staff or halyard from which the Flag is flown.

(f) The Flag, when it is in such condition that it is no longer a fitting emblem for display, should

be destroyed in a dignified way, preferably by burning.

**Sec. 105. Desecration of the Tribal Flag.**

No person shall knowingly cast contempt upon the Assiniboine and Sioux Tribal Flag by publicly mutilating, defacing, defiling, burning or trampling upon it. Any non- Indian violating this provision may be excluded from lands subject to the jurisdiction of the Tribes by order of the Fort Peck Tribal Court.

**Chapter 2. Police and Law Enforcement**

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**Sec. 201. Superintendent to command Reservation police.**

The Superintendent of the Fort Peck Agency shall be the commander of the Reservation police.

**Sec. 202. Duties of commander of Reservation police.**

The commander shall be responsible for the general efficiency and conduct of the Reservation police. He/she or his/her duly qualified representative shall keep informed as to the efficiency of the police officers in the discharge of their duties, inspect the force at regular times, inform the police officers of their duties, and account for the equipment issued in connection with their official duties. The commander shall detail such Reservation police officers as may be necessary to carry out the orders of the Fort Peck Tribal Court or Court of Appeals and to preserve order in the Courts. The commander shall investigate all reports and charges of misconduct on the part of Reservation police officers and shall exercise

such proper disciplinary measures as may be consistent with existing regulations.

**Sec. 203. Police commissioners.**

The commander of Reservation police, with the approval of the Commissioner of Indian Affairs, may designate a police commissioner. Wherever any special federal officer is regularly employed on the Reservation, he/she shall be police commissioner. The police commissioner shall enforce all orders of the Fort Peck Tribal Court and Court of Appeals. The police commissioner shall be responsible to the commander for the conduct and efficiency of the Reservation police under his/her direction and shall give such instruction and advice to them as may be necessary. The police commissioner shall promptly report all violations of law or regulation and any misconduct of any member of the Reservation police to the commander.

**Sec. 204. Police training.**

The commander shall conduct or maintain, as circumstances require, classes for the instruction of the Reservation police in the proper enforcement of their duties. Such classes shall familiarize the police officers with

- (1) The manner of making searches and arrests;
- (2) The proper and humane handling of prisoners;
- (3) The keeping of records of offenses and police activities;
- (4) The court's orders and legal forms and the duties of the police in relation thereto; and
- (5) Any other subjects of importance for efficient police duty. Particular instruction shall be given to the methods of preventing crime and of securing cooperation with Indian and non-Indian communities in establishing better social relations.

**Sec. 205. Appointment and qualifications of Reservation police.**

(a) When appointment of Reservation police is subject to control by the Tribes, the Executive Board, with the approval of the Assistant Secretary for Indian Affairs, may appoint Indians as Reservation police;

(b) To be eligible for appointment, an Indian shall possess qualifications as follows:

(1) Be of sound physical condition and sufficient size and strength to perform the duties required of a police officer;

(2) Be of courage, self-reliance, intelligence and high sense of loyalty and duty;

(3) Never have been convicted of a felony for which he/she has not received a pardon, nor have been convicted of any misdemeanor for a period of one (1) year prior to appointment;

(4) Have a high school degree or its equivalent;

(5) Be at least eighteen (18) years of age;

(6) If the appointment is to be a permanent appointment, have attended and satisfactorily completed the course of study at a duly accredited police academy.

(c) All Reservation police officers shall retire at the age seventy (70).

#### **Sec. 206. Duties of Reservation police.**

The duties of a Reservation police officer shall be as follows:

(a) To obey promptly all orders of the police commissioner or the Fort Peck Tribal Court or Court of Appeals when assigned to that duty;

(b) To lend assistance to other officers;

(c) To report and investigate all violations of any laws or regulation coming to his/her notice or reported for attention;

(d) To arrest all persons observed violating the laws or committing the offenses enumerated in Title 7 (Criminal Offenses) of this Code;

(e) To inform himself/herself as to the laws, regulations and offenses applicable to the Reservation and as to the laws of arrest, including Chapter 2 of Title 6 (Criminal Procedure);

(f) To prevent violations of the law and the committing of offenses enumerated in Title 7 (Criminal Offenses) of this Code;

(g) To report to his/her superior officers all accidents, births, deaths, and events or impending events of importance;

(h) To abstain from the use of intoxicants and narcotics while on duty and to refrain from engaging in any act which would reflect discredit upon the police force;

(i) To refrain from the use of profane, insolent or vulgar language while on duty;

(j) To use only necessary force in making an arrest, search, or seizure;

(k) To keep all equipment furnished by the United States and the Tribes in reasonable repair and order;

(l) To report the loss of any and all property issued by the United States or the Tribes to the appropriate officials;

(m) To arrest non-Indians on the Reservation for violations of state or local law pursuant to any state or local law or agreement authorizing Indian police to make such arrests. Any person arrested under this subsection shall be promptly delivered to state or local authorities in accordance with the law or agreement authorizing the arrest;

(n) To arrest Indians or non-Indians for violations of federal law on the Reservation. Any person arrested under this subsection shall be promptly delivered to appropriate federal authorities. No police officer shall be assigned or detailed for duty as janitor or chauffeur or for any duty not connected with the administration of law and order.

#### **Sec. 207. Procedures for discipline and dismissal.**

(a) Whenever a charge or complaint is brought against any employee of the Reservation police force, the commander of Reservation police in his/her discretion may place the employee on administrative leave and suspend the employee from all duties, or may assign the employee to administrative duties. Any suspension under this section shall be without pay.

(b) At the time action under subsection (a) is taken, the employee shall be informed of the reason for the action and promptly after the action is taken the commander shall:

(1) Serve the employee with a written statement of the charges or complaints and the names of all persons on whose information the charges or complaints are based. Service shall be in person, or by leaving the written statement at the last known place of residence of the employee with some person of suitable age and discretion then living in the residence.

(2) Set a hearing date not less than five (5) days, or more than ten (10) days, after the employee has been served with the written statement of charges.

(c) The hearing shall be before a panel of three (3) persons, selected by the Executive Board. None of the persons selected shall be employees

of the Reservation police force or members of the Executive Board.

(d) The parties shall be entitled to counsel and an opportunity to confront and examine witnesses.

(e) The hearing panel shall render a decision promptly and issue a final order in writing that shall be binding on the parties. If the decision is adverse to the employee, the order shall specify the penalty, which may include termination of employment, suspension from duty without pay for a specified period, not to exceed two (2) weeks, or a monetary penalty. If a monetary penalty is imposed, the employee, at his/her option, may resign rather than pay the penalty.

(f) The procedures set forth in this Section shall be in lieu of those set forth in 25 C.F.R. 11.304(k). The procedures set forth in this Section shall be included in any contract or grant under 25 C.F.R. Part 271 or Part 272 for the administration of the Reservation police force.

**Sec. 208. State and local law enforcement officials authorized to make arrests.**

(a) All law enforcement officials vested with general law enforcement authority by the State of Montana, or by any County or City within the boundaries of the Fort Peck Reservation and approved by Executive Board on recommendation of the safety committee, are hereby authorized to arrest Indians on any highway on the Reservation or within the boundaries of the cities of the Reservation for violations of the Tribal Code of Justice. Each jurisdiction shall from time to time submit the names of new law enforcement officials to the safety committee for approval.

(b) Upon arresting any Indian as authorized by this Section, such law enforcement officials shall promptly deliver the individual to the Tribal Court or to the appropriate tribal law enforcement officers for action under tribal laws.

**Chapter 3. Tribal Jail**

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**Sec. 301. Duties of the Chief Jailer and jailers.**

(a) The Chief Jailer and the assistant jailers are responsible for the safety, cleanliness and general well-being of all persons confined as prisoners of the Fort Peck Tribal Court.

(b) The duty jailer shall monitor the Indian police radio frequency, and shall keep an accurate radio log of all police calls and document all complaints, arrests and police calls on the radio log.

(c) The Chief Jailer may from time to time designate reliable prisoners to assist in operation of the jail. Only four (4) such trustees may be allowed outside the cell block at a time.

**Sec. 302. Procedures upon arrival of new prisoners.**

(a) Upon incarceration of each person held in the Fort Peck Tribal Jail, all personal property in the possession of the person to be confined shall be taken from the prisoner, properly inventoried and stored in a safe place until the person is released from custody.

(b) Any new prisoner who is not intoxicated may use the telephone for one (1) completed call to an attorney or lay counselor and one (1) completed call to a friend or relative prior to being placed in the cell block. Any long distance calls must be made collect.

(c) The prisoner shall then be placed in a cell block for detention until release or further court action.

**Sec. 303. Prisoners to be kept in cells.**

(a) All prisoners are to be locked in their respective cells at all times, with exception of the trustee, and such others actually performing work on assigned work details.

(b) If, in his/her judgment, he/she can do so without risk to the security of the jail, the Chief Jailer may designate a daily exercise period during which the prisoners, under supervision, may be out of their cells.

**Sec. 304. Property permitted in the jail.**

(a) No property shall be allowed to be furnished incarcerated prisoners with exception to tobacco products and clean clothing. No foods other than scheduled meals shall be furnished to prisoners. No knives, beer openers, bottles, metal objects or other items which could produce bodily harm shall be allowed inside the cell blocks.

(b) Each prisoner will be furnished with eating materials and bedding as required.

**Sec. 305. Meals.**

(a) All persons confined shall be fed a minimum of three (3) meals each day while confined; breakfast shall be fed before 8:00 a.m., lunch at approximately noon, and dinner at approximately 5:00 p.m.

(b) The Chief Jailer shall direct preparation of and establish procedures for serving these meals.

**Sec. 306. Work details.**

(a) Incarcerated prisoners shall be assigned work details for the benefit of the Tribes only upon authorization of the Presiding Judge of the Tribal Court.

(b) The Chief Judge and the assistant jailers may use prison labor for internal cleaning of the jail such as scrubbing floors, walls, sweeping and mopping. The jail should be kept in clean and sanitary condition, and should be scrubbed at least two (2) times each week, swept daily, and trash should be emptied daily or more frequently as needed.

**Sec. 307. Visitors and phone calls.**

(a) No unauthorized persons shall be allowed inside or around the Fort Peck Jail.

(b) Visiting hours shall be posted at the gate and strictly enforced.

(c) Prisoners shall not receive or make phone calls at the jail.

(d) Prisoners shall be afforded adequate opportunity to consult privately with their attorneys or lay counselors. Notwithstanding subsection (c), prisoners may have reasonable access to the telephone to communicate with their attorney and lay counselors.

**Sec. 308. Medical care for prisoners.**

(a) When any prisoner confined requires medical attention, the Chief Jailer or his/her assistant

on duty shall arrange with the Tribal police for transportation to the necessary medical facility. Any medications prescribed for prisoners' use shall be kept and issued by the duty jailer. No medicines will be allowed in cell blocks.

(b) The Chief Jailer shall maintain records each showing the date, time and reason for each instance of medical treatment of prisoner, and showing all prescriptions issued to each prisoner, and showing the date and time of each issuance of medication to each prisoner.

**Sec. 309. Women's cell block.**

Female prisoners shall be confined in a separate cell block. The Chief Jailer shall assure the privacy of the women's cell block. To the extent reasonably possible, a female jailer shall be available for duty in the women's cell block. Only under emergency circumstances shall any male jailer or police officer, or other male person enter the women's cell block.

**Sec. 310. Release.**

No prisoner shall be released from custody until a release form or other order is signed by the presiding tribal judge, the prisoner's sentence is served, or release is ordered by a court having jurisdiction over the matter.

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**Sec. 401. Definitions.**

(a) Fugitive from justice. Any Indian who has fled to the Reservation and is charged by a state with a crime committed within the jurisdiction of the state but outside of Indian country, or is charged by an Indian tribe with an offense committed in Indian country.



(b) Demanding jurisdiction. The governor of the state, or tribal chairman of the Indian Reservation, from which the fugitive from justice fled, or the authorized agent of such person.

**Sec. 402. Tribal Court to issue warrant.**

Whenever a demanding jurisdiction requests a fugitive from justice and produces a copy of the indictment found, or complaint and warrant, or other judicial evidence, charging any Indian with having committed a crime within the jurisdiction of the demanding jurisdiction, the Tribal Court may issue a warrant for the apprehension and commitment of the Indian so charged, to the end that such Indian may be brought before the Tribal Court for hearing and determination of the issues set forth in Section 405 of this Chapter.

**Sec. 403. Notice of hearing; waiver of hearing.**

As soon as possible after the apprehension of the accused Indian, and in any event within twenty four (24) hours, the Tribal Court shall fix a date for the hearing on the issues defined in Section 405 of this Chapter. The hearing date shall be not more than two (2) weeks after the date of apprehension of the accused, unless the accused is in custody at the time the demand is received. At the same time, the Tribal Court shall:

(a) In open Court and on the record advise the accused Indian of his/her rights to present evidence and testimony at the hearing on the issues defined in Section 405 of this Chapter, furnish the accused Indian with a copy of this Chapter calling particular attention to Section 405 defining the issues to be heard, and advise the Indian that the Indian may voluntarily waive the hearing and agree to be delivered to the demanding jurisdiction.

(b) Immediately notify the demanding jurisdiction of the date of the hearing by telephone if necessary, furnish the demanding jurisdiction with a copy of this Chapter calling particular attention to Section 405 of this Ordinance defining the issues to be heard, and advise the demanding jurisdiction of its right to present evidence and testimony and to be represented by counsel.

(c) Immediately notify the Chairman of the Executive Board of the date of the hearing. The Executive Board may, through any representative designated by it, be present at the hearing, and present evidence and legal arguments.

**Sec. 404. Accused may be admitted to bail conditions of bond.**

The Tribal Court may release the accused Indian from custody pending the hearing provided for in Section 405 of this Chapter in accordance with Title 7 (Criminal Procedure), Section 402(a), provided that the Court shall impose such conditions of release as it deems proper for the appearance of the Indian before the Tribal Court at the hearing and for the surrender of the Indian to the demanding jurisdiction, if so adjudged after the hearing.

**Sec. 405. Issues for determination.**

At the hearing as provided in Section 403 hereof, the Tribal Court shall hear and determine the following issues:

(a) Whether the accused Indian is the person before the court and is the person charged by the demanding jurisdiction with the commission of a crime.

(b) Whether there is evidence of criminality. For purposes of this Section, criminality is established if evidence is found sufficient to justify commitment for trial if the crime had been committed on the Reservation. Evidence need not be such as is required to convict an accused at a trial. The Tribal Court shall not determine guilt or innocence.

(c) Whether the circumstances surrounding the charge by the demanding jurisdiction indicate that the accused Indian was the victim of discrimination by reason of his/her race.

(d) Whether the demanding jurisdiction can assure the accused Indian of nondiscriminatory and safe treatment in jail of the demanding jurisdiction. (e) Whether the demanding jurisdiction can assure the accused Indian of a fair trial in the area of the demanding jurisdiction where such a trial would be held.

(f) Whether the criminal charges by the demanding jurisdiction were in good faith, or for the purpose of using criminal process to compel payment of a civil debt or some other improper motive.

(g) Whether, under all the facts and circumstances, justice would best be served by delivering the Indian to the demanding jurisdiction.

**Sec. 406. Entry of judgment.**

If the accused Indian waives in writing the right to a hearing, or if the issues defined in Section 405 hereof are resolved against the accused Indian, the Tribal Court shall enter a judgment authorizing the demanding jurisdiction to arrest and remove the accused Indian from the Reservation.

**Chapter 5. Parks**

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**Sec. 501. Closing times.**

All tribal parks and celebration grounds on the Fort Peck Indian Reservation shall be closed from 10:00 p.m. until dawn each day, except that use of the parks after 10:00 p.m. may be authorized by the Executive Board for organized functions such as a recognized pow wow.

**Sec. 502. Consumption of liquor.**

No liquor shall be consumed in tribal parks or celebration grounds at any time.

**Chapter 6. Relationships with Other Governments**

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**Sec. 601. Consultation with governmental entities.**

(a) It is the policy of the Assiniboine and Sioux Tribes that the federal, state and local governments and any agencies thereof should consult with the Tribes concerning any policy, decision or enactment which may significantly affect the Tribes or the Fort Peck Indian Reservation prior to such policy, decision or enactment.

(b) Any government entity desiring to initiate consultation about any matter of mutual interest may do so by contracting the Chairman of the Fort Peck Tribal Executive Board. Consultation shall be with the Executive Board, the Chairman, or such agency or representative of the Tribes as the Chairman or Board may direct.

(c) Whenever the Fort Peck Tribal Executive Board desires to consult with any government or

governmental entity it shall initiate such consultation by a communication directed to the head of such government or governmental entity, except that:

(1) Consultations with a federal agency or instrumentality may, if appropriate, be initiated by a communication directed to the regional director of such agency for the region which includes the Fort Peck Indian Reservation;

(2) Consultations with the Bureau of Indian Affairs may, if appropriate, be initiated by a communication directed to the Superintendent of the Fort Peck Agency; and

(3) Any government or governmental entity may, by so informing the Chairman, appoint a representative to whom such communication shall be directed.

(d) This section shall not be construed to forbid or limit informal communications and cooperation between the Tribes and their agencies and other governmental entities. However, all such informal communications and cooperation shall be subject to supervision by the Executive Board.

**Chapter 7. Exclusion from the Fort Peck Reservation**

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**Sec. 701. Grounds for Exclusion.**

Any person may be excluded from the Reservation for:

(a) Conduct which substantially threatens the life, the physical health or the safety of an Indian or Indians residing on the Reservation.

(b) Conviction in Tribal Court of at least three felonies or Class A Misdemeanors which involve acts of violence against persons under the laws of the Tribes.

**Sec. 702. Initiation of Exclusion Proceedings.**

(a) Exclusion proceedings shall be initiated by written charges of specific conduct justifying exclusion made by the Tribal Civil Prosecutor or a member of the Tribal Executive Board. Such charges shall also include the text of a proposed exclusion order. The charges and order must then be adopted by a majority vote of the Tribal Executive Board at a meeting at which a quorum is present.

(b) In an emergency situation and for good cause shown, the Board may, at the time it adopts charges, enact a temporary exclusion order, effective upon adoption, against the person or persons charged. Such temporary exclusion order shall be effective for 30 days or until the date of the hearing pursuant to Section 704, whichever comes first. Notwithstanding any other provision, such a temporary exclusion order shall not be construed to prevent the person or persons excluded from appearing at the hearing on the charges against them pursuant to Section 704, or at any Tribal Court hearings at which the excluded person or persons are otherwise required to appear.

**Sec. 703. Notices.**

Written notice of exclusion charges, including the complete text of the charges adopted by the Tribal Executive Board, shall be served on the person or persons against whom the charges are made by personal delivery or by certified or registered mail, return receipt requested. Such notice shall be accompanied by a copy of this ordinance and shall advise the person or persons of the date of the Tribal Court hearing on the charges. Such notice shall be delivered not less than 10 days before the date of the hearing.

**Sec. 704. Hearing on Charges.**

(a) Not less than 10 days after service of notice of charges pursuant to Section 703, the Tribal Court shall hold a public hearing on the charges. The charges must be proven by sworn testimony of witnesses and reliable documentary evidence. The person or persons charged shall be given the opportunity to answer the charges by written or oral presentation before the Court, and shall have the right to cross-examine witnesses, to present witnesses or evidence in defense against the charges and to be represented by counsel at their own expense.

(b) After the hearing, the Court shall determine whether the charges have been proven by a preponderance of the evidence. If it determines the charges have been so proven, it shall adopt the exclusion order and set a date when the exclusion order shall take effect. If the Court determines the charges have not been so proven, it shall not adopt the exclusion order, and the charges shall be dropped. In either case, the decision of the Court shall be reviewable only in the manner provided for appeal of a final decision in a civil action by the Tribal Court of Appeals.

**Sec. 705. Content of Exclusion Order.**

Every exclusion order proposed as part of charges pursuant to Section 702, or adopted pursuant to Section 704(b) shall:

(a) Specifically identify by name, and such other information necessary to avoid any ambiguity, the person or persons to be excluded from the Reservation.

(b) Include, either directly or by reference to the charges, a description of the specific conduct for which exclusion is ordered.

(c) State the date, time and place of the Tribal Court hearing on the charges.

(d) State that the excluded person may be allowed or required to appear in Tribal Court in any proceedings within the jurisdiction of Tribal Court, notwithstanding the exclusion order.

**Sec. 706. Revocation of Exclusion Orders.**

(a) A person excluded from the Reservation may, at any time at least six months following entry of an exclusion order, petition the Court to revoke the exclusion order. The petition shall be made in writing and shall set forth in detail the grounds upon which revocation is sought.

(b) Except as provided in subsection (c), the Court shall afford a person petitioning for revocation of an exclusion order a hearing in the manner provided in Section 704. Notwithstanding the outstanding exclusion order, the petitioner may enter the Reservation to appear at the hearing, under procedures set forth in Section 707. At the hearing the burden shall be on the petitioner to show that revocation is appropriate, but revocation shall be ordered by the Court only if it determines that the petitioner no longer poses a substantial threat to the life, the physical health or the

safety of an Indian or Indians residing on the Reservation.

(c) A hearing need not be afforded on a petition for revocation filed within six months of the effective date of the exclusion order or within one year of a hearing on a previous petition for revocation filed by the same person.

**Sec. 707. Procedures for entering Reservation for exclusion, revocation or Tribal Court hearing.**

Any person excluded from the Reservation under this ordinance, who is entitled under this ordinance to appear at a Tribal Court hearing on exclusion or revocation, or is required to appear in Tribal Court in any proceeding, may enter the Reservation only in compliance with this section. The person excluded must provide the Tribal Chairman with seven (7) days' notice, in writing, of the date, time and purpose for seeking entry to the Reservation. Upon receipt of such a notice, the Chairman shall determine if the request by the excluded person complies with this ordinance. If not, the Chairman shall inform the excluded person that his request to enter the Reservation has been denied. If the request is in compliance with this ordinance, the Chairman shall notify the excluded person that he may enter the Reservation, but only for the purpose of attending the specified Tribal Court hearing. In such event, the Chairman shall arrange for a tribal police escort of the excluded person from the boundary of the Reservation to the designated hearing, and, immediately after the designated hearing, to the Reservation boundary. For purposes of this section, the term "Chairman" shall mean the Tribal Chairman or his designee.

**(CHAPTER ADOPTED AS PER RESOLUTION NO. 1290-2003-1, DATED 01/27/03.)**

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 4 – Enrollment**

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## Chapter 1. Enrollment Ordinance No. 1

NOTE: Pursuant to Article 3 of the Constitution and Bylaws of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, this Chapter was adopted and should be amended only by a referendum vote of the Tribes.

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### Sec. 101. Qualifications.

The following individuals automatically qualify for membership in the Assiniboine and Sioux Tribes of the Fort Peck Reservation and shall be enrolled if they comply with the rules of procedure prescribed for enrollment by the Tribal Executive Board:

(a) Basic rolls. Each living person of Assiniboine and/or Sioux blood whose name appears on either the 1932 annuity payment roll or an allotment schedule prepared and approved pursuant to the Acts of February 8, 1887 (24 Stat. 388), February 28, 1891 (26 Stat. 794), May 30, 1908 (35 Stat. 558), August 1, 1914 (38 Stat. 593), February 14, 1920 (41 Stat. 408), and March 3, 1927 (44 Stat. 1401), provided that he or she is not enrolled as a member of some other tribe.

(b) Descendants of persons on basic roll. Each living person who is of one-fourth (1/4) or more Assiniboine or Sioux blood born prior to the effective date of this Constitution who is a lineal descendant of a person whose name appears on one or both of the documents specified in (a) of this Section regardless of whether such annuitant or allottee is living or deceased, provided that he or she is not a member of some other tribe at the time of application for enrollment and provided further that he or she is a citizen of the United States. Any such person may apply for enrollment at any time.

### (AMENDMENT NO. 1 AS PER REFERENDUM VOTE OF 05/07/88.)

(c) Adoptees. Each person adopted into tribal membership by the General Council prior to the

effective date of this constitution whose adoption was approved by the Secretary of the Interior, or his/her authorized representative, provided such adoptee has not subsequently become enrolled as a member of some other tribe.

(d) Future members. Each child of one-fourth (1/4) or more Assiniboine and/or Sioux blood born after the effective date of this ordinance to any member of the Assiniboine and Sioux Tribes provided that the child is not a member of some other tribe at the time of application for enrollment and provided further, that the child is a citizen of the United States at the time of the child's birth.

### (AMENDMENT NO. 2 AS PER REFERENDUM VOTE OF 05/07/88.)

(e) Associate members. Each child of one-eighth (1/8) or more but less than one-quarter (1/4), Assiniboine and/or Sioux blood born to any member of the Assiniboine and Sioux Tribes, provided the child is a citizen of the United States at the time of the child's birth. Associate members shall not be eligible to vote in Tribal elections or to share in any distribution of tribal funds or property, but shall otherwise be eligible for benefits as Indians as provided by Law.

### (AMENDMENT NO. 4 AS PER REFERENDUM VOTE OF 05/07/88.)

### Sec. 102. Loss of membership.

In no case shall a member lose his/her membership other than by personal request in writing to the Tribal Executive Board or establishing residence in a foreign country.

### Sec. 103. Rules of procedure.

The Tribal Executive Board shall have the authority to appoint an Enrollment Committee of seven (7) tribal members and to prescribe rules to be followed by the Committee and by the tribal members in compiling a membership roll in accordance with the provisions of this article. The completed roll to be approved by the Tribal Executive Board, and in a case of distribution of tribal assets the roll shall be submitted to the Secretary of the Interior for final approval by him/her

or by his/her authorized representative prior to such distribution.

**Sec. 104. Appeals.**

Any person who has been rejected for enrollment as a member of the Assiniboine and Sioux Tribes shall have the right to appeal within sixty (60) days from the date of receipt of written notice of rejection to the Secretary of the Interior from the decision of the Tribal Executive Board, and the decision of the Secretary of the Interior shall be final.

**Sec. 105. Definition.**

The terms "Assiniboine or Sioux blood" or "Assiniboine and/or Sioux blood" as used in this Ordinance, means the blood of the Assiniboine or the Sioux Tribes of the Fort Peck Reservation, Montana, or the blood of any other federally recognized Assiniboine or Sioux Tribes, or any combination of Assiniboine and Sioux blood. The burden shall be on the applicant for enrollment to establish the requisite degree of blood by evidence satisfactory to the Executive Board.

**(AMENDMENT NO. 3 AS PER REFERENDUM VOTE OF 05/07/88.)**

**Chapter 2. Enrollment Procedure**

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**Sec. 201. Definitions.**

- (a) "Applicant" means the applicant for enrollment.
- (b) "Enrollment Ordinance" is the ordinance adopted by referendum and effective as of October 1, 1960, and codified as Chapter 1 of this Title.
- (c) "Section 1(a) annuity roll or allotment schedules" embraces the documents identified in Section 101(a) of the enrollment ordinance.
- (d) "Secretary" means the Secretary of the Interior.
- (e) "Superintendent" means the Superintendent of the Fort Peck Indian Agency or the person authorized to act in that office.

**Sec. 202. Who is eligible for enrollment.**

Persons eligible for enrollment fall into five (5) groups. The first three (3) groups are made up of persons born or adopted into the Tribes on or before October 1, 1960. The fourth (4th) group is made up of persons born after October 1, 1960. The fifth (5th) group is made up of persons born prior to and after October 1, 1960. The following are eligible for enrollment:

Group 1. Living annuitants and allottees. Any person of Assiniboine and/or Sioux blood living on October 1, 1960, whose name is listed on the Section 101(a) annuity roll or allotment schedules, who was not a member of some other tribe on or since October 1, 1960;

Group 2. Living lineal descendants of annuitants and allottees. Any lineal descendant living on October 1, 1960, of any ancestor whose name is listed on the Section 101(a) annuity roll or allotment schedules, regardless of whether such ancestor is living or dead (the applicant must be of one-fourth (1/4) or more Assiniboine or Sioux blood, must be born on or before October 1, 1960, must not be enrolled as a member of any other tribe on or since October 1, 1960, and must be a citizen of the United States). Any such person may apply for enrollment at anytime.

**(AMENDMENT NO. 1 AS PER REFERENDUM VOTE OF 05/07/88.)**

Group 3. Adoptees. Any person living on October 1, 1960, adopted into the Tribes by the General Council of the Tribes prior to October 1, 1960, with the approval of the Secretary, who did not become enrolled as a member of some other tribe subsequent to his/her adoption;

Group 4. Persons born after October 1, 1960. Any persons born after October 1, 1960 to a member under Groups 1, 2, or 3. The applicant must possess one-fourth (1/4) or more Assiniboine and/or Sioux blood and must be a citizen of the United States at the time of birth. Applicants of illegitimate birth shall be eligible but in determining their degree of Assiniboine and/or Sioux blood, only the blood of the mother shall count, and the applicant shall take one-half (1/2) the mother's Assiniboine and/or Sioux blood; however, if the applicant is accompanied by an order of the Fort Peck Tribal Court; or an order of another jurisdiction recognized by the Fort Peck Tribal Court, establishing paternity, then the applicant's degree of blood shall include one-half of the Assiniboine and/or Sioux blood of the father.  
**(AMENDED AS PER RESOLUTION #26-644-2012-04; DATED 4/10/2012)**

Group 5. Associate members. Each child of one-eighth (1/8) or more but less than one-quarter (1/4) Assiniboine and/or Sioux blood born to any member of the Assiniboine and Sioux Tribes, provided the child is a citizen of the United States at the time of the child's birth. Associate members shall not be eligible to vote in Tribal Elections or

to share in any distribution of tribal funds or property, but shall otherwise be eligible for benefits as Indians as provided by law.

Burden of Proof. The burden of proving eligibility for enrollment shall be upon the applicant. The basic membership roll of the Assiniboine and Sioux Tribes, as set out in Section 101 of this Title, shall be the authoritative document used to determine blood quantum of all applicants.

**(AMENDMENT NO. 4 AS PER REFERENDUM VOTE OF 05/07/88, AND AMENDED AS PER RESOLUTION NO. 3151-89-10, DATED 10/24/89.)**

### **Sec. 203. Who must file applications for enrollment.**

All persons in Groups 1, 2, 3, 4 and 5 interested in seeking membership in the Tribes must apply for enrollment under the provisions of this Chapter. Except as specified herein, persons who do not file applications will not be enrolled. Applications for persons in Groups 1, 2, 3, 4 and 5 who are minors, or under any other legal disability, or members of the Armed Forces stationed outside of the continental United States, and applications for persons in Groups 1, 2 or 3 who died after October 1, 1960, may be filed and prosecuted by a parent, recognized guardian, next of kin, spouse, or other person responsible for the applicant's care, or by the Superintendent, except that the Superintendent may not file for any Group 4 or 5 applicant.

Applications will be necessary for deceased persons in Groups 1, 2 and 3 who died after October 1, 1960, only in instances where a Group 4 and 5 application must establish that a parent was a member of the Tribes.

**(AMENDED AS PER RESOLUTION NO. 3151-89-10, DATED 10/24/89.)**

### **Sec. 204. Where application forms may be obtained.**

Application forms may be obtained upon request from the Fort Peck Tribal Office, Poplar, Montana, or the Fort Peck Indian Agency, Poplar, Montana. The request shall state the name of the applicant for whom the application is sought and



a record shall be maintained of the prospective applicants for whom application forms are obtained and the dates furnished. The Enrollment Committee shall mail an appropriate application form to each living person or Assiniboine and/or Sioux blood whose name is listed on Section 1(a) annuity roll or allotment schedules (Group 1 applicants) and shall lend all assistance possible in obtaining the completion and filing of such applications. Publicity shall be given to the availability of application forms pursuant to Section 216 of this Chapter.

Form 1 is for Group 1 applicants.

Form 2 is for Group 2 applicants.

Form 3 is for Group 3 applicants.

Form 4 is for Group 4 applicants.

Form 5 is for Group 5 applicants.

**(AMENDED AS PER RESOLUTION NO. 3151-89-10, DATED 10/24/89.)**

**Sec. 205 Where applications must be filed.**

All applications must be filed in the Tribal Office, Poplar, Montana. A receipt or written acknowledgment shall be furnished for each application filed.

**Sec. 206. When applications must be filed.**

Groups 1 and 3. Except as specified herein, applicants under Groups 1 and 3 must file their applications by May 7, 1962 except that any person in Groups 1 and 3 who, during the period allowed for filing applications, is a member of the Armed Forces of the United States may file his or her application for membership and that of the applicant's spouse and children any time within one hundred twenty (120) days after the date of discharge from the Armed Forces. Applications filed after May 7, 1962 shall be rejected, except that the Tribal Executive Board shall add to the rolls the name of any person qualified under Section 101(a) of the enrollment ordinance regardless of whether an application was ever filed.

Group 2. Applicants under Group 2 (persons before October 1, 1960) may file at any time.

Group 4. Applicants under Group 4 (persons born after October 1, 1960) may file at any time.

Group 5. Applicants under Group 5 (persons born before and after October 1, 1960) may file at any time.

**(AMENDED AS PER RESOLUTION NO. 3151-89-10, DATED 10/24/89.)**

**Sec. 207. Review of Groups 1, 2, 3, 4 and 5 applications.**

The Enrollment Committee shall review all Group 1, 2, 3, 4 and 5 applications and shall submit to the Tribal Executive Board at a regular meeting its recommendation for or against enrollment of each applicant, exercising care to follow the requirements of the enrollment ordinance and this procedure and not to discriminate for or against any applicant. If the Tribal Executive Board determines that an applicant is qualified, his/her name shall be listed for entry on a proposed roll and the applicant shall be so notified by mail. If the Tribal Executive Board rejects an applicant for enrollment, the applicant shall be notified of the decision, by certified mail, return receipt requested, together with a statement of the reasons for the rejection and shall be advised of his/her right to appeal to the Secretary and the procedure for taking such an appeal. Any person in Group 2 where application was timely filed but who was rejected on the grounds that the Group 1 ancestor through whom eligibility was claimed had not filed an application to be enrolled shall be reviewed by the Tribal Executive Board and if the applicant meets the requirements his/her name shall be entered on the roll and the Tribal Secretary shall notify the applicant of the action. The Tribal Enrollment Committee shall present all group applications separately, by group number, to the Tribal Executive Board for consideration.

**(AMENDED AS PER RESOLUTION NO. 3151-89-10, DATED 10/24/89.)**

**Sec. 208. Review of Group 4 applications.**

**(THIS SECTION HAS BEEN REPEALED AS PER RESOLUTION NO. 3148-89-10, DATED 10/24/89.)**

**Sec. 209. Applicant's right of appeal.**

An applicant aggrieved by the decision of the Tribal Executive Board shall have a right of appeal to the Secretary. The appeal must be in writing and filed with the Superintendent within sixty (60) days from the date of receipt of the notice of rejection of the application. The Superintendent shall serve a copy of the appeal on the Tribal Secretary at the time of filing. The Superintendent shall present to the Tribal Executive Board any evidence reflected in the Agency records bearing on the eligibility of the applicant. If upon review of the evidence the Tribal Executive Board is satisfied that the right to enrollment has been established the applicant's name shall be entered on the roll. The Tribal Secretary shall notify the applicant of the decision. If the Tribal Executive Board is not so satisfied, the Secretary shall act on the appeal. The applicant may submit with his/her appeal supporting evidence not previously furnished. The decision of the Secretary on the appeal shall be final and conclusive.

**(Sections 210-215 pertain only to Tribal Executive Board activities with regard to the original tribal membership roll processes which took place circa 1960-1962. Nothing in Section 210- 215 shall be construed to effect a mandate on the Tribal Executive Board to prepare and/or post any new proposed tribal membership roll. INSERTED AS PER RESOLUTION NO. 3152- 89-10, DATED 10/.24/89.)**

**Sec. 210. Preparation of proposed roll.**

After the time for filing applications for Groups 1, 2 and 3 has expired and the Tribal Executive Board has completed action on all applications filed, a proposed roll shall be prepared listing the name of each person in Groups 1, 2 and 3 determined to be qualified as a member. Opposite each name shall be shown

- (a) The new roll number,
- (b) Allotment or annuity roll number,
- (c) Address,
- (d) Sex,
- (e) Date of birth,
- (f) Degree of Indian blood and

(g) A column headed "Remarks" under which shall be shown the name, relationship, the Section 1(a) annuity roll or allotment schedule number of the ancestor from whom the enrollee derives his/her enrollment and related information.

**Sec. 211. Notice and posting of proposed roll.**

The proposed roll shall be posted for examination for not less than forty-five (45) days at each of the prominent public places listed below and such other places as the Tribal Executive Board deems appropriate:

- 1. Tribal Office, Poplar
- 2. Agency, Poplar
- 3. Poplar Post Office
- 4. Wolf Point Post Office
- 5. Brockton Post Office
- 6. Oswego Post Office
- 7. Frazer Post Office
- 8. Culbertson Post Office
- 9. Froid Post Office
- 10. Nashua Post Office
- 11. Fort Kipp Community Hall
- 12. Glasgow Post Office

The Tribal Executive Board shall certify the date on which the proposed roll is posted and this date shall be conclusive for purposes of filing protests under this procedure. Publicity shall be given to the posting of the proposed roll pursuant to Section 216 of this Chapter.

**Sec. 212. Who may file protests to the proposed roll.**

Any person claiming the right to enrollment, or the Superintendent, may protest the inclusion of a name on the proposed roll or the omission of a name from the proposed roll, by filing a protest within sixty (60) days after the proposed roll is posted.

**Sec. 213. How, where and when protests must be filed.**

All protests must be in writing and filed with the Superintendent within sixty (60) days after the proposed roll is posted. Each protest must be in writing and supported by documentary evidence. The Superintendent shall serve notice of

the protest on the protestee by certified mail, return receipt requested, and at the same time shall notify the protestee that his/her answer to the protest, including any evidence to support his/her position, must be filed with the Superintendent within thirty (30) days from the date of the Superintendent's service on the protestee.

The protests, answers and all related materials shall be submitted to the Tribal Executive Board and if based on the information submitted by the Superintendent the individual meets the qualifications for enrollment specified in the enrollment ordinance, his or her name shall be entered on the roll. If for any reason the Tribal Executive Board determines that the individual does not meet the requirements of the enrollment ordinance, it shall pass a resolution to that effect and submit it to the Superintendent who shall transmit it together with all related material through proper channels to the Secretary and his/her decision shall be final and conclusive. In the event the Tribal Executive Board fails to act on any protests, the Superintendent shall forward the case through proper channels to the Secretary and his/her decision shall be final and conclusive. The Tribal Executive Board and all persons affected shall be advised of the Secretary's decision.

**Sec. 214. Preparation and approval of roll.**

Upon expiration of the period during which protests may be filed, the Tribal Executive Board shall cause to be prepared multiple copies of a roll composed of the names of those persons in Groups 1, 2 and 3 determined by the Tribal Executive Board to be eligible for membership and against whom no protests have been filed. Three (3) copies of this roll duly certified by resolution of the Tribal Executive Board shall be submitted to the Secretary for approval. As appeals and protests are determined by the Tribal Executive Board or by the Secretary, the names of additional members shall be added to the roll. Any person who did not file an application and who is enrolled under these procedures but who does not desire that his/her name be entered on the roll may at any time have his/her name removed by

filing a request in writing with the Tribal Executive Board that his/her name be removed from the roll.

**Sec. 215. Finality of the roll.**

The roll approved by the Secretary shall be closed as to persons in Groups 1, 2 and 3 and after approval of the roll no further names of persons in Group 1, 2 and 3 shall be added, except the following:

(a) The name of any person required to be added by any decision of the Tribal Executive Board or by the Secretary in an appeal or protest taken under this procedure;

(b) The name of any person qualified under Section 101(a), (b) or (c) of the enrollment ordinance where the application was timely filed but the name was omitted from the roll by inadvertence, mistake or neglect or in the case of a person qualified under Section 101(a) because the application was not timely filed; such names shall be added upon action of the Tribal Executive Board with the approval of the Secretary;

(c) The name of any person in the Armed Forces of the United States and such person's spouse and children qualified under Section 101(a), (b) or (c) of the enrollment ordinance and files his or her application for membership within one hundred twenty (120) days after the date of discharge from the Armed Forces.

**Sec. 216. Publicity.**

Publicity shall be given to the enrollment program. Particular emphasis shall be placed on the availability of application forms, the time within which such forms must be filed.

**(AMENDED AS PER RESOLUTION NO. 3149-89-10, DATED 1-0/24/89.)**

**Sec. 217. Removal from roll; false statements.**

Any enrollment granted in reliance on information which is false shall be void and of no force and effect. The Tribal Executive Board shall give a challenged enrollee ten (10) days' notice by certified mail, return receipt requested, to show cause why his/her name should not be removed from the roll, stating in the notice the reason for

removal. The last known address of the enrollee, and where applicable, the person who represented the enrollee in filing the application for enrollment shall be conclusive for purposes of service. Following the expiration of the time for responding to the notice to show cause the Tribal Executive Board shall act. The enrollee shall be advised of the Tribal Executive Board's decision. If it is adverse, the enrollee shall have a right of appeal to the Secretary by filing a notice of appeal with the Superintendent a copy with the Tribal Secretary within thirty (30) days after receiving notice of the Tribal Executive Board's adverse action. The Secretary's decision on appeal shall be final. Each application form shall contain a certification by the applicant, or the one authorized to act on behalf of the applicant, that the information given in the application is true and correct and that if any material statement is false, any enrollment granted pursuant to the application shall be void and of no force and effect and that the name shall be removed from the roll by action of the Tribal Executive Board subject to the enrollee's right of appeal to the Secretary. This Section provides additional reasons for loss of membership in conjunction with those reasons set forth in Section 102 of this Title.

**(AMENDED AS PER RESOLUTION NO.3150-89-10, DATED 10/24/89.)**

**Sec. 217-A. Relinquishment of Enrollment - Tribal Membership.**

(a) In no case, shall any person be allowed to relinquish the enrollment or tribal membership of any minor Indian.

(b) Any adult member of the Assiniboine and/or Sioux Tribes may apply for relinquishment of their respective tribal enrollment, at any time. Relinquishment of an adult's tribal membership for the purpose of becoming enrolled in another Indian Tribes is allowed only if another Indian Tribes declares, in writing, that such adult Indian is eligible for enrollment in such Tribe. This is called a "conditional relinquishment". Forms for "conditional relinquishment" shall be available at the Fort Peck Tribal Enrollment Office.

**(AMENDED AS PER RESOLUTION NO. 149-89-12, DATED 12/11/89.)**

**Sec. 217-B. Re-enrollment of Prior Tribal Members.**

(a) Any person, whose prior enrollment on the Assiniboine and/or Sioux Tribes of the Fort. Peck Reservation was relinquished when said person was a minor, by a parent or other adult person, may apply for re-enrollment in the Tribes. If such applicant meets the qualifications for enrollment set forth in this Title, then said applicant shall be re-enrolled with all rights and privileges attaching to such enrollment. Nothing in this Section shall be construed so as to allow any such re-enrolled person to receive any prior rights or monetary payments made prior to such re-enrollment.

(b) Any person, who had by their own volition, previously relinquished their tribal enrollment as an adult, shall not be eligible for re-enrollment into the Fort Peck Assiniboine and/or Sioux Tribes, unless such individual can show that their relinquishment was for the purpose of enrolling in another tribe and was subsequently rejected, where no conditional relinquishment was operative in this Title.

**(AMENDED AS PER RESOLUTION NO. 151-89-12, DATED 12/11/89.)**

**Sec. 218. Roll to be kept under security.**

The roll approved by the Secretary shall be stamped "ORIGINAL" on each page of the roll. It shall be the official tribal roll. It shall be kept under security in a safety deposit box in a local bank. The box shall be in the names of the Tribes. The box shall be opened and changes made in the roll only in the presence of the Chairman of the Tribal Executive Board, the Chairman of the Enrollment Committee and the Superintendent or person delegated to act for the Superintendent. No changes or alterations shall be made in the roll without a resolution of the Tribal Executive Board approved by the Secretary and a duplicate original of the resolution shall be placed in security with the roll. Duplicates of the original roll shall be maintained at the Tribal Office. Copies of the roll shall be furnished to the Agency. All

authorized changes shall be shown on the duplicate roll maintained at the Tribal Office. From time to time, but at least twice a year, the original roll shall be brought up to date.

**Sec. 219. Directions to Enrollment Committee.**

The Enrollment Committee is directed to exercise the greatest care in its work to insure that the objectives of the enrollment ordinance are carried out in accordance with the requirements of this procedure. The Enrollment Committee is specifically directed to open a separate jacket for each application filed and to maintain a filing system which will permit efficient handling of applications.

**Sec. 220. Cost of preparation of the roll.**

All tribal costs incurred in the preparation of the tribal roll shall be paid by appropriate withdrawals from tribal funds. The necessary expenditures are hereby authorized by the Tribal Executive Board subject to the preparations and submission of budgets for the review and action by the Tribal Executive Board.

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 5 - Elections**

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## Chapter 1. Election Procedures

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### Sec. 101. Definitions.

For the purposes of this Chapter, the terms listed below shall mean:

(a) District. One of the districts of the Reservation designated in the Tribal Constitution, which also serve as election districts;

(b) Elector. A member of the Tribes qualified to vote;

(c) Judge. A district election judge, appointed pursuant to Section 106(b) of this Chapter;

(d) Secretary. The Secretary Accountant of the Tribe;

(e) Supervisor. The Election Supervisor appointed pursuant to Section 106(a) of this Chapter;

(f) Election Commission. The Election Commission appointed pursuant to Section 106(a) of this Chapter.

(g) Central Tabulation Area. The area designated by the Executive Board for the location of the automatic scanning machines used to tabulate votes.

**(AMENDED AS PER RESOLUTION NO. 2405-91-7, DATED 07/22/91.)**

### Sec. 102. Who is qualified to vote.

(a) Resident voters. Any member of the Tribes, as determined by Article 3 of the Constitution, who

(1) Is eighteen (18) years of age or over,

(2) Resides on the Reservation,

(3) Is duly registered to vote, and

(4) Did not fail to vote in any general election subsequent to his/her last registration, is eligible to vote in the district in which he/she has last resided for a full sixty (60) days immediately preceding the election. Registration for voting at a State or County election shall be conclusive as establishing the residence of a voter.

(b) Non-resident voters. Any member of the Tribes, as determined by Article 3 of the Constitution, who

(1) Is eighteen (18) years of age or over,

(2) Does not reside on the Reservation,

(3) Is duly registered to vote in the last district of former affiliation at least thirty (30) days prior to the date of election, is eligible to vote by absentee ballot in the last district of his/her former affiliation.

**(AMENDED PER RESOLUTION NO. 169-91-12, DATED 12/09/91.)**

### Sec. 103. Registration of voters.

(a) Secretary ex officio registrar of voters. The Secretary, or such other person as the Executive Board may designate, shall be ex officio registrar of voters and shall have custody and responsibility for all registration books, records and materials. The registrar may appoint not more than one (1) assistant registrar to register voters.

(b) Registration records. The official register shall be contained in a card index and a book designated as "Register of Electors" arranged alphabetically by districts and designed to record all requisite information.

(c) How to register as a voter. Any member of the Tribes, otherwise qualified to vote, may register to vote by appearing in person, before the Secretary or any member of the Tribal Executive Board, and a non-resident before a notary, at least 15 days before a general or special election in which the registrant seeks to vote, and completing and signing the registration card set out as Form 1 of this Title or a form containing the same information. The registrant shall be furnished a receipt evidencing his/her registration.

Registration before a member of the Tribal Executive Board shall not be effective unless the registration card is filed with the Secretary before the close of registration.

**(AMENDED AS PER RESOLUTION NOS. 169-91-12, DATED 12/09/1991; 26-1541-2012-10, DATED 10/22/2012.)**

(d) How to transfer registration. The registration and voting district of any voter who changes his/her residence from one district to another, shall be correspondingly transferred by the Secretary upon written request by the voter made at least 15 days before the next election.

(e) Cancellation of registration. Immediately after every general election the Secretary shall compare the list of electors who voted, as shown by the official poll books, with the list of registered voters and shall remove from the register the names of all persons who are known to the Secretary to be deceased, either on the Secretary's own knowledge, or on the basis of satisfactory information or other proof of death. The Secretary shall mark the registry cards of such deceased persons "Canceled" and shall place the cards in a separate file drawer marked "Canceled Deceased Registrants' File".

**(AMENDED PER RESOLUTION NO. 169-91-12, DATED 12/09/91.)**

(f) Close of registration. Registration shall close 15 days prior to a general election and 15 days prior to a special election, and shall reopen on the day following election.

**(AMENDED PER RESOLUTION NO. 2420-91-7, DATED 07/22/91.)**

(g) Preparation and posting list of registered voters. Upon the close of registration, the Secretary shall prepare for each District a list signed and dated by the Secretary of all registered voters entitled to vote in that District as shown by the official registration records. In any district where there is more than one polling place (see Section 110 of this Title), the Secretary shall divide the voter registration list for that district into portions so that each polling place is assigned approximately an equal number of voters. At least 15 days prior to a general election, and at least 5 days prior to a special election, the Secretary shall post such lists for each district in a conspicuous place in each district, and on the list shall designate the location of the polling place.

**(AMENDED AS PER RESOLUTION NO.**

**2995-85- 10, DATED 10/03/85.)**

(h) Preparation of poll books. After the close of registration, the Secretary shall prepare and furnish for each District poll books in the following form:



POLL BOOK OF \_\_\_\_\_ DISTRICT NO. \_\_\_\_\_

Ballots by Number and Name of

Elector Voting Same

Ballot Name of Ballot Name of

No. Voter No. Voter

\*\*\*\*\*

Return of Certification of

Election Judges and Clerk

DISTRICT NO. \_\_\_\_\_

No. unmarked ballots received \_\_\_\_\_

No. ballots spoiled \_\_\_\_\_

No. ballots rejected \_\_\_\_\_

No. ballots unused and returned \_\_\_\_\_

Account for any discrepancy: \_\_\_\_\_

Total No. votes cast at

District No. \_\_\_\_\_

We, the undersigned, Judges and Clerks of an election held at District \_\_\_\_\_ of the Fort Peck Indian Reservation on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ having first been severally sworn according to law, hereby certify that the foregoing is a true and correct statement of the number and names of persons voting at said district at said election; that the foregoing figures showing the number of ballots received, cast, spoiled, rejected and returned are true and correct and that the number of votes cast for each of the candidates by office and for each question presented on the ballot is as follows:

(List of names of candidates by offices and questions on the ballot and number of votes counted for each.)

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Election Judges

**Sec. 104. Absentee voters.**

(a) Who may vote by absentee ballot. Any non-resident elector duly qualified to vote under Section 102 of this Chapter may vote by absentee ballot. Any resident elector duly qualified to vote under Section 102 of this Chapter, upon making written proof satisfactory to the Supervisor that he/she expects to be absent from the Reservation on the day of election, or who is physically incapacitated so as to be unable to go to the polls or who is a member of the Armed Forces of the United States stationed away from the Reservation, may vote by absentee ballot.

(b) How to obtain an absentee ballot. An elector, eligible to vote by absentee ballot, shall file with the Secretary, at least 30 days before the election, a completed and signed application for an absentee ballot in the form set out as Form 2 of this Title, or a form containing the same information.

**(AMENDED AS PER RESOLUTION NO. 2420-91-7, DATED 07/22/91.)**

(c) Delivery of absentee ballots. Each absentee ballot shall be sealed in an envelope marked on the outside:

Absentee ballot within. Do not open, except in the presence of a notary public, or any other officer authorized by law to administer oaths, or before the Secretary of the Tribal Executive Board, or before some commissioned officer, if the applicant be in the Armed Forces.

The absentee ballot so sealed in an envelope shall be placed in an outer envelope marked "OFFICIAL BALLOT", together with a return envelope pre- address to the Secretary and marked "ABSENT VOTER'S BALLOT" on the front. On the back of the return envelope there shall be set forth the following:

State of \_\_\_\_\_) ss (for nonresidents)  
County of \_\_\_\_\_)

I, \_\_\_\_\_, do solemnly swear that I am at least eighteen (18) years of age, a member of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, duly registered and entitled to cast the enclosed ballot, and a nonresident of the Reservation, and the \_\_\_\_\_ District is the District of my last affiliation.

\_\_\_\_\_  
Voter's Signature

State of \_\_\_\_\_) ss (for residents)  
County of \_\_\_\_\_)

I, \_\_\_\_\_, do solemnly swear that I am at least eighteen (18) years of age, a member of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, duly registered and entitled to cast the enclosed ballot, and a resident of the Reservation, \_\_\_\_\_ District, duly qualified to vote by absentee ballot.

\_\_\_\_\_  
Voter's Signature

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_; and I hereby certify that the affiant exhibited to me the enclosed ballot(s) for inspection before marking, and that the same was (were) then unmarked and that affiant then, in my presence, and in the presence of no other person, marked and folded said ballot(s) without assistance and without making known the manner of marking the same and in such manner that I could not see affiant vote. Affiant then and there placed the ballot(s) in this envelope, sealed the same and signed the voucher above in my presence. I further certify that the affiant was not solicited or advised by me to vote for or against any candidate or referendum.

\_\_\_\_\_  
Secretary,  
Executive Board

\_\_\_\_\_  
Tribal Notary Public

My commission expires:

Received by: \_\_\_\_\_  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

Absentee ballots shall be mailed priority mail, or given to the applicant in person and to no one else. When an absentee ballot is delivered in person the Secretary shall obtain a receipt from the person to whom it is delivered. No absentee ballots shall be mailed on or after the 5th day preceding the election. A small absentee pencil, conforming to the standard required to make a mark readable by the automatic scanner, shall be provided to each absentee voter along with the ballot.

**(AMENDED AS PER RESOLUTION NO. 2405-91-7, DATED 07/22/91.)**

(d) How ballots are marked and returned. Upon receipt of the absentee ballot, the voter shall open the sealed envelope marked "Absentee Ballot within" only in the presence of a notary public or

any other officer authorized by law to administer oaths, the Secretary, or in the case of an elector in the Armed Forces stationed outside the Reservation, any commissioned officer, and in the presence of such person as herein provided, shall separate the stub from the ballot and shall then and there mark and refold the ballot without assistance and without making known the manner of marking same, and shall place the ballot and the detached stub in the pre-addressed, return envelope provided for the purpose, seal the envelope and fill in and sign the affidavit printed on the back of the envelope in the presence of a notary or other person hereinabove provided, who shall execute the acknowledgment and certification printed on the envelope. The voter shall then mail the envelope registered or certified mail, return receipt requested, to the

Secretary, or shall personally deliver the envelope to the Secretary. When an envelope is personally delivered, the Secretary shall give the voter a receipt for it.

(e) Cut-off for delivery of absentee ballots to Secretary. No absentee ballots shall be counted unless received in hand by the Secretary of the Executive Board before the official hour for opening the polls on election day. The Secretary shall check at the post office for absentee ballots at approximately 5:00 p.m. on the day prior to election day. The Secretary shall be in his/her office at least one (1) hour before the polls open on election day to receive absentee ballots.

(f) Absentee voting by residents after ballots are printed. Any resident elector who duly qualifies himself/herself under subsection (a) hereof to vote by absentee ballot by reason of expected absence from the Reservation on election day, or who is physically incapacitated so as to be unable to go to the polls, and who is present in his/her district after the official ballots have been printed, may vote before the Secretary in the same manner as provided in subsection (d) hereof up to but not including the day of election.

(g) Record of absentee ballots. The Secretary shall make and keep a record of ballots mailed or delivered, to whom mailed or delivered, the date of mailing or delivery, the address on the envelope, the date and time of return of the ballot and from whom received. The Secretary shall preserve all receipts received in connection with mailing or delivery of ballots.

(h) Delivery of absentee ballots to districts. The Secretary shall deliver to the Supervisor all absentee voters' ballots sealed and intact together with the applications for such ballots as soon as possible after the polls open on election day. The Supervisor shall deliver the ballots sealed and intact to the election judges of the respective districts. The absentee ballots shall be held, sealed and intact, until the polls close. After the polls close and immediately before removal of the ballot boxes to the central tabulation area, the clerk of each election district, in public and in the presence of all persons assembled, shall note on the poll book the name of each elector who voted by absentee ballot and shall open the sealed envelope, remove the stub and deposit it in the box for detached stubs and remove the folded ballot without disclosing its marking and deposit

it in the ballot box for counting with the other ballots.

**(AMENDED AS PER RESOLUTION NO. 2405-91-7, DATED 07/22/91.)**

#### **Sec. 105. Scheduling of elections.**

(a) Time of general elections. General elections of the Board shall be held on the last Saturday in October in every odd-numbered year. If such day is a holiday, the election shall be held on the first subsequent day that is not a holiday.

(b) Time of special elections. Special elections shall be held on dates specified by the Executive Board.

(c) Election proclamation. At least ninety (90) days before a general election the Executive Board shall cause a proclamation of the election and a notice that registration will close forty-five (45) days prior to the election, to be printed in a newspaper or newspapers of general circulation on the Reservation. As early as practicable but not less than fifty (50) days before a special election, the Board shall cause a proclamation of the special election and a notice that registration will close twenty (20) days prior to the election to be similarly printed.

**(AMENDED AS PER RESOLUTION NO. 2420-91-7, DATED 07/22/91.)**

#### **Sec. 106. Election officials.**

(a) Election Supervisor and Election Commission. The Executive Board, at least 45 days before a general election and as early as practicable but at least 30 days before a special election, shall appoint an Election Supervisor, and an Election Commission. The Commission shall be made up of 2 members from any district where the last registration showed 800 or more voters, and one member from each district of the Reservation to constitute the Election Commission. The Supervisor shall be the head of the Commission. Each of the other members of the Commission shall serve as one of the election judges of his/her respective district. The Executive Board shall designate one of these Commission members as the alternate Election Supervisor. The alternate Supervisor shall become the Supervisor if the original Commissioner resigns or if the Executive Board disqualifies the original Commissioner from service, either under subsection 106(d) of this

Section, or because the Supervisor fails to carry out the duties of the office.

**(AMENDED AS PER RESOLUTION NOS. 2995-85-10, DATED 10/03/85; 3290-87-9, DATED 9/30/87; 2420-91-7, DATED 7/22/91.)**

(b) Election judges. The Tribal Executive Board, at least ten (10) days before a general election, shall appoint ten (10) judges of election for each district where the last registration showed eight hundred (800) or more voters, five (5) judges of election for each district where such registration showed two hundred (200) or more but less than eight hundred (800) voters and three (3) judges of election for each district where such registration showed less than two hundred (200) voters. In each district where the last registration showed eight hundred (800) or more voters, two (2) of the judges shall be members of the Commission, and in each other district one (1) member of the Commission. If any person appointed by the Executive Board does not accept the appointment or fails to appear for duty, the supervisor shall appoint a replacement. The Executive Board, as early as practicable but at least five (5) days before a special election or runoff election, shall appoint judges for the district or districts affected.

**(AMENDED AS PER RESOLUTION NO. 2995-85- 10, DATED 10/03/85.)**

(c) Chief Judge and Election Clerk. The election judge of each district shall designate one of their members as Chief Judge and another member as Clerk of Election for that district.

(d) Qualifications of election officials. The Supervisor, all other members of the Commission and election judges must be qualified voters and none shall be a candidate for office in the election, a member of the Executive Board, an employee of the Tribes or of the United States, or the spouse, brother, sister or parent of a candidate for office. No person may serve as an election official if they have been convicted of a felony in any Tribal, Federal or State Court, unless such person has received a full pardon from an appropriate official authorized to grant such pardon by the government in which they received the felony conviction.

**(AMENDED AS PER RESOLUTION NO.2346-89-5, DATED 05/08/89.)**

(e) Oath. All election officials, before entering upon their duties, shall take the same oath as

taken by a member of the Executive Board before taking office.

(f) Compensation of election officials. The compensation of election officials shall be fixed by the Executive Board, provided that it shall not exceed the rate of compensation of members of the Executive Board.

(g) Duties of the Election Supervisor. The Election Supervisor, or such other person as the Executive Board may designate, shall be responsible for the maintenance, preparation and operation of the automatic scanning equipment used to tabulate ballots pursuant to Section 111(e) hereof. The Election Supervisor shall familiarize himself or herself with all operating manuals, manufacturer's instructions and technical requirements necessary for the operation of the ballot scanner. The Election Supervisor shall also be responsible for maintaining an inventory of supplies necessary for the operation of the scanner and shall further be responsible for programming and preparing the automatic scanner prior to each election.

**(AMENDED AS PER RESOLUTION NO. 2405-91-7, DATED 07/22/91.)**

#### **Sec. 107. Duties and powers of the Election Commission.**

(a) Testing eligibility of candidates. The Commission shall test the eligibility of each person seeking to become a candidate in accordance with Section 204 of this Title, and rule on challenges in accordance with Sections 205 and 206 of this Title.

(b) Board of canvassers. The Commission shall constitute the board of canvassers as set forth in Section 111(k).

(c) Finality of rulings. The rulings of the Commission within the scope of its authority shall be final.

#### **Sec. 108. Duties of Election Supervisor.**

(a) Publication of notice of election. The Supervisor shall cause a notice of election to be published for two (2) successive issues before any general election and for one (1) issue in any special election in a newspaper or newspapers of general circulation on the Reservation. The notice shall state the date and time of the election and list the names of all candidates, the respective

offices, the questions on any referendum, and the polling places.

(b) Preparation of ballots and election materials. The Supervisor shall arrange for all election supplies including the printing of all ballots and for the printing or other reproduction of poll list, tally lists, lists of electors and shall arrange for the delivery of the same to the judges before opening of the polls.

(c) Ballots. The ballot shall consist of a ballot and a stub printed on the same leaf and divided by a perforated line. The ballots shall be uniform in size, white in color, of good quality paper. The ballot shall be printed and produced in conformance with specification for machine-readable ballots set by the manufacturer of the automatic scanner equipment used to scan and tabulate the ballots.

**(AMENDED AS PER RESOLUTION NO. 2405-91-7, DATED 07/22/91.)**

(d) Form of ballot. The ballot shall set forth the name of the office and list all candidates under each office with the incumbents' names listed first in order of filing and the names of all other candidates listed in the order of their filing, with ovals for the voter's mark. Questions on a referendum shall be fairly and clearly stated with ovals for the voter's mark "For" and "Against".

(e) Form of stub. The portion of the ballot above the perforated line is the stub. On the face of the stub shall be printed appropriate instructions to the voter as to the manner of designating his/her vote. On the back of the stub shall be printed or stamped by the Secretary the consecutive number of the ballot beginning with number "1" for each district through the total number required for each district.

(f) Delivery and receipt for ballots. The Supervisor shall cause to be delivered to the election judges of the respective districts the printed blank ballots and the other election materials including ballot boxes, each with a lock, and fitted with one (1) opening, and no more, of sufficient size to admit a single folded ballot. The key to the lock shall be given to the election judge who is the member of the Commission. A duplicate key shall be retained by the Supervisor. The election judges for each district shall count all ballots delivered to them and shall receipt for the ballots and all election materials to the Supervisor or his/her authorized

representative, and shall be responsible for an account for all ballots until delivered as provided in Section 111(h).

**Sec. 109. Duties of district election judges.**

(a) Voting booths. The election judges shall provide sufficient private booths or other places for the voters to mark their ballots in secrecy and privacy. Instructions for marking ballots and for handling spoiled ballots shall be posted in the booths or voting places.

(b) Present at polls. The election judges shall be presented at the district polling place on election day an hour before the polls open and shall remain until the polls close, and the ballot boxes have been removed for delivery to the central tabulation area pursuant to Section 111(a). At least two of the judges shall accompany the ballot boxes to the central tabulation area.

**(AMENDED AS PER RESOLUTION NO. 2405-91-7, DATED 07/22/91.)**

(c) Preparation of ballot boxes and ballots. Before receiving any ballots, the judges must, in the presence of all persons assembled at the polling place, open and exhibit the ballot box and remove any contents thereof, and then close and lock the same, delivering the key to the judge who is the member of the Commission. Thereafter, the ballot box must not be opened until after the polls are finally closed as provided in Section 110(b), nor must the ballot box be removed from the polling place or from the presence of the public until it is removed for delivery to the central tabulation area as provided in Section 111(a).

**(AMENDED AS PER RESOLUTION NO. 2405-91-7, DATED 07/22/91.)**

(d) General duties. The judges shall judge the election, be responsible for the ballots, voting records and materials for their respective district, for supervising the automatic tabulation of the ballots for their respective district, and for certifying the votes. The judges for each district shall be responsible for the security and integrity of the ballots cast in their respective district throughout the process of balloting and tabulation.

**(AMENDED AS PER RESOLUTION NO. 2405-91-7, DATED 07/22/91.)**

**Sec. 110. Polling places; procedure at the polls.**

(a) Polling places. Each district where the last registration showed eight hundred (800) or more voters shall maintain two (2) polling places, which may be either in the same or different locations. Other districts shall maintain one (1) polling place. In districts with two (2) polling places, five (5) judges shall be assigned to each polling place, and the judges shall perform their duties at the polling place to which they are assigned.

**(AMENDED AS PER RESOLUTION NO. 2995-85- 10, DATED 10/03/85.)**

(b) Voting hours. The polls in each district shall open at 8:00 a.m. of election day and shall remain open until 8:00 p.m. of that day when they must be closed, provided that when all registered voters in any district have voted the polls shall be closed.

(c) Elector must sign registration book. Each elector must sign the district registration book before such elector may vote. If the elector cannot write his/her name, he/she shall sign by mark before two (2) witnesses. The judges shall note by marking "X" or some other appropriate mark in the register book on the line opposite the name of the elector to show that the elector voted and the elector shall then be given a ballot.

(d) Voting and casting ballot. Upon receipt of a ballot, the elector shall retire to one of the private voting booths or other designated places and there vote his/her ballot in secret. Only one (1) person shall occupy a voting booth at one time, except as provided in subsection (e). The elector must mark and cast his/her ballot without leaving the polling place. The elector shall mark the ballot by using a pencil to fill completely the oval space or spaces on the ballot as appropriate to reflect the elector's vote. After the ballot is so marked, the elector shall tear off the stub, and shall place the ballot in a secrecy sleeve so that the marked portion of the ballot is completely concealed, and shall deposit the ballot in the ballot box and deposit the stub in the box for detached stubs.

**(AMENDED AS PER RESOLUTION NO. 2405-91-7, DATED 07/22/91.)**

(e) Disabled electors. Any electors who cannot read the English language or, because of blindness or other disability, cannot mark the ballot, may, upon request, be assisted by two (2) election judges in marking the ballot, but the

judges shall neither by word, action or expression influence or attempt to influence the elector.

(f) Spoiled ballots. Any elector who spoils a ballot shall be entitled to a new ballot upon surrender of the spoiled ballot to the election judges. No elector shall receive more than one additional ballot. A judge shall place the name of the elector and the judge's initials on the back of the spoiled ballot. All spoiled ballots shall be kept in a separate envelope, securely sealed, marked "SPOILED BALLOTS". All spoiled ballots shall be accounted for separately on the tally sheets.

(g) Removing voting materials. No person shall take or remove from the voting place any ballot, ballot box, or other voting records or materials furnished by the Secretary, the Commission or the Supervisor, except as provided in Section 111(h).

(h) No electioneering. There shall be no electioneering within the polling place or within fifty (50) feet of the polling place.

(i) No loitering. There shall be no loitering in the polling places during voting hours.

**Sec. 111. Delivery of ballots; tabulating the votes.**

(a) Ballots to be delivered to central tabulation area after polls close. After the polls close and after the absentee ballots are deposited in the ballot box as prescribed in Section 104(h) of this Chapter, the judges shall take the ballot box, and without unlocking or opening the ballot box, shall deliver forthwith the ballot box to the central tabulation area, along with the poll books, check lists, detached stubs from voted ballots and the unused ballots. At the time the polls close, the Election Supervisor shall be present at the central tabulation area and shall cause a written record to be made of the districts and polling places that have delivered ballot boxes to the central tabulation area, and the time that each ballot box was delivered.

b) Tabulation of ballots. When all ballot boxes have been delivered to the central tabulation area, the ballots shall be tabulated. The tabulation process shall be open and in the presence of the public and shall be continued without adjournment until completed and the result thereof publicly declared.

(c) Opening of ballot boxes; determining the number of ballots. The judges shall unlock and open the ballot box of each district or polling

place and remove the ballots unopened. If two or more ballots are found so folded together so as to present the appearance of a single ballot, they shall be laid aside until the number of ballots is determined. A judge shall count the number of ballots in the ballot box of each district and compare the number of ballots to the number of names on the poll list for that district. If, on comparison and further considering the appearance of ballots which are laid aside as noted above, a majority of the judges are of the opinion that ballots thus folded together were voted by one single elector, such ballots must be rejected; otherwise they must be added to the other ballots for tabulation. The ballots for each district shall be kept together and apart from the ballots for each other district.

(d) Where ballots are in excess of the names on the poll lists. If the number of ballots cast in the ballot box for any district are found to exceed the number of names on the poll list, this fact shall be noted in writing by the clerk. No ballots shall be destroyed.

(e) Ascertaining the number of votes cast for each candidate, office or issue. The number of votes cast for each candidate, office or issue shall be determined by automatic scanning of the ballots. The scanning process shall be conducted by the Secretary at the central tabulation area under the supervision of the Election Supervisor. After the ballots from each district have been scanned, they should be removed from the automatic scanner and held by the Supervisor.

(f) Ballots rejected by automatic scanner. The automatic scanner shall be set to sort out any blank ballots, over voted ballots or otherwise damaged or defective ballots. Any such ballots sorted out by the scanner shall be presented to the judges who shall view such ballots. Any ballot sorted by the scanner as damaged or defective such that it cannot be automatically scanned shall be manually tabulated as determined by a majority of the judges and added to the automatic tabulation. Any ballots sorted by the scanner as blank shall be presented to the judges and examined by them to verify whether the ballot is truly blank or was marked with a non-detectable marking device. If it is determined that the ballot was marked with a non-detectable marking device, it shall be manually tabulated as determined by a majority of the judges and added

to the automatic tabulation. Any ballot that is over marked or otherwise rejected by a majority of the judges as illegal shall be initialed on the back by judges voting for rejection before it is strung as provided in subsection (h) hereof.

(g) Reporting of result of tabulation. After all ballots have been scanned, the Election Supervisor shall cause a report of the results of the balloting to be generated. This report shall be provided to the Supervisor who shall announce the results to the judges and the public.

(h) Ballots to be strung and enclosed in sealed envelopes; Election materials to be enclosed in separate sealed envelopes. The ballots, as soon as automatically scanned or rejected for illegality, must be strung upon a string by one of the judges, and must not thereafter be examined by any person, but must, as soon as all legal ballots are scanned, be carefully sealed in a strong envelope, each of the judges writing his or her name across the seal. The check lists, poll books, detached stubs from voted ballots and unused blank ballots should be separately sealed in a strong envelope.

(i) Watchers. Each candidate shall be entitled to one watcher who shall not be compensated by the Board. The watcher may watch the tallying and scanning of the votes and may challenge any ballot rejected by the automatic scanner. The judges shall immediately rule on the challenge of the ballot. The judges shall write the word "CHALLENGED", their decision on the challenge and their initials on the back of any challenged ballot before it is strung as provided in Section 111(h).

(j) Securing the ballots. Upon completion of the scanning and tabulation of the ballots, the sealed envelope containing the strung ballots, and the sealed envelopes containing the check lists, poll books, detached stubs from the voted ballots and the unused blank ballots shall be placed by the judges in a strong outer envelope which shall be addressed to the Supervisor and security sealed. Each judge shall sign his or her name on the outside of the envelope. The outer envelope and its contents and the key to the ballot box lock shall be placed in the ballot box. The ballot box shall then be locked and delivered to the Supervisor.

(k) Board of canvassers. The Commission shall constitute the board of canvassers who shall meet the day following the election and canvass the

results of the election in public. Upon completion of the canvass the Commission shall certify the results of the election to the Executive Board and the Supervisor of the Fort Peck Indian Agency.

(l) Tie votes. In the event of a tie vote for an office, if the tied candidates agree, the election shall be decided by the toss of a coin or by drawing lots under the supervision of the Supervisor. If there is no agreement, a run-off election between or among the candidates tied for office shall be held thirty (30) days after the completion of the canvass.

(m) Election Supervisor responsible for security of ballots. The Election Supervisor shall be responsible for the security of the ballots and election material after delivery to him/her. Except when the results of the election are being canvassed under subsection (l), or are being recounted under Section 113, the ballots and election materials shall be placed in security in the safe or other appropriate place of safekeeping, in the Fort Peck Indian Agency.

**(AMENDED AS PER RESOLUTION NO. 2405-91-7, DATED 07/22/91.)**

**Sec. 112. Partial invalidity shall not invalidate the entire ballot.**

Where the vote for one or more offices or issues on a single ballot is rejected as illegal, it shall not affect the validity of the vote for other offices or issues on the same ballot.

**Sec. 113. Recounts.**

(a) Conditions for recount. No recount of votes in any tribal election shall be made except in accordance with the provisions of this Section 113.

(1) Conditions for recount without charge. Any candidate defeated by a margin not exceeding one percent (1%) of the total votes cast for all candidates for the same office, or by a margin not exceeding seven (7) votes, whichever is greater, or who is tied with another candidate for an office, may, within three (3) days after the official canvass, file with the Election Supervisor a written request that the votes for the office be recounted. A recount under this subsection shall be without charge to any candidate.

(2) Conditions for recount on a referendum election. The votes deciding an issue presented at

a referendum, by a margin not exceeding half (½) of one percent (1%) of the total votes cast for a against the issue, or by seven (7) votes, whichever is greater, may be recounted upon request by resolution of the Executive Board presented to the Election Supervisor within three (3) days after the official canvass. The expense of the recount shall be a tribal expense.

(b) Appointment of recount board. The Election Supervisor, immediately upon receipt of a lawful request for a recount, shall designate a recount board for each District of three (3) persons, none of whom shall be a candidate for office, or member, or member-elect, of the Tribal Executive Board. The recount board shall be the Chief Election Judge for each District and two (2) other election judges for that District. The recount board shall employ such clerical aid as may be needed.

(c) Notice. The Election Supervisor shall fix the recount for a time as soon as practically convenient after he/she receives the request for a recount. The recount shall be held in the principal District polling place unless the Election Supervisor deems another place more appropriate. The Election Supervisor shall promptly notify, by telephone or messenger confirmed by certified letter, each candidate affected by the recount of the times and places of the recount.

(d) Recount shall be public. Any recount shall be open to the public and the news media but the audience may be limited to prevent interference with the procedures.

(e) Appearance of candidates or their representatives. Each candidate affected by a recount may be present at the recount, personally or by a representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots.

(f) Representation at referendum recount. If the recount is upon a referendum issue, one qualified elector from each side of the question may be present and represent the elector's side.

(g) Procedure for recounting ballots. The Election Supervisor shall be responsible for management of the recount.

(1) Production of ballots. The Election Supervisor shall produce the ballots, and deliver them in sealed ballot boxes to the Chief Election Judge for each District.



(2) Tallying the votes. The Chief Election Judge for each District or a clerk designated by the Chief Judge shall read aloud each ballot for the offices for which the recount is made. As the ballots are read, the two (2) other members of the recount board, or clerks designated by the Chief Election Judge, shall write the votes cast for each individual in each polling place on previously prepared tally sheets simultaneously announcing the vote each is tallying. The tally sheets shall identify the polling place or district where the ballots were cast, show the names of the respective candidates, and the office or issue for which a recount is made.

(3) Recount totals. After a recount is completed, the tally sheets shall be compared and the correctness of the tallies ascertained. Then, the totals for each candidate or each issue shall be compiled and checked for accuracy.

(h) Necessity of further recounts. Recounts shall continue until the two (2) tallies have identical totals. At that point the recount is finished and the new count shall be certified to the Election Supervisor by the Chief Election Judge for each District.

(i) Sealing ballots. When the recount has been finished, the ballots shall, in the presence of the Chief Election Judge and the recount board, be restored to the ballot boxes, and delivered to the Election Supervisor for deposit with the Superintendent of the Fort Peck Indian Agency for safekeeping.

**Sec. 114. Intent, purpose and construction of this Chapter.**

The intent and purpose of this Chapter is to establish procedures for fair elections and to ensure the secrecy and sanctity of the ballot. This Chapter shall be construed to accomplish such purpose and intent. Cognizance shall be given to substantial compliance. Want of form shall not cause an action or document to be invalid if the intent is clear. Technicalities, as such, shall not be employed to obstruct or impede elections, or cause confusion, or loss of confidence in the election system.

**Chapter 2. Eligibility for and Filing for Tribal Office**

**Sections:**

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**Sec. 201. Eligibility for tribal office.**

To be eligible for nomination and election to the Tribal Executive Board, a person must:

(a) Be an eligible voter on the Reservation;

(b) Have resided on the Reservation at least sixty (60) days immediately preceding the election; and

(c) Not have been convicted of a felony for which he or she has not received a pardon.

**Sec. 202. Tribal employee.**

Any person who is an employee of the Tribes, or any program sponsored by the Tribes, or any tribal corporation or enterprise financed in whole or in part by the Tribes shall not be required to resign his or her position before filing a notice of candidacy for tribal office. Any such person may not campaign for office while on the job and shall continue to perform the duties of his or her job in a timely and efficient manner. Any such person who is elected shall be terminated.

**(AMENDED AS PER RESOLUTION NO. 2898-85- 8, DATED 08/26/85.)**

**Sec. 203. Filing for office.**

Any person seeking to become a candidate shall, at least forty-five (45) days prior to election day in a general election and thirty (30) days prior to election day in a special election, file a notice of candidacy with the Secretary of the Tribal Executive Board, Tribal Office, Poplar, Montana, accompanied by a filing fee of one-half (1/2) of one percent (1%) of the salary of the office sought, this fee to be deposited in a special account in the Fort Peck Agency. The notice of candidacy shall set forth the information as shown on Form No. 3 of this Title. The Secretary

shall note the date, hour and minute of filing.  
**(AMENDED AS PER RESOLUTION NO. 2420-91-7, DATED 07/22/91.; PER RESOLUTION NO. 1553-2005-02, DATED 02/28/05)**

**2420-91-7, DATED 07/22/91.)**

**Sec. 204. Testing eligibility of candidates.**

Except for questions of residence, which must be resolved by the Executive Board pursuant to Article 5, Section 5(c) of the Constitution, the Election Commission shall test the eligibility of each person seeking to become a candidate whether challenged or not. If the Election Commission determines that a person is not eligible to be a candidate, the notice of candidacy shall be rejected and there shall be no refund of the filing fee.

**Sec. 205. Challenge of candidates.**

Any qualified voter may challenge the eligibility of any candidate to hold office by filing, with the Election Supervisor, not later than the thirtieth (30th) day preceding the election, a written affidavit setting forth the ground for the challenge. The Election Supervisor shall promptly notify the challenged candidate and furnish him/her with a copy of the affidavit of challenge.

**(AMENDED AS PER RESOLUTION NO. 2420-91-7, DATED 07/22/91.)**

**Sec. 206. Ruling on challenges.**

The Election Commission shall rule on all questions presented by a challenge of the eligibility of a candidate, except questions of residence. If a question of residence is involved, the Supervisor promptly shall present it to the Executive Board for determination under Article 5, Section 5(c) of the Constitution. The decisions of the Executive Board on questions of residence shall be by resolution and shall be final. After the Executive Board resolves the question of residence, the Election Commission shall rule on each challenge accordingly. The Election Commission shall rule on each challenge of the eligibility of a candidate in a general election at least twenty-five (25) days before the election date, and in a special election as soon before the election date as is practicable.

**(AMENDED AS PER RESOLUTION NO.**

**Form 1**

ASSINIBOINE & SIOUX TRIBES  
OF THE FORT PECK INDIAN RESERVATION  
REGISTRATION CARD

(Complete in Duplicate)

Date \_\_\_\_\_

I hereby register to vote.

1. Name \_\_\_\_\_

2. Address \_\_\_\_\_

3. Date of Birth \_\_\_\_\_ 4. Age \_\_\_\_\_

5. Place of Birth \_\_\_\_\_

6. Member of the Assiniboine and Sioux of the Fort Peck Indian Reservation? (Answer "YES" or "NO")

7. If you reside on the Reservation, set out the name of the District in which you now live and how long you have continuously lived there.

\_\_\_\_\_ District \_\_\_\_\_ Length of Time \_\_\_\_\_

8. If you do not reside on the Reservation, set out the name of the last District of your former affiliation

\_\_\_\_\_

\_\_\_\_\_ Signature of Elector

Filed this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

By \_\_\_\_\_.

**Form 2**

Date \_\_\_\_\_

Mr./Ms. \_\_\_\_\_

Secretary Accountant

Fort Peck Tribal Executive Board

P.O. Box #1027

Poplar, Montana 59555

Dear Mr./Ms. \_\_\_\_\_:

I am hereby requesting an Absentee Ballot for the forthcoming Tribal Election to be held October 29, 1977.

My name and address is as follows:

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

**Form 3**

NOTICE OF CANDIDACY FOR TRIBAL OFFICE

Date \_\_\_\_\_

1. Name \_\_\_\_\_

2. Address \_\_\_\_\_

3. Date of Birth \_\_\_\_\_ 4. Age \_\_\_\_\_

5. Place of Birth \_\_\_\_\_

6. Member of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation? (Answer "YES" or

- "NO") \_\_\_\_\_
7. Are you a registered voter of the Tribes? (Answer "YES" or "NO") \_\_\_\_\_
8. Have you ever been convicted of a felony for which you have not received a pardon? (Answer "YES" or "NO") \_\_\_\_\_
9. District in which you live \_\_\_\_\_
10. Length of time you have continuously lived in that District \_\_\_\_\_
11. Candidate for the office of \_\_\_\_\_ from the \_\_\_\_\_ District.

I hereby certify that the foregoing statements are true and correct and are made for the purpose of establishing my qualifications as a candidate for tribal office. If any material statement made in this notice of candidacy is false, it shall be grounds for my disqualification as a candidate for tribal office, or, if elected, it shall constitute grounds for removal from office.

\_\_\_\_\_  
Signature of Candidate

Filed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock  
(A.M.)(P.M.)

\_\_\_\_\_  
Secretary, Tribal Executive Board

**Chapter 3. Removal of Members of the Tribal Executive Board**

**Sections:**

- Sec. 301. Removal of Board members..... 14
- Sec. 302. Presentation of alleged charges. ... 14
- Sec. 304. Notice of authorized charges..... 14
- Sec. 305. Hearing of the authorized charges.  
..... 15
- Sec. 306. Removal from office. .... 15

**Sec. 301. Removal of Board members.**

Any member of the Tribal Executive Board may be removed from office on any of the following grounds:

- (a) Permanent change of residence from the Reservation.
- (b) Conviction in any court of a felony while in office, and/or any course of conduct prejudicial to the Tribes.
- (c) Failure to attend 3 regular meetings in succession, except that the Tribal Executive Board may approve reasonable grounds for non-attendance.
- (d) Failure to attend and report to 3 successive duly called District meetings.

**Sec. 302. Presentation of alleged charges.**

Any member of the Tribal Executive Board may initiate the procedures for charges against another member by presenting to the Tribal

Executive Board a signed statement of the charges and shall move that such charges be authorized. The statement shall specify the particulars of the charges. Upon presentation of the statement of charges, the Tribal Executive Board shall give the matter priority over all other business.

**Sec. 303. Authorization of charges and suspension.**

(a) Authorization by the Tribal Executive Board. If the motion to authorize the charges is adopted by a majority vote of the Tribal Executive Board, the charges stand authorized. Otherwise, the charges stand dismissed and any charges based on the particulars alleged in the statement shall not be renewed.

(b) Suspension. In its discretion, the Tribal Executive Board, by an affirmative vote of 8 members at the meeting where the charges are authorized, may, subject to Section 306(b), suspend the member charged with or without pay, until the Tribal Executive Board has disposed of the authorized charges. The suspension shall continue until the removal proceedings are disposed of by the Tribal Executive Board, unless otherwise ordered by the Tribal Executive Board.

**Sec. 304. Notice of authorized charges.**

The Secretary shall give the member charged 20 days written notice of the authorized charges,

served by personal service or by certified or registered mail, return receipt requested. A copy of 5 CCOJ Chapter 3, (this Ordinance) shall be enclosed with the notice. The notice shall state the time and place of hearing at which the authorized charges may be answered. The hearing may be held at either a regular or a special meeting of the Tribal Executive Board. Upon receipt of the 20 days' notice, the member charged may, if he so desires, request the Chairman to advance the date of hearing so that the authorized charges may be disposed of sooner. Upon receipt of such a request in writing, the Chairman in his discretion, or if he is the member charged, then any three other members of the Tribal Executive Board not under charges, in their discretion, may set a new date for the hearing as requested. The Secretary, or the person performing the office, shall notify all members of the Tribal Executive Board of the new date on which the hearing will be held.

**Sec. 305. Hearing of the authorized charges.**

(a) At the request of the member charged, the hearing shall be in executive session and no one shall be present except the members of the Tribal Executive Board, counsel representing the Tribes and the member charged, and a witness during the witness testimony. The authorized charges shall take priority over all other tribal business. No other tribal business shall be taken up at the meeting until the hearing on the authorized charges is completed and final decision is rendered.

(b) The Tribal Executive Board shall hear all relevant evidence, either sworn oral testimony or documentary evidence, offered in support of or in opposition to the charges. The member charged shall have the right to cross-examine witnesses and to present his own witnesses, and shall have the right to be represented by counsel at his own expense at the hearing.

(c) At the conclusion of all the arguments and evidence presented for and against the charges, the Tribal Executive Board shall vote by roll call vote on the question of whether the member charged shall be removed from office. The member charged shall not vote on this question.

**Sec. 306. Removal from office.**

(a) No member shall be removed from office

except by an affirmative vote of 8 members of the Tribal Executive Board voting by roll call vote.

(b) If the necessary vote is obtained, the removal shall be effective immediately and the office shall be declared vacant. If the necessary vote is not obtained, the charges shall stand as dismissed, and the member charged, if on a salary basis, shall be given his full compensation for the period of suspension.

(c) The decision of the Tribal Executive Board shall be final.

**(AS PER RESOLUTION NO. 1127-88-7; DATED 7/27/1988.)**

**Chapter 4. Eligibility for and Filing for the Office of Judge**

**Sections:**

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**Sec. 401. Eligibility for office of chief judge or judge.**

To be eligible to hold the office of judge or chief judge, a person must:

(a) have an Associate of Arts degree or Bachelor of Arts or Science degree from an accredited college in law and justice or a similar field of study or 4 years judicial experience;

(b) have successfully completed a judge's qualifying examination administered as prescribed by the Tribal Executive Board;

(c) be at least 25 years of age;

(d) not have been convicted of a felony;

(e) not have been dishonorably discharged from the Armed Forces; and

(f) be physically capable of carrying out the duties of the office.

**Sec. 402. Tribal employee.**

Any person who is an employee of the Tribes, or any program sponsored by the Tribes, or any tribal corporation or enterprise financed in whole or in part by the Tribes shall not be required to resign his or her position before filing a notice of candidacy for tribal office. Any such person may not campaign for office while on the job and shall continue to perform the duties of his or her job in a timely and efficient manner. Any such person who is elected shall be terminated.

**Sec. 403. Filing for office.**

Any person seeking to become a candidate shall, at least 45 days prior to election day, file a notice of candidacy with the Secretary of the Tribal Executive Board, Tribal Office, Poplar, Montana, accompanied by a filing fee of one-half (½) of one percent (1%) of the salary of the office sought. This fee to be deposited in the General Fund account of the Fort Peck Tribes. The notice of candidacy shall set forth the information as shown on Form No. 4 of this Title and have attached verification of the information required at Section 401 (a) & (b). The Secretary shall note the date, hour and minute of filing.

**Sec. 404. Testing eligibility of candidates.**

The Election Commission shall test the eligibility of each person seeking to become a candidate whether challenged or not. If the Election Commission determines that a person is not eligible to be a candidate, the notice of candidacy shall be rejected and there shall be no refund of the filing fee.

**Sec. 405. Challenge of candidates.**

Any qualified voter may challenge the eligibility of any candidate to hold office by filing, with the Election Supervisor, not later than the 30<sup>th</sup> day preceding the election, a written affidavit setting forth the ground for the challenge. The Election Supervisor shall promptly notify the challenged candidate and furnish him/her with a copy of the affidavit of challenge.

**Sec. 406. Ruling on challenges.**

The Election Commission shall rule on all questions presented by a challenge of the eligibility of a candidate. The Election Commission shall rule on each challenge of the eligibility of a candidate in a general election at least 25 days before the election date.

**(AS PER RESOLUTION NO. 27-2002-2015-07; DATED 7/13/2015)**

**Form 4**

NOTICE OF CANDIDACY FOR Judge or Chief Judge

Date \_\_\_\_\_

1. Name \_\_\_\_\_
2. Address \_\_\_\_\_
3. Date of Birth \_\_\_\_\_ 4. Age \_\_\_\_\_
5. Place of Birth \_\_\_\_\_
6. Do you have an Associate of Arts degree or Bachelor of Arts or Science degree from an accredited college in law and justice or similar field of study or years of judicial experience? (Answer "Yes" or "No") \_\_\_\_\_
7. Have you successfully completed a judge's qualifying examination administered as prescribed by the Tribal Executive Board? (Answer "Yes" or "No") \_\_\_\_\_
8. Have you ever been convicted of a felony for which you have not received a pardon? (Answer "Yes" or "No") \_\_\_\_\_
9. Have you been dishonorably discharged from the Armed Forces? (Answer "Yes" or "No") \_\_\_\_\_
10. Candidate for the office of \_\_\_\_\_.

I hereby certify that the foregoing statements are true and correct and are made for the purpose of establishing my qualifications as a candidate for tribal office. If any material statement made in this notice of candidacy is false, it shall be grounds for my disqualification as a candidate for tribal office, or, if elected, it shall constitute grounds for removal from office.

\_\_\_\_\_  
Signature of Candidate

Filed this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, at \_\_\_\_\_ o'clock (A.M.) (P.M.)

\_\_\_\_\_  
Secretary, Tribal Executive Board

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 6 - Criminal Procedures**

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## Chapter 1. Complaint

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### Sec. 101. Complaint.

(a) A complaint is the written statement of the essential facts charging that a named individual has committed a particular criminal offense. All criminal prosecutions shall be initiated by a complaint filed with the Court signed by the prosecutor and sworn to before a judge. All complaints initiated by the prosecutor shall be based on probable cause that the crime charged happened and that the defendant(s) committed the crime charged. A judge shall have the authority to demand the filing of an information by the prosecutor or to hold a preliminary hearing to determine whether lawful probable cause as to the crime exists, and whether the appropriate defendant(s) exist prior to the issuance of a summons or warrant for the arrest of the defendant(s).

(b) Complaints shall contain:

(1) A written statement of the violation describing in ordinary language the nature of the offense committed, including the time and place as nearly as may be ascertained. Statements or affidavits by persons having personal knowledge may be expressly referenced in and attached to the complaints.

(2) The name and description of the person(s) alleged to have committed the offense.

(3) A statement describing why the Court has personal jurisdiction of the defendant.

(4) A description of the offense charged.

(5) A statement of the maximum authorized penalty.

(6) The signature of the prosecutor sworn to before a judge.

(c) For purposes of crimes involving non-Indian domestic or dating violence, the complaint shall also allege, and the prosecution must prove beyond a reasonable doubt:

(1) That the defendant is a non-Indian.

(2) That the victim is Indian.

(3) That the offense occurred within the Fort Peck Tribes' Indian country.

(4) That the defendant has sufficient ties to the Fort Peck Tribes, such that:

(A) The defendant resided in the Fort Peck Tribes' Indian country at the time of the offense.

(B) The defendant was employed in the Fort Peck Tribes' Indian country at the time of the offense, or

(C) At the time of the offense, the defendant was a spouse, intimate partner, or dating partner of either

(i) A member of the Fort Peck Tribes, or

(ii) A non-member Indian who resides in the Fort Peck Tribes' Indian country.

(d) For purposes of crimes involving non-Indian protection order violations, the complaint shall also allege, and the prosecution must prove beyond a reasonable doubt:

(1) That the defendant is a non-Indian,

(2) That the protection order was issued against the defendant,

(3) That the protected person is an Indian,

(4) That the violation occurred within the Fort Peck Tribes' Indian country,

(5) That the defendant has sufficient ties to the Fort Peck Tribes, such that:

(A) The defendant resided in the Fort Peck Tribes' Indian country at the time of the offense;

(B) The defendant was employed in the Fort Peck Tribes' Indian country at the time of the offense, or

(C) At the time of the offense, the defendant was a spouse, intimate partner, or dating partner of either

(i) A member of the Fort Peck Tribes, or

(ii) A non-member Indian who resides in the Fort Peck Tribes' Indian country.

(6) That the protection order is consistent with 18 U.S.C. 2265(b), and

(7) That the violation relates to that portion of the protection order that provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, the protected person.

(e) The Chief Judge may designate an individual or individuals who shall be available to assist persons in drawing up complaints and who shall screen them for sufficiency. Such complaints shall then be submitted without necessary delay to the prosecutor and, if he/she approves, to a judge to determine whether an arrest warrant or summons should be issued.

**(AS PER RESOLUTION NOS. 27-201-2013-12, DATED 12/23/2013; 27-788-2014-06, DATED 6/09/2014; 27-1631-2015-03, DATED 3/9/2015.)**

**Sec. 102. Time limit for commencing criminal prosecution.**

(a) Prosecution for any offense must be commenced within the period specified: Class B misdemeanor offenses - 1 year; Class A misdemeanor offenses - 1 year; Felony offenses - 2 years.

(b) Where the complaint alleges violation of Section 201, 202, or 203 of Title 7, there is no time limit for filing the complaint.

(c) Where the complaint alleges violation of Section 220, or 227 of Title 7, and the alleged victim is eighteen (18) years of age or less at the time of the offense, there is no time limit for filing the complaint.

(d) The period of limitations does not run during any period in which the offender is not physically located on the Reservation or when a prosecution is pending in another jurisdiction against the offender for the same conduct.

**(AMENDED AS PER RESOLUTION NO. 603-2008-04; DATED 4/28/2008)**

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**Sec. 201. Arrest.**

(a) Arrest is the taking of a person into police custody in order that he/she may be held to answer for a criminal offense.

(b) No law enforcement officer shall arrest any person for a criminal offense except when:

(1) A judge has signed a warrant commanding the arrest of such person, and the arresting officer has the warrant in his/her possession or knows for a certainty that such a warrant has been issued; or

(2) The offense shall occur in the presence of the arresting officer; or

(3) The arresting officer shall have probable cause to believe that the person arrested committed the offense.

(c) Probable cause. For purposes of this chapter, probable cause is defined as: such facts and circumstances which would lead a reasonable person to believe that an offense has been committed.

**(AMENDED AS PER RESOLUTION NO. 3137-93-9, DATED 09/13/93.)**

**Sec. 202. Arrest warrants.**

(a) Judges shall have authority to issue warrants to arrest if they find that there is probable cause to believe that an offense against tribal law has been committed by the named accused, based on sworn written statements or sworn oral testimony.

(b) The arrest warrant shall contain the following information:

(1) Name or description and address, if known, of the person to be arrested.

(2) Date of issuance of the warrant.

(3) Description of the offense charged.

(4) Signature of the issuing judge.

(c) The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his/her possession at the time of the arrest, but upon request shall, as soon as possible, show it to the defendant.

(d) A warrant shall not be executed by a Tribal or Bureau of Indian Affairs law enforcement official outside the boundaries of the Reservation.

**Sec. 203. Notification of rights at time of arrest.**

Upon arrest the suspect shall be advised immediately of the following rights:

- (1) That he/she has the right to remain silent.
- (2) That any statements made by him /her may be used against him/her in court.
- (3) That he/she has the right to obtain counsel at his/her own expense. Any person arrested pursuant to 7 CCOJ 244 and/or 249 shall be advised that they have a right to an attorney and if they cannot afford an attorney, one will be appointed for them.
- (4) That he/she has the right to one completed telephone call to a friend and at least one

completed call to a lay counselor or attorney immediately after being registered and identified at the jail, or sooner if there is an unreasonable delay in taking the accused to jail or in processing at the jail.

**(AMENDED AS PER RESOLUTION NO. 27-1680-2015-03, DATED 3/23/2015; 28-1581-2017-02, DATED 2/14/2017)**

**Sec. 204. Summons in lieu of arrest warrant.**

(a) A law enforcement officer or a judge may, in lieu of a warrant, issue a summons commanding the accused to appear before the Court at a stated time and place and answer to the charge.

(b) The summons shall contain the same information as a warrant, except that it may be signed by a police officer.

(c) The summons shall state that if a defendant fails to appear in response to a summons, a warrant for his/her arrest shall be issued.

(d) The summons, together with a copy of the complaint, shall be served upon the defendant by delivering a copy to the defendant personally or by leaving a copy at his/her usual residence or place of business with a person of suitable age and discretion who also resides or works there. Service shall be made by an authorized law enforcement officer, who shall make a return of service which shall be filed with the records of the case.

**Sec. 205. Appearance of arrested person - use of two-way electronic audio-video communication.**

(a) A person arrested, with or without a warrant, must be taken without unnecessary delay before the nearest and most accessible judge for an initial appearance.

(b) A defendant's initial appearance before a judge may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication, if available. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other and so that the defendant and his counsel, if any, can communicate privately. A judge may order a defendant's physical appearance in court for an initial appearance hearing.

**Sec. 206. Bail schedule.**

(a) Annually, the Chief Judge will establish and post a schedule of bail for offenses. A person may not be released on bail without first appearing before a judge when the offense is:

- (1) Stalking; 7 CCOJ 224;
- (2) Partner and family member assault; 7CCOJ 244;
- (3) Special domestic violence criminal offense; 7 CCOJ 249;
- (4) Violation of a Temporary Restraining Order, Temporary Order of Protection, Order of Protection; 7 CCOJ 427
- (5) Unlawful sale of dangerous drugs; 7 CCOJ 413;
- (6) Unlawful possession of dangerous drugs with intent to sell; 7 CCOJ 413-B;
- (7) Unlawful production or manufacture of dangerous drugs; 7 CCOJ 415;
- (8) Possession of firearm in drug related crimes; 7 CCOJ 415-B;
- (9) Unauthorized use, possession, dispensing and acquisition of prescription drugs;

7 CCOJ 418;  
(10) Unlawful sale, use, abuse, possession of prescription medication; 7 CCOJ 418-A.

(11) Any person detained for violating conditions of release.  
**(RESOLUTION NO. 27-2242-2015-09; DATED 9/14/2015; AMENDED AS PER RESOLUTION NO 28-1581-2017-02; DATED 2/14/2017)**

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**Sec. 301. Search warrant.**

(a) A search warrant is a written order, signed by a tribal judge, directing a law enforcement officer to conduct a search and seize property specified in the warrant. A warrant shall describe the person, property or place to be searched and shall describe the property to be seized.

(b) A search warrant shall be issued only by a judge and only upon probable cause that a search will discover:

(1) Stolen, embezzled, contraband or otherwise unlawfully possessed property;

(2) Property which has been or is being used to commit a criminal offense; or

(3) Property which constitutes evidence of the commission of a criminal offense. Such probable cause shall be supported by a sworn written statement or sworn oral testimony. Warrants shall be served only by authorized law enforcement officers.

**Sec. 302. Execution and return of search warrant.**

The executing officer shall return the warrant to the Court within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) days from the date of issuance. Warrants not returned within such time limit

its shall be void. The warrant shall be served between 7:00 a.m. and 9:00 p.m., unless the judge, upon a showing of good cause therefor, inserts a direction that it be served at some other time.

**Sec. 303. Search without a warrant.**

No law enforcement officer shall conduct any search without a valid warrant except:

(1) When he/she is making a lawful arrest; or

(2) With the voluntary consent of the person being searched or the person entitled to possession of property being searched; or

(3) When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen property, or property otherwise unlawfully possessed.

**Sec. 304. Disposition of seized property.**

(a) The officer serving and executing a warrant shall make an inventory of all property seized and a copy of this inventory shall be left with every person from whom property is seized.

(b) A hearing shall be held by the Court to determine the disposition of all property seized by the police. Upon satisfactory proof of ownership, the property shall be delivered immediately to the owner, unless the property is contraband or is to be used as evidence in a pending case. Property seized as evidence shall be returned to the owner after final judgment. Property confiscated as contraband shall be destroyed or otherwise lawfully disposed of as ordered by the Court.

**Sec. 305. Exclusion of unlawfully obtained evidence.**

The Court shall prohibit the introduction or use at trial of any evidence seized in a search conducted in violation of Section 303 and may, in addition, recommend to the chief law enforcement officer of the Reservation any appropriate disciplinary actions against the law enforcement officer conducting the unlawful search.

**Sec. 306. Investigative stop and frisk.**

(a) In order to obtain or verify an account of the person’s presence or conduct or to determine whether to arrest the person, a peace officer may

stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense. If the stop is for a violation under Title 17, unless emergency circumstances exist or the officer has reasonable cause to fear for the officer's own safety or for the public's safety, the officer shall as promptly as possible inform the person of the reason for the stop.

(b) A peace officer who has lawfully stopped a person or vehicle under this section may:

(1) Request the person's name and present address and an explanation of the person's actions and, if the person is the driver of a vehicle, demand the person's driver's license and the vehicle's registration and proof of insurance; and

(2) Frisk the person and take other reasonably necessary steps for protection if the officer has reasonable cause to suspect that the person is armed and presently dangerous to the officer or another person present. The officer may take possession of any object that is discovered during the course of the frisk if the officer has probable cause to believe that the object is a deadly weapon or an illegal substance until the completion of the stop, at which time the officer shall either immediately return the object, if legally possessed, or arrest the person.

(c) A peace officer acting under section (b) while the peace officer is not in uniform shall inform the person as promptly as possible under the circumstances and in any case before questioning the person that the officer is a peace officer.

**(AS PER RESOLUTION NO. 27-685-2014-05; DATED 5/12/2014)**

## Chapter 4. Arraignment and Release

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### Sec. 401. Arraignment.

(a) Arraignment is the bringing of an accused before the Court, informing him/her of his/her rights and of the charges against him/her, receiving his/her plea, and setting conditions of pre-trial release as appropriate in accordance with this Code.

(b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regular session of Court. The accused shall not be in custody longer than 48 hours without a probable cause determination.

(c) Before an accused is required to plead to any criminal charges, the judge shall:

(1) Read the complaint to the accused and determine that he/she understands the complaint and the section of the Tribal Code which he/she is charged with violating, including the maximum authorized penalty; and

(2) Advise the accused that he/she has the right:

(A) To remain silent,

(B) To have a speedy and public trial where he/she has had sufficient time to prepare his/her defense is he/she pleads "not guilty",

(C) To be tried by a jury if the offense charged is punishable by imprisonment,

(D) To be represented by counsel at his/her expense, before he/she pleads to the charge, and

(E) To file a writ of habeas corpus in the United States District Court if the accused feels his/her rights have been violated.

(d) If the accused is arraigned pursuant to the Fort Peck Tribes Special Domestic Violence Criminal Jurisdiction over non-Indians, the accused has the right to obtain counsel and the right to a reasonable continuance to obtain counsel. If the accused cannot afford counsel, one will be appointed for him/her at the expense of the Tribes. The right to appointed counsel continues through the appeals process.

(e) If the arrest was without a warrant, and the defendant is to be continued in custody, the judge shall also determine during arraignment whether there is probable cause to believe that an offense

against Tribal law has been committed by the named accused.

(f) The judge shall call upon the defendant to plead to the charge:

(1) If the accused pleads “not guilty” to the charge, the judge shall then set a pretrial or trial date and consider conditions for release prior to trial as provided in Section 402.

(2) If the accused pleads “guilty” to the charge, the judge shall accept the plea only if the judge is satisfied that the plea is made voluntarily and the accused understands the consequences of the plea, including the rights which he/she is waiving by the plea. The judge may then impose sentence or defer sentencing for a reasonable time in order to obtain any information the judge deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the Court prior to sentencing.

(3) If the accused refuses to plead, the judge shall enter a plea of “not guilty” on his/her behalf. **(AS PER RESOLUTION NOS. 27-201-2013-12, DATED 12/23/2013; 26-788-2014-06, DATED 6/09/2014)**

#### **Sec. 402. Release before final judgment of conviction.**

(a) Prior to trial. At arraignment, the judge shall decide whether to release the defendant from custody pending trial. As conditions of release, the judge may, to assure the accused's appearance at all times lawfully:

(1) Require the accused to deposit cash or other sufficient collateral, in an amount specified by the judge;

(2) Require the accused, and/or any other designated person or organization satisfactory to the judge, to execute a written promise to appear or to deliver the accused at all required times;

(3) Impose reasonable restrictions on the travel, association or place of residence of the accused;

(4) Impose any other condition deemed reasonably necessary to assure the appearance of the accused as required.

(b) By police officer. Any law enforcement officer authorized to do so by the Court may admit an arrested person to bail pending trial pursuant to a bail schedule and conditions prepared by the Court.

(c) Pending appeal. A convicted person may be released from custody pending appeal on such conditions as the judge determines will reasonably assure the appearance of the accused unless the judge determines that release of the accused is likely to pose a danger to the community, to himself/herself or to any other person.

(d) The Court may revoke its release of the defendant and order him/her committed at any time where it determines that the conditions of release will not reasonably assure the appearance of the defendant, or if any conditions of release have been violated.

(e) If at the time the case involving the charge of Disorderly Conduct, 7 CCOJ 440, is called for arraignment before the Judge the defendant does not appear, either in person or by counsel, the Judge may declare the bail forfeited and may, in his or her discretion, order that no further proceedings be had in the case and a conviction entered upon the record of the defendant. Upon the making of the order that no further proceedings shall be had, all sums deposited as bail shall be paid to the Court.

**(AMENDED AS PER RESOLUTION # 26-641-2012-04; DATED 4/11/2012)**

#### **Sec. 402-A. Violation of release condition - forfeiture.**

(a) If a defendant violates a condition of release, including failure to appear, the prosecutor may make a written motion to the Court for revocation of the order of release. A judge may issue a warrant for arrest of a defendant charged with violating a condition of release. Upon arrest, the defendant must be brought before a judge in accordance with 6 CCOJ 205.

(b) If a defendant fails to appear before a court as required and bail has been posted, the judge may declare the bail forfeited. Notice of the order of forfeiture must be mailed to the defendant, the

person posting the cash bail bond for the defendant and the defendant's sureties at their last known address.

(c) If at any time within 30 days after the forfeiture the defendant's sureties surrender the defendant or appear and satisfactorily excuse the defendant's failure to appear, the judge shall direct the forfeiture to be discharged without penalty. If at anytime within 30 days after the forfeiture the defendant appears and satisfactorily excuses the defendant's failure to appear, the judge shall direct the forfeiture be discharge upon terms as may be just.

(d) The surety bond must be exonerated upon proof of the defendant's death or incarceration or subjection to court-ordered treatment in a foreign jurisdiction for a period exceeding the time limits under subsection (c).

(e) A surety bail bond is an appearance bond only. It cannot be held or forfeited for fines, restitution, or violations of release conditions other than failure to appear. The original bond is in effect pursuant to subsection (f) and is due and payable only if the surety fails, after 30 days from forfeiture, to surrender the defendant or if the defendant fails to appear on the defendant's own within the same time period.

(f) If a commercial surety bond is posted as bail and the defendant is convicted, the bond must be released and returned to the surety within 30 days after the conviction.

(g) If the defendant appears and the defendant posted the bond, the Court may order that the bond be converted to pay fines, fees, surcharges, or restitution on the case at hand and/or other cases involving the defendant. The Court does not need the defendant's consent to order the conversion.

(h) If the defendant appears, the Court may order the bond be converted to fines, fees, surcharges, or restitution on the case at hand and/or other cases the defendant may have if the person who posted the bond, not the defendant, agrees to the bond conversion.

**(AS PER RESOLUTION NO. 26-906-2012-5; DATED 05/25/2012.)**

### **Sec. 403. Withdrawal of guilty plea.**

The Court may, in its discretion, allow a defendant to withdraw a plea of guilty if it appears that the interest of justice and fairness would be served by doing so.

### **Sec. 404. Notification of escape or release from confinement.**

(a) When a person confined to an institution or jail for a criminal offense involving the use or threat of physical force or violence escapes or is released, the Fort Peck Department of Corrections shall notify:

(1) Fort Peck Law Enforcement;

(2) A victim of the offense who has requested notification in the event of an escape or a release of the person.

(b) The Fort Peck Department of Corrections shall adopt a methodology for notifying law enforcement and a victim who has requested notification. Notification concerning a pending release must be made prior to the release.

**(RESOLUTION NO. 1450-2010-12, DATED 12/13/2010)**

## **Chapter 5. Trial Proceedings**

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**Sec. 501. Rights of defendant in criminal cases.**

No person shall twice be put in jeopardy for the same offense, nor shall he/she be compelled in any criminal case to be a witness against himself/herself. The accused shall have the right to a speedy and public trial, the right to be confronted with witnesses against him/her, the right to assistance of counsel at his/her own expense and the right to demand trial by an impartial jury if the offense, or combination of offenses, charged is punishable by imprisonment.

**Sec. 502. Issuance of subpoenas.**

(a) Upon request of the defendant or upon the Court's own initiative, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. An employee of the Court may act on behalf of the Court and issue subpoenas which have been signed by a trial judge and which are to be served within the confines of the Reservation.

(b) A subpoena shall bear the signature of the Chief Judge or an Associate Judge of the Court and it shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

**Sec. 503. Service of subpoenas.**

(a) A subpoena may be served at any place within or without the confines of the Reservation, but any subpoena to be served outside the Reservation shall be issued personally by a judge of the Court.

(b) A subpoena may be served by any law enforcement officer or other person appointed by the Court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his/her usual place of residence or business with any person of suitable age and discretion who also resides or works there.

(c) Proof of service of the subpoena shall be filed with the Court by noting on the back of a copy of the subpoena the date, time and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

**Sec. 504. Failure to obey subpoena.**

In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena may be deemed to be in contempt of court.

**Sec. 505. Witness expenses.**

(a) Each witness answering a subpoena shall be entitled to reimbursement fees and mileage expenses at the current rate paid by Roosevelt County, Montana.

(b) The expenses provided for in this Section shall be paid by the Tribes upon completion of the trial, but such expenses associated with witnesses called by the defendant may be taxed as costs against the defendant if he/she is found guilty and in such case a judgment for the costs shall be entered against the defendant, provided however, that no defendant shall be imprisoned solely because of his/her inability to pay such costs.

(c) If the Court finds that a complaint was filed in good faith but with a frivolous or malicious intent, it may order the complainant to reimburse the Tribes for expenditures incurred under this Section, and such order shall constitute a judgment against the complainant.

**Sec. 506. Trial procedure.**

(a) The time and place of court sessions, the rules of evidence to be followed by the Court and all other details of judicial procedure may be set out in rules of court.

(b) In a felony case, the defendant shall be present in court at every stage of the trial, including impaneling the jury, return of the verdict, and imposition of sentence.

(c) All testimony of witnesses shall be given orally under oath in open court and subject to the right of cross-examination. Documentary and



tangible evidence shall also be received in open court and available to the defendant.

(d) The defendant is presumed to be innocent. The prosecution has the burden of proving the defendant's guilt beyond a reasonable doubt, including the facts that a crime has actually been committed, and that the defendant committed it with the requisite intent, when intent is an element of the offense.

(e) The prosecution shall present its case first, followed by the case of the defendant. If rebuttal is required, the prosecution shall proceed first, followed by the defendant.

(f) At the conclusion of the evidence, the prosecution and defendant each in turn shall summarize the proof and make final argument, with the prosecution having the right of final rebuttal.

(g) All records relating to statements or confessions of the defendant, or reports of physical, mental, or other scientific tests or examinations relating to or performed on the defendant, when in the possession or control of the Tribes, shall be open to inspection and copying by the defendant.

(h) At any time in the trial process, the judge may appoint an interpreter of his/her own selection and may fix the reasonable compensation of such interpreter. An interpreter through whom testimony is communicated shall be put under oath to faithfully and accurately translate and communicate as required by the judge.

#### **Sec. 507. Right to jury trial.**

(a) Any person accused of a crime punishable by imprisonment shall be granted a jury trial, upon his/her request made at time of arraignment. Any person charged pursuant to 7 CCOJ 244 and/or 249 shall automatically have their case set for a jury trial. A jury shall consist of at least 6 members of the Reservation community selected at random from a list of eligible jurors prepared each year by the Court.

(b) An eligible juror is an Indian person who has reached the age of 18 years, is of sound mind and discretion, has never been convicted of a felony, is not a member of the Tribal Executive Board, or a judge or justice, officer or employee of the Court or an employee of the Reservation police force or Reservation jail, and is not otherwise disqualified according to standards established by the Court.

(1) Where the Tribes are exercising Special Criminal Domestic Violence Jurisdiction under the Violence Against Women Reauthorization Act of 2013, an eligible juror is any resident within the boundaries of the Fort Peck Reservation of the age of 18 or over, regardless of race or tribal citizenship, is of sound mind and discretion, has never been convicted of a felony, is not a judge or justice, officer or employee of the Court or an employee of the Reservation police force or Reservation jail, and is not otherwise disqualified according to standards established by the Court.

(c) A list of at least 21 resident Indian persons, and in the case of the Tribes exercising Special Criminal Domestic Violence Jurisdiction, a list of at least 21 non-Indian residents of the Reservation, who are eligible for jury duty shall be prepared and maintained by the clerk.

(d) Under the supervision of the presiding judge, a panel of jurors shall be drawn by lot from the jury list. A trial jury shall consist of 6 qualified jurors selected from a panel of 12 eligible persons taken from the jury list, none of whom has an interest in the case, or is related as spouse, parent, brother or sister to any of the parties or their attorneys. If the jury panel is exhausted before a sufficient number of jurors are selected for the trial jury, additional jurors shall be drawn by lot from the jury list for the panel until a trial jury is selected.

(e) The judges of the Court shall have the power to issue subpoenas, through regular mail, to compel the attendance of members of the jury panel and of trial jurors. Subpoenas shall be signed by the judge issuing them.

(f) The judge assigned to the case shall have the power to excuse persons from jury duty on account of sickness, disability or other good cause.

(g) Each party may question members of the panel of prospective jurors for the purpose of selecting a trial jury.

shall permit otherwise, or shall permit each defendant to exercise 2 peremptory challenges.

(i) Each member of the jury panel called to service and each juror who serves upon a jury shall be entitled to compensation at a rate paid to jurors by Roosevelt County, Montana, and may, in the discretion of the presiding judge, be allowed mileage at a rate to be fixed by the Court. All payments of per diem and mileage shall be supported by vouchers signed by the presiding judge. Such vouchers shall be paid in order of presentation, from available funds on deposit for the purpose.

(j) The judge shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of that law. At the close of evidence or at such earlier time during the trial as the judge directs, any party may file with the judge written instructions on the law which the party requests the judge to deliver orally to the jury. At the same time copies of such requests shall be furnished to the opposing party. The judge shall inform each party of his/her proposed action upon each request prior to the arguments to the jury, but the judge shall deliver his/her instructions to the jury after arguments are completed. No party may assign as error any portion of the judge's charge or any omission unless he/she makes his/her objection and reasons for it before the jury retires to consider its verdict. Opportunity shall be given to make the objection out of the hearing of the jury.

(k) After deliberation in private, the jury in criminal cases shall return to the judge in open court a verdict of "Guilty" or "Not Guilty" with respect to each defendant. A verdict in criminal cases shall be rendered by a unanimous vote of the jury.

**(AS PER RESOLUTION NOS.  
27-201-2013-12; DATED 12/23/2013;  
27-788-2014-06, DATED 6/09/2014;  
28-1172-2016-09; DATED 9/27/2016;  
28-1581-2017-02, DATED 2/14/2017**

.)

### **Sec. 508. Expert witness reliance on records produced by law enforcement investigations and provision for telephonic court testifying.**

(a)(1) Tribal and state records of law enforcement work product listed in Subsection (c) of this Section shall be acceptable for a law enforcement expert to rely on in testifying in the Fort Peck Tribal Court, as per Federal Rule of Evidence 703, and may be the product of any State or Tribal law enforcement employee.

(2) To be admissible, the records must conform to the requirements set out in Subsection (d), following Federal Rule of Evidence 807, and Rule of Civil Procedure for the Fort Peck Tribal Court 9-4. Records shall be acceptable source material whether they come from Tribal or State law enforcement.

(b) Lab technicians of the Montana State Crime Lab may telephonically testify in trial as to their personal findings relevant to the case at hand.

(c) The following shall be acceptable for law enforcement experts to rely on in testifying in a Court proceeding:

(1) Records of autopsies from fatalities from the case at hand, performed by or for any government law enforcement personnel;

(2) Records from the examination, description, or testing of any physical evidence of the case at hand;

(3) Records about fingerprint or DNA found at the crime scene for the case at hand.

(d) To be admissible in the Fort Peck Tribal Court, such records shall meet the following requirements:

(1) The record shall contain an inherent guarantee of trustworthiness:

(A) It shall be signed and dated by the author, not photocopied;

(B) It shall bear the letterhead of the law enforcement agency;

(C) It shall be written in the format standard for such reports.

(e) If the record is from the Montana State Crime Laboratory, the Tribal Criminal Prosecutor shall notify the Court and the Defendant(s) in writing of its intention to offer such record(s) in evidence at trial in sufficient time for the party not offering the record(s), to either obtain the record(s) before trial of the person(s) responsible for creating the record(s), or to subpoena the attendance of the record's author(s) at trial.

(1) The notice must include disclosure of what the record to be relied on is and the purpose of its intended use in trial.

(2) The notice shall state who wrote it and the address of its author/declarant.

(3) To be admissible, portions of the report to be quoted in trial must be underlined, and irrelevant questions, answer, colloquy, and abandoned objections deleted.

(4) To be admissible, the opposing party shall, before the final pretrial conference, underline the parts to be quoted in trial and submit to the party originally submitting the report.

(5) To be admissible, record contents which were objected to, and the Court sustained the objection, shall be deleted and not entered as part of the Court transcript.

(6) For a bench trial, record contents longer than 25 pages shall be summarized and the summary provided to opposition at the pre-trial hearing.

(7) Any of the requirements in (3), (5), and (6) above may be waived if the record is to be used to refresh recollection, as an admission against interest, or as impeachment.

**(AMENDED AS PER RESOLUTION NO. 821-2002-8; DATED 8/12/2002)**

**Sec. 509. Absence of defendant from trial.**

(a) In all misdemeanor cases, of the defendant fails to appear in person, either at the time set for the trial or at any time during the course of the trial and if the defendant's counsel is authorized to act on the defendant's behalf, the Court shall proceed with the trial unless good cause for continuance exists.

(b) If the defendant's counsel is not authorized to act on the defendant's behalf as provided in subsection (a) or if the defendant is not represented by counsel, the Court, in its discretion, may do one or more of the following:

- (1) order a continuance;
- (2) order bail forfeited;
- (3) issue an arrest warrant; or

(4) proceed with the trial after finding that the defendant had knowledge of the trial date and is voluntarily absent.

(c) In all misdemeanor cases, the defendant need not be present for preliminary, preparatory, or ministerial matters and the verdict may be returned and the sentence imposed without the defendant being present.

(d) After the trial of a felony offense has commenced in the defendant's presence, the absence of the defendant during the trial may not prevent the trial from continuing up to and including the return of a verdict if the defendant has been removed from the courtroom for disruptive behavior after receiving a warning that removal will result if the defendant persists in conduct that is so disruptive that the trial cannot be carried on with the defendant in the courtroom.

(e) Nothing in this section limits the right of the Court to order the defendant to be personally present at the trial for purposes of identification unless defense counsel stipulates to the issue of identity.

(f) If the defendant feels aggrieved by an action taken in his absence, the defendant may move to set aside the action if he can provide evidence satisfactory to the Court that the absence was for good cause.

**(AS PER RESOLUTION NO. 26-643-2012-04; DATED 4/11/2012)**

**Sec. 510. Federal Rules of Evidence and Federal Rules of Criminal Procedure.**

(a) The Federal Rules of Evidence shall be followed in all Tribal Court proceedings.

(b) When necessary, the Tribal Court will supplement the Rules of Criminal Procedure of this Title with the Federal Rules of Criminal Procedure.

**Sec. 511. Enhanced punishment.**

(a) If the Tribal Prosecutor intends to seek an enhanced punishment greater than 1 year, the Tribal Prosecutor shall file notice of this intention not less than 30 days before the pretrial conference. If the notice is untimely, the trial judge shall grant the defendant, on motion, a reasonable continuance of the trial. The notice shall specify that the Tribes intend to seek the enhanced sentence and shall specify the aggravating circumstances the Tribes intend to rely on at the sentence hearing. The Tribes may specify by referring to the statutory citation of the aggravating circumstance.

(b) If the Tribal Prosecutor files notice that the Tribal Prosecutor intends to seek an enhanced punishment greater than 1 year, the Tribal Court shall notify the defendant that the defendant is entitled to have counsel appointed for him/her at the expense of the Tribal Court.

(c) The Fort Peck Tribal Court shall not impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or

(1) Impose on a person in a criminal proceeding a total penalty or punishment greater than a term of 9 years.

(d) A defense attorney/counsel provided by the Fort Peck Tribes for a defendant when the Tribes are seeking an enhanced sentence shall be someone who has passed the Fort Peck Tribal Bar Exam and has practiced within the Fort Peck Tribal Court for a minimum of one year.

(e) A judge presiding over a case when the Tribes are seeking an enhanced sentence shall be someone who has passed the Fort Peck Tribal Bar Exam and completed a minimum of 40 hours of legal education from the National Judicial College or an equivalent course of study from another institution.

**Sec. 512. Offenses subject to greater than 1-year imprisonment or a fine greater than \$5,000.**

(a) The Tribal Court may subject the defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who:

(1) Has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or

(2) Is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

**(AS PER RESOLUTION NO. 26-1654-2012-11; DATED 11/14/2012.)**

**Chapter 6. Sentences**

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**Sec. 601. Sentences.**

Any person who has been convicted of an offense enumerated in this Code may be sentenced by the Court to one or a combination of the following penalties:

(a) Imprisonment for a period not to exceed the maximum permitted by the code provisions defining the offense, including a felony charged pursuant to 6 CCOJ 511,512. Imprisonment may be continuous or intermittent. On any sentence of imprisonment, credit shall be given for all time spent in custody in an institution as a result of the charge for which the sentence was imposed. Imprisonment may include commitment to an appropriate institution or program, either on or off the Reservation, for care, treatment, evaluation, or rehabilitation of the offender. Anyone receiving physical custody of a person sentenced by the Court shall be acting solely as an agent of the Tribes and the Court. Jurisdiction over a person sentenced to a program or institution off the Reservation shall be absolutely retained by the Tribes and the Court. No placement off the Reservation shall be valid unless first approved in writing by the Chief Judge and any order of such placement shall specify that the Tribes and the Court retain jurisdiction over any person placed.

**(AMENDED AS PER RESOLUTION NO. 26-2811-2013-08; DATED 9/26/2013.)**

(b) A money fine in an amount not to exceed the maximum permitted by the code provision defining the offense. If the Court determines that a

convicted offender is unable to pay forthwith a money fine assessed under this Section or costs assessed under Section 505 of this Title, the Court shall allow him/her a reasonable period of time to pay the entire sum or allow him/her to make installment payments to the clerk of the court at specified intervals until the entire sum is paid. If the offender defaults on such payments, the Court may find him/her in contempt of court and punish him/her accordingly, but no person shall be held in contempt of court where nonpayment is because of indigency. Any convicted person may, if he/she chooses, elect to serve time in prison at the rate of \$40.00 per day to be credited against any fine or costs such person owes.

**(AMENDED AS PER RESOLUTION NO. 26-2291-2013-04; DATED 4/30/2013)**

(c) Parents, guardians, and custodians of a child who are convicted of rape, sexual assault, sexual exploitation, physical abuse, neglect, or abandonment of that child may be ordered to seek such therapy, treatment, or instruction as will assist in preventing recurrence of the conduct that formed the basis of the offense. Such treatment or therapy may be ordered in lieu of incarceration, with the proviso that if the offender fails to seek the therapy or treatment as ordered, the sentence of incarceration shall be reinstated.

**(AMENDED AS PER RESOLUTION NO. 1287-86- 7, DATED 07/28/86.)**

(d) In addition to or in lieu of the penalties provided above, the Court may require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensation to the injured person by means of the surrender of property, payment of money damages, or the performance of any other act, including appropriate work detail, for the benefit of the injured party.

(e) In its discretion, the Court may commute or suspend some or all of the sentence imposing a fine or imprisonment, or grant probation, on condition that the convicted person does work for the benefit of the Tribes. A person unable or unwilling to work may be confined in jail or fined as provided above.

(f) In determining the character and duration of the sentence to be imposed, the Court shall take into consideration the previous conduct of the defendant, the circumstances under which the offense was committed, whether the offense was malicious or willful, whether the defendant has attempted to make amends, and shall give due consideration to the extent of the defendant's financial resources and the needs of his/her dependents.

#### **Sec. 602. Probation.**

(a) Granting probation. After conviction of an offense, the defendant may be placed on probation, under such terms and conditions as the Court deems just, taking into consideration any prior criminal record of the defendant, his/her back-ground and characteristics helpful in determining the advisability of probation. Probation shall be no longer than the statutory penalty.

(b) Violations of conditions of probation. If any person violates the terms and conditions of probation, the Court may, after giving him/her notice and the opportunity for a hearing in open court, revoke or alter the terms of his/her probation, and may, as a penalty for violation of the probation, impose an additional fine or imprisonment.

**(AMENDED AS PER RESOLUTION NO. 28-2095-2016-01; DATED 1/25/2016)**

#### **Sec. 603. Forfeiture of Weapons.**

Any person owning and using a firearm, or any sharp or dangerous weapon, in the commission of an offense shall forfeit such weapon to the Tribes as part of the sentence. Upon order of the Court, such weapon shall be destroyed, or sold a public sale after appropriate public notice, pursuant to the direction of the Court.

#### **Sec. 604. Notification of right to appeal.**

Following the imposition of judgment of guilty, except upon a plea of guilty, the Court shall inform the defendant that he/she has a right to appeal. If the defendant requests, the clerk of the court shall prepare and file a Notice of Appeal on behalf of the defendant. The defendant, or the clerk of the court filing on his/her behalf, must

file the Notice of Appeal within fifteen (15) working days of the judgment.

the Tribal Executive Board by means of its budgeting process.

## **Chapter 7. Probation and Parole**

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### **Sec. 701. Establishment of Department of Tribal Probation and Parole.**

There is established a Tribal Department of Probation and Parole (hereafter "the Department"), for the purposes of which include the protection of the Reservation community by providing for the acceptance of custody and the supervision and rehabilitation of juvenile and adult offenders placed on probation or released on parole by the Tribal Court.

### **Sec. 702. Organization of the Department.**

The Department is managed by the Tribal Court Administrator, subject to the supervision of the Tribal Executive Board, and is comprised of adult probation officers, juvenile probation officers, community service officers, youth court representatives, support staff, and such other personnel as may be deemed necessary and approved by

### **Sec. 703. Definitions.**

As used in this Chapter, unless the context otherwise requires, the following definitions apply:

(a) "Notice to the probationer or parolee" is the personal service of a warrant or a summons and petition for revocation of the parole or probation to a supervised offender.

(b) "Parole" means the release to the community of an adult prisoner as provided by law prior to the expiration of the prisoner's term, subject to the conditions imposed by the Court and subject to the supervision of the Department upon direction of the Court.

(c) "Probation" means the release by the Court without imprisonment of an offender found guilty of a crime upon verdict or plea, subject to conditions imposed by the Court and subject to the supervision of the Department upon direction of the Court.

(d) "Supervised offender" is an offender:

(1) Sentenced to probation,

(2) Whose sentence is deferred, or (3) released from incarceration subject to conditions imposed by the Court and subject to the supervision of the Department.

### **Sec. 704. Powers of the Department of Adult Probation.**

(a) An adult probation officer, in his or her supervision of an adult offender, is vested with:

(1) The authority to request a judge of the Tribal Court to issue a warrant for arrest of the supervised offender,

(2) The authority to arrest and/or detain the supervised offender and orally request any officer with the power to arrest to do so by giving the officer oral authorization and within 12 hours delivering to the detention center a written statement setting forth that the supervised offender has, in the judgment of the probation officer, violated the conditions of probation. A written statement or oral authorization delivered with the supervised offender by the arresting officer to the

official in charge of the detention center is sufficient warrant for the detention of the supervised offender if the probation officer delivers the written statement within 12 hours of the supervised offender's arrest.

(3) The authority to conduct a search without a warrant upon reasonable cause or upon the terms agreed upon in the signed Conditions of Probation statement.

(b) The Department may:

(1) Recommend to the Tribal Executive Board for adoption of rules for the conduct of adults placed on parole or probation, except that the Department may not recommend, and the Tribal Executive Board may not adopt, any rule conflicting with conditions of parole or probation imposed by a court of competent jurisdiction; and

(2) Adopt requirements for the training of probation officers.

**(AMENDED AS PER RESOLUTION NOS. 27-1888-2015-05; DATED 5/26/2015; 28-1718-2017-03; DATED 3/27/2017)**

**Sec. 705. Juvenile Probation Officers.**

Juvenile Probation Officers shall have the power and duty to carry out the objectives and provisions of this Chapter with regard to juvenile offender cases and shall:

(a) Make preliminary inquiries, social studies, and such other investigations as the Court may direct;

(b) Keep written records of such inquiries, social studies, and such other investigations and shall make written reports to the Court;

(c) Supervise and assist each child placed on probation or under his/her supervision;

(d) Keep informed concerning the conduct and conditions of each person on probation or under protective supervision and shall report thereon to the Court as directed;

(e) Use all suitable methods to aid children on probation or under protective supervision to bring about improvements in their conduct or conditions;

(f) Have children taken into custody when there is reasonable cause to believe that they have violated conditions of their probation; and

(g) Perform such other duties in connection with the care, custody, or transportation of children as the Court may require.

**Part 2. Probation**

**Sec. 706. Declaration of purpose and policy.**

The Tribal Executive Board finds and declares that probation is a desirable disposition of appropriate criminal cases because:

(a) It provides a framework by which the Tribes can supervise positive rehabilitative measures imposed on an offender by a court;

(b) The offender remains under the purview of the Court while engaging in the educational, therapeutic and community restorative pursuits that add up to a successful rehabilitation;

(c) It maximizes the liberty of the individual while at the same time vindicating the authority of the law and effectively protecting the public from further violations of the law;

(d) It affirmatively promotes the rehabilitation of the offender by continuing normal community contacts; and

(e) It minimizes the impact of the conviction upon innocent dependents of the offender.

**Sec. 707. Penalty upon revocation of probation or parole.**

(a) A person who is found, after a hearing, to have violated a condition of his or her probation may be required:

(1) In the case of probation during a suspended sentence, to serve in the Tribal jail up to the entire period for which execution of sentence was suspended; or

(2) In the case of deferred imposition of sentence, to serve such sentence as may be imposed by the Court after a sentencing hearing.

(b) Parole is not available to a supervised offender whose probation is revoked, but appellate review of the trial court's revocation decision may be had on the ground that the supervised offender was deprived of liberty without due process of law.

**Sec. 708. Violation of a condition of probation.**

Upon a determination that a condition(s) of probation have been violated, the probation officer may petition the Court to have the probation revoked.

**Sec. 709. Probation revocation hearing.**

(a) A probationer is entitled to a hearing before the Court prior to revocation of probation within 10 days of the date of notice that a petition for revocation has been filed, unless good cause for delay exists. The burden is on the party asking for the delay to show that good cause exists.

(b) The subject matter of a revocation hearing is limited to alleged knowing violation(s) of probation condition(s). A violation of a condition is deemed to be a knowing violation if the probationer signed and was given a copy of, the conditions of probation.

(c) Supervised offenders do not have a right to a jury trial at a revocation hearing.

(d) If the probationer admits to violating a condition of probation, the Court, after the probationer has had the opportunity to offer testimony or evidence regarding any circumstances tending to mitigate the violation, may revoke the probation.

(e) If the probationer does not admit to violating a condition of probation, the prosecutor has the burden of proving by a preponderance of the evidence that the probationer violated a condition of the probation. Prosecution evidence may not be suppressed on the ground that, if an admission of a violation, no warning was given of a right not to incriminate oneself.

(f) The probationer has a right to counsel at his or her own expense and may call witnesses or introduce evidence in his or her own behalf and may cross examine any prosecution witness. Hearsay evidence is admissible, although a decision to revoke probation may not be based solely on hearsay evidence. The prosecutor may show any aggravating circumstances, and the probationer may show any mitigating circumstances.

(g) The Court may determine the appropriate disposition of the petition for revocation by bal-

ancing the probationer's interest in liberty, employment, family ties, responsibilities, health, or community ties against the Tribes' interest in rehabilitation, public safety, victim(s)' rights, and the probationer's duty to comply with each condition of probation.

(h) An order revoking probation shall be in writing and shall contain findings of fact, including, but not necessarily limited to, those required in subsection (g), and conclusions of law supporting the revocation.

**Part 3. Parole**

**Sec. 710. Duties of the Adult Probation and Parole Officer.**

(a) The adult probation and parole officer shall retain custody of all persons placed on parole and shall supervise the persons during their parole periods in accordance with the conditions set by the Court.

(b) The adult probation and parole officer shall review and monitor a person who is eligible for parole in preparing a parole plan. The officer shall make a report of the officer's efforts and findings to the Court prior to its consideration of the case of the eligible person.

(c) A copy of the conditions of parole must be signed by the parolee and given to the parolee and to the parolee's probation and parole officer, who shall report on the parolee's progress to the Court as maybe necessary or desirable.

(d) To assist parolees, the adult probation and parole officer may, in addition to other services, provide the following:

- (1) Employment counseling and job placement;
- (2) Family and individual counseling and treatment placement;
- (3) Financial counseling;
- (4) Vocational and educational counseling and placement; and
- (5) Referral services to any appropriate agency.

**Sec. 711. Eligibility for parole.**

An offender sentenced to confinement in the Tribal correctional facility for 40 days or more on



any conviction or combination of convictions, who has served at least one-half of the imposed sentence, and whose confinement is not the result of a probation or parole violation, may file a petition for parole with the Tribal Court.

**Sec. 712. Parole hearing.**

The Court shall hold a hearing on the petition within 10 days of its filing. All persons desiring to speak at the hearing shall be heard, including, but not limited to law enforcement officers, the Tribal prosecutor, family and friends of the offender, the offender and the offender's attorney, any victim of the offense for which the offender was sentenced in incarceration, and immediate, adult, family members of such victim. Notice of hearing shall be given to all parties at least 5 days prior to the hearing.

**Sec. 713. Granting parole.**

(a) In determining whether to grant parole, the Court shall consider all pertinent information including, but not limited to, the following:

- (1) The circumstances and nature of the offense;
  - (2) The past criminal record of the petitioner;
  - (3) The past employment record of the petitioner;
  - (4) The conduct of the petitioner during imprisonment;
  - (5) The results of any physical or psychological reports; and
  - (6) The petitioner's employment status, family and community ties and responsibilities, and health, which may be balanced against the Tribes' interest in rehabilitation, public safety, and victim's rights.
- (b) The order granting parole shall set forth:
- (1) The duration of parole;
  - (2) The conditions of parole;
  - (3) Commitment to the custody of the adult probation and parole officer; and
  - (4) The consequences of violating a condition of parole.

**Sec. 714. Penalty for violation of a condition of parole.**

A person who violates a condition of parole may be apprehended and required to serve the remainder of the original sentence. Further parole in this instance is not allowed.

**Sec. 715. Parole revocation hearing.**

(a) Upon determination that a condition of parole has been violated, the adult probation and parole officer shall file a petition for the revocation of parole with the Court. Such petition must be filed within the parole period and served upon the parolee.

(b) The parolee is entitled to a revocation hearing within 10 days of arrest for a parole violation or receipt of a notice of revocation unless the Court finds good cause for delay exists.

(c) The subject matter of the hearing is limited to alleged violation(s) of condition(s) of parole.

(d) The parolee has no right to a jury trial when a violation of a condition of parole is alleged.

(e) Unless the parolee admits the parole violation, the adult probation officer or Tribal prosecutor must prove by a preponderance of the evidence that the parolee violated a condition of his or her parole. Evidence that the parolee violated a condition of parole is not excludable on the grounds that the parolee was not warned of his or her right not to incriminate himself or herself prior to admitting a violation.

(f) A parolee has the right to counsel at the parolee's own expense.

(g) A parole may not be revoked based solely on hearsay, but hearsay testimony may be admitted.

(h) A parole revocation is appealable on the grounds that the revocation deprived the parolee of liberty without due process of the laws. The court's refusal to revoke a parole is not appealable by or on behalf of the Tribes.

**(ADOPTED AS PER RESOLUTION NO. 1730-2007-06, 06/11/07)**

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**Subchapter 1. General Matters**

**Sec. 801. Title.**

This ordinance shall be known as the Sex Offender and Violent Offender Registration Ordinance of the Fort Peck Tribes.

**Sec. 802. Purpose.**

The intent of this ordinance is to implement the federal Sex Offender Registration and Notification Act (SORNA) (Title I of Public Law 109-248) and shall be interpreted liberally to comply with the terms and conditions of SORNA as presently written or hereafter amended. In addition, this ordinance is to implement the Violent Offender statute of the Fort Peck Tribes.

**Sec. 803. Creation of registries.**

Sex Offender Registry. There is hereby established a sex offender registry, which the Fort Peck Tribes shall maintain and operate pursuant to the provisions of this ordinance, as amended. The Fort Peck Tribes, in their discretion, shall maintain the registry in conjunction with the Montana Department of Justice and Roosevelt County.

**Subchapter 2. Terminology and Covered Offenses**

**Sec. 804. Definitions.**

The definitions below apply to this code ordinance only.

(a) Convicted. An adult sex offender is “convicted” for the purposes of this ordinance if the sex offender has been subjected to penal consequences based on the conviction, however the conviction may be styled.

A juvenile offender is “convicted” for purposes of this ordinance if the juvenile offender is either:

(1) Prosecuted and found guilty as an adult for a sex offense; or

(2) Is adjudicated delinquent as a juvenile for a sex offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in either (a) or (b) of section 2241 of Title 18, United States Code), or was an attempt or conspiracy to commit such an offense.

(b) Foreign Convictions. A foreign conviction is one obtained outside of the United States.

(c) Employee. The term “employee” as used in this ordinance includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation. Volunteers of a Tribal agency or organization are included within the definition of employee for registration purposes.

(d) Immediate. “Immediate” and “immediately” mean within 3 business days.

(e) Imprisonment. The term “imprisonment” refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state “prison” as well as in a federal, military, foreign, BIA, private or contract facility, or a local or tribal “jail”. Persons under “house arrest” following conviction of a covered sex offense are required to register pursuant to the provisions of this ordinance during their period of “house arrest”.

(f) Jurisdiction. The term “jurisdiction” as used in this ordinance refers to the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the

United States Virgin Islands, and any Indian tribe.

(g) Minor. The term “minor” means an individual who has not attained the age of 18 years.

(h) Resides. The term “reside” or “resides” means, with respect to an individual, the location of the individual’s home or other place where the individual habitually lives or sleeps.

(i) Sex Offense. The term “sex offense” as used in this ordinance includes those offenses contained in 42 U.S.C. 16911(5) and those offenses enumerated in section 805 of this ordinance or any other covered offense under tribal law.

An offense involving consensual sexual conduct is not a sex offense for the purposes of this ordinance if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.

(j) Sex Offender. A person convicted of a sex offense is a “sex offender”.

(k) Sexual Act. The term “sexual act” means:

(1) Contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;

(2) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(3) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(4) the intentional touching, not through the clothing, of the genitalia of another person that has not attained the age of 18 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(l) Sexual Contact. The intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of another person.

(m) Student. A “student” is a person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, or an institution of higher education.

(n) SORNA. The Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006 P.L. 109-248), 42 U.S.C. 16911 et. seq., as amended.

(o) Sex Offender Registry. The term “sex offender registry” means the registry of sex offenders, and a notification program, maintained by the Fort Peck Tribes.

(p) National Sex Offender Registry (NSOR). The national database maintained by the FBI.

(q) SMART Office. The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking, which was established within the United States Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C. 16945.

(r) Dru Sjodin National Sex Offender Public Website (NSOPW). The public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. 16920.

(s) “Tier 1 Sex Offender”. A “tier 1 sex offender”, or a “sex offender” designated as “tier 1”, is one that has been convicted of a “tier 1” sex offense as defined in section 806.

(t) “Tier 2 Sex Offender”. A “tier 2 sex offender”, or a “sex offender” designated as “tier 2”, is one that has been either convicted of a “tier 2” sex offense as defined in section 807, or who is subject to the recidivist provisions of 807.

(u) “Tier 3 Sex Offender”. A “tier 3 sex offender”, or a “sex offender” designated as “tier 3” is one that has been either convicted of a “tier 3” sex offense as defined in section 808, or who is subject to the recidivist provisions of 808.

### **Sec. 805. Covered offenses.**

Individuals who reside within the exterior boundaries of the Reservation or otherwise reside on property owned by the Tribes in fee or trust regardless of location, are employed within the exterior boundaries of the Reservation or on

property owned by the Tribes in fee or trust regardless of location, or who attend school within the exterior boundaries of the Reservation or on property owned by the Tribes in fee or trust regardless of location, that have been convicted of any of the following offenses, or convicted of an attempt or conspiracy to commit any of the following offenses, are subject to the requirements of this ordinance:

(a) Tribal Offenses. A conviction of any of the following:

- (1) 7 CCOJ 220 (rape),
- (2) 7 CCOJ 221 (statutory rape),
- (3) 7 CCOJ 222 (indecent exposure),
- (4) 7 CCOJ 226 (sexual assault),
- (5) 7 CCOJ 227 (aggravated sexual assault of a child),

(6) 7 CCOJ 228 (sexual exploitation of a child).

(b) Federal Offenses. A conviction for any of the following, and any other offense hereafter included in the definition of “sex offense” at 42 U.S.C. 16911(5):

- (1) 18 U.S.C. 1591 (sex trafficking of children),
- (2) 18 U.S.C. 1801 (video voyeurism of a minor),
- (3) 18 U.S.C. 2241 (aggravated sexual abuse),
- (4) 18 U.S.C. 2242 (sexual abuse),
- (5) 18 U.S.C. 2243 (sexual abuse of a minor),
- (6) 18 U.S.C. 2244 (abusive sexual contact),
- (7) 18 U.S.C. 2245 (offenses resulting in death),
- (8) 18 U.S.C. 2251 (sexual exploitation of children),
- (9) 18 U.S.C. 2251A (selling or buying children),
- (10) 18 U.S.C. 2252 (material involving the sexual exploitation of a minor),
- (11) 18 U.S.C. 2252A (material containing child pornography),
- (12) 18 U.S.C. 2252B (misleading domain names on the internet),

(13) 18 U.S.C. 2252C (misleading words or digital images on the internet),

(14) 18 U.S.C. 2260 (production of sexually explicit depictions of a minor for import into the U.S.),

(15) 18 U.S.C. 2421 (transportation of a minor for illegal sexual activity),

(16) 18 U.S.C. 2422 (coercion and enticement of a minor for illegal sexual activity),

(17) 18 U.S.C. 2423 (Mann Act),

(18) 18 U.S.C. 2424 (failure to file factual statement about an alien individual),

(19) 18 U.S.C. 2425 (transmitting information about a minor to further criminal sexual conduct).

(c) Foreign Offenses. Any conviction for a sex offense involving any conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, or under the laws of any foreign country when the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

(d) Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. 951 note)

(e) Juvenile Offenses or Adjudications. Any sex offense, or attempt or conspiracy to commit a sex offense, that is comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in 18 U.S.C. 2241) and committed by a minor who is 14 years of age or older at the time of the offense. This includes engaging in a sexual act with another by force or the threat of serious violence; or engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim.

Any juvenile adjudicated delinquent of any sex offense shall register as a sex offender for 25 years from the date of conviction. The registrable juvenile offender shall be exempt from public disclosure until his 18th birthday.

(f) Jurisdiction Offenses. Any sex offense committed in any jurisdiction, including the jurisdiction of the Fort Peck Tribes, that involves:

(1) Any type or degree of genital, oral or anal penetration,

(2) Any sexual touching of or sexual contact with a person's body, either directly or through the clothing,

(3) Kidnapping of a minor,

(4) False imprisonment of a minor,

(5) Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct,

(6) Use of a minor in a sexual performance,

(7) Solicitation of a minor to practice prostitution,

(8) Possession, production, or distribution of child pornography,

(9) Criminal sexual conduct that involves physical contact with a minor or the use of the internet to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense,

(10) Any conduct that by its nature is a sex offense against a minor, or

(11) Any offense similar to those outlined in:

(A) 18 U.S.C. 1591 (sex trafficking by force, fraud, or coercion),

(B) 18 U.S.C. 1801 (video voyeurism of a minor),

(C) 18 U.S.C. 2241 (aggravated sexual abuse),

(D) 18 U.S.C. 2242 (sexual abuse),

(E) 18 U.S.C. 2244 (abusive sexual contact),

(F) 18 U.S.C. 2242(b) (coercing a minor to engage in prostitution), or

(G) 18 U.S.C. 2423(a) (transporting a minor to engage in illicit conduct).

### **Subchapter 3. Tiered Offenses**

**Sec. 806. Tier 1 offenses.**

(a) Sex Offenses. A “Tier 1” offense includes any sex offense for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that is not a “Tier 2” or “Tier 3” offense.

(b) Offenses Involving Minors. A “Tier 1” offense also includes any offense for which a person has been convicted by any jurisdiction, local government, or qualifying foreign country pursuant to section 805(c) that involves the false imprisonment of a minor, video voyeurism of a minor, or possession or receipt of child pornography.

(c) Tribal Offenses. Any sex offense covered by this ordinance where punishment was limited to one year in jail shall be considered a “Tier 1” offense:

(d) Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered a conviction for a “Tier 1” offense:

- (1) 18 U.S.C. 1801 (video voyeurism of a minor),
- (2) 18 U.S.C. 2252 (receipt or possession of child pornography),
- (3) 18 U.S.C. 2252A (receipt or possession of child pornography),
- (4) 18 U.S.C. 2252B (misleading domain names on the internet),
- (5) 18 U.S.C. 2252C (misleading words or digital images on the internet),
- (6) 18 U.S.C. 2422(a) (coercion to engage in prostitution),
- (7) 18 U.S.C. 2423(b) (travel with the intent to engage in illicit conduct),
- (8) 18 U.S.C. 2423 (c) (engaging in illicit conduct in foreign places),
- (9) 18 U.S.C. 2423(d) (arranging inducing, procuring or facilitating the travel in interstate commerce of an adult for purpose of engaging in illicit conduct for financial gain.)
- (10) 18 U.S.C. 2424 (failure to file factual statement about an alien individual), or
- (11) 18 U.S.C. 2525 (transmitting information about a minor to further criminal sexual conduct).

(e) Certain Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. 951 note) that is similar to those offenses outlined in section 806(a), (b), or (c) shall be considered a “Tier 1” offense.

**Sec. 807. Tier 2 offenses.**

(a) Recidivism and Felonies. Unless otherwise covered by section 808, any sex offense that is not the first sex offense for which a person has been convicted and that is punishable by more than one year in jail is considered a “Tier 2” offense.

(b) Offenses Involving Minors. A “Tier 2” offense includes any sex offense against a minor for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that involves:

- (1) The use of minors in prostitution, including solicitations,
- (2) Enticing a minor to engage in criminal sexual activity,
- (3) Sexual contact with a minor 13 years of age or older, whether directly or indirectly through the clothing, that involves the intimate parts of the body,
- (4) The use of a minor in a sexual performance, or
- (5) The production or distribution of child pornography.
- (6) A non-forcible Sexual Act with a minor 16 or 17 years old.

(c) Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered a conviction for a “Tier 2” offense:

- (1) 18 U.S.C. 1591 (sex trafficking by force, fraud, or coercion),
- (2) 18 U.S.C. 2243 (sexual abuse of a minor or ward),
- (3) 18 U.S.C. 2244 (abusive sexual contact, where the victim is 13 years of age or older),
- (4) 18 U.S.C. 2251 (sexual exploitation of children),
- (5) 18 U.S.C. 2251A (selling or buying of children),
- (6) 18 U.S.C. 2252 (material involving the sexual exploitation of a minor),

(7) 18 U.S.C. 2252A (production or distribution of material containing child pornography),

(8) 18 U.S.C. 2260 (production of sexually explicit depictions of a minor for import into the United States),

(9) 18 U.S.C. 2421 (transportation of a minor for illegal sexual activity),

(10) 18 U.S.C. 2422(b) (coercing a minor to engage in prostitution),

(11) 18 U.S.C. 2423(a) (transporting a minor to engage in illicit conduct).

(12) 18 U.S.C. 2423(d) (arranging, inducing, procuring or facilitating the travel in interstate commerce of a minor for the purpose of engaging in illicit conduct for financial gain.)

(d) Certain Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. 951 note) that is similar to those offenses outlined in section 807(a), (b), or (c) shall be considered a "Tier 2" offense.

#### **Sec. 808. Tier 3 offenses.**

(a) Recidivism and Felonies. Any sex offense where the offender has at least one prior conviction or an attempt or conspiracy to commit such an offense for a Tier 2 sex offense, or has previously become a Tier 2 sex offender, is a "Tier 3" offense.

(b) General Offenses. A "Tier 3" offense includes any sex offense for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that involves:

(1) Non-parental kidnapping of a minor,

(2) A sexual act with another by force or threat,

(3) A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate, or

(4) Sexual contact with a minor 12 years of age or younger, including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing.

(c) Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered conviction for a "Tier 3" offense:

(1) 18 U.S.C. 2241 (aggravated sexual abuse),

(2) 18 U.S.C. 2242 (sexual abuse),

(3) 18 U.S.C. 2243 (sexual abuse of a minor), or

(4) Where the victim is 12 years of age or younger, 18 U.S.C. 2244 (abusive sexual contact).

(d) Certain Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. 951 note) that is similar to those offenses outlined in section 808(a), (b), or (c) shall be considered a "Tier 3" offense.

### **Subchapter 4. Required Information**

#### **Sec. 809. General requirements.**

(a) Duties. A sex offender covered by this ordinance who is required to register with the Tribes pursuant to Subchapter 5 shall provide all of the information detailed in this chapter to the Fort Peck Tribes, and the Fort Peck Tribes shall obtain all of the information detailed in this chapter from covered sex offenders who are required to register with the Tribes in accordance with this ordinance and shall implement any relevant policies and procedures.

(b) Digitization. All information obtained under this ordinance shall be, at a minimum, maintained by the Fort Peck Tribes in a digitized format.

(c) Electronic Database. A sex offender registry shall be maintained in an electronic database by the Fort Peck Tribes and shall be in a form capable of electronic transmission.

#### **Sec. 810. Criminal history.**

(a) Criminal History. The Fort Peck Tribes or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's criminal history:

(1) The date of all arrests,

(2) The date of all convictions,

(3) The sex offender's status of parole, probation, or supervised release,

(4) The sex offender's registration status, and

(5) Any outstanding arrest warrants.

**Sec. 811. Date of birth.**

(a) Date of Birth. The Fort Peck Tribes or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's date of birth:

(1) The sex offender's actual date of birth, and

(2) Any other date of birth used by the sex offender.

**Sec. 812. DNA sample.**

(a) DNA. If a sex offender's DNA is not already contained in the Combined DNA Index System (CODIS), the sex offender shall provide the Fort Peck Tribes or designee a sample of his DNA.

(b) CODIS. Any DNA sample obtained from a sex offender shall be submitted to an appropriate lab for analysis and entry of the resulting DNA profile into CODIS.

**Sec. 813. Driver's licenses, identification cards, passports, and immigration documents.**

(a) Driver's License. The Fort Peck Tribes or designee shall obtain, and a covered sex offender shall provide, a photocopy of all of the sex offender's valid driver's licenses issued by any jurisdiction.

(b) Identification Cards. The Fort Peck Tribes or designee shall obtain, and a covered sex offender shall provide, a photocopy of any identification card including the sex offender's tribal enrollment card issued by any jurisdiction.

(c) Passports. The Fort Peck Tribes or designee shall obtain, and a covered sex offender shall provide, a photocopy of any passports used by the sex offender.

(d) Immigration Documents. The Fort Peck Tribes or designee shall obtain, and a covered sex offender shall provide, a photocopy of any and all immigration documents.

**Sec. 814. Employment information.**

(a) Employment. The Fort Peck Tribes or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's employment, to include any and all places where the sex offender is employed in any means including volunteer and unpaid positions:

(1) The name of the sex offender's employer,

(2) The address of the sex offender's employer, and

(3) Similar information related to any transient or day labor employment.

**Sec. 815. Finger and palm prints.**

Finger and Palm Prints. The Fort Peck Tribes or designee shall obtain, and covered sex offender shall provide, both finger prints and palm prints of the sex offender in a digitized format. The prints shall be obtained through the use of Live Scan and submitted through the Integrated Automated Fingerprint Identification System (IAFIS). The palm prints will be submitted to the FBI Database NPPS (National Palm Print System).

**Sec. 816. Internet identifiers.**

(a) Internet Names. The Fort Peck Tribes or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's internet related activity:

(1) Any and all email addresses used by the sex offender,

(2) Any and all Instant Message addresses and identifiers,

(3) Any and all other designations or monikers used for self-identification in internet communications or postings, and

(4) Any and all designations used by the sex offender for the purpose of routing or self-identification in internet communications or postings.

**Sec. 817. Name.**

(a) Name. The Fort Peck Tribes or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's name:



(1) The sex offender's full primary given name,

(2) Any and all nicknames, aliases, and pseudonyms regardless of the context in which it is used, and

(3) Any and all ethnic or tribal names by which the sex offender is commonly known. This does not include any religious or sacred names not otherwise commonly known.

**Sec. 818. Phone numbers.**

(a) The Fort Peck Tribes or designee shall obtain, and a covered sex offender shall provide, any and all telephone numbers and any other designations used by sex offenders for purposes of routing or self-identification in telephonic communications including but not limited to:

(1) Any and all land line telephone numbers,

(2) Any and all cellular telephone numbers, and

(3) Any and all Voice over IP (VOIP) telephone numbers.

**Sec. 819. Picture.**

(a) Photograph. The Fort Peck Tribes or designee shall obtain, and a covered sex offender shall provide, a current photograph of the sex offender.

(b) Update Requirements. Unless the appearance of a sex offender has not changed significantly, a digitized photograph shall be collected:

(1) Every 90 days for Tier 3 sex offenders,

(2) Every 180 days for Tier 2 sex offenders, and

(3) Every year for Tier 1 sex offenders.

**Sec. 820. Physical description.**

(a) Physical Description. The Fort Peck Tribes or designee shall obtain, and a covered sex offender shall provide, an accurate description of the sex offender as follows:

(1) A physical description,

(2) A general description of the sex offender's physical appearance or characteristics, and

(3) Any identifying marks, such as, but not limited to, scars, moles, birthmarks, or tattoos.

**Sec. 821. Professional licensing information.**

(a) Professional Licenses. The Fort Peck Tribes or designee shall obtain, and a covered sex offender shall provide, all licensing of the sex offender that authorizes the sex offender to engage in an occupation or carry out a trade or business.

**Sec. 822. Residence address.**

(a) Address. The Fort Peck Tribes or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's residence:

(1) The address of each residence at which the sex offender resides or will reside, and

(2) Any location or description that identifies where the sex offender habitually resides regardless of whether it pertains to a permanent residence or location otherwise identifiable by a street or address.

**Sec. 823. School.**

(a) School Location. The Fort Peck Tribes or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's school:

(1) The address of each school where the sex offender is or will be a student, and

(2) The name of each school the sex offender is or will be a student.

**Sec. 824. Social Security number.**

(a) Social Security. The Fort Peck Tribes or designee shall obtain, and a covered sex offender shall provide, the following information:

(1) A valid Social Security number for the sex offender, and

(2) Any Social Security number the sex offender has used in the past, valid or otherwise.

**Sec. 825. Temporary lodging.**

(a) Lodging Information. The Fort Peck Tribes or designee shall obtain, and a covered sex offender shall provide, the following information when the sex offender will be absent from his residence for 7 days or more:

(1) Identifying information of the temporary lodging locations including addresses and names, and

(2) The dates the sex offender will be staying at each temporary lodging location.

(3) The registered sex offender shall provide the information in Section 825 (1) and (2) no later than 3 days before their scheduled travel. The information shall be provided in person.

**Sec. 825-A. International travel.**

Sex offenders must inform the Fort Peck Tribes 21 days in advance if they intend to travel outside of the United States. The Fort Peck Tribes must notify the U.S. Marshals Service and immediately notify any other jurisdiction where the sex offender is either registered, or is required to register, of that updated information. Update also must be made to NCIC/NSOR.

**Sec. 826. Offense information.**

(a) Offense Information. The Fort Peck Tribes or designee shall obtain the text of each provision of law defining the criminal offense(s) for which the sex offender is registered.

**Sec. 827. Vehicle information.**

(a) Detailed Information. The Fort Peck Tribes or designee shall obtain, and a covered sex offender shall provide, the following information related to all vehicles owned or operated by the sex offender for work or personal use including land vehicles, aircraft, and watercraft:

(1) License plate numbers,

(2) Registration numbers or identifiers,

(3) General description of the vehicle to include color, make, model, and year, and

(4) Any permanent or frequent location where any covered vehicle is kept.

**Sec. 828. Frequency, duration and reduction.**

(a) Frequency. A sex offender who is required to register shall, at a minimum, appear in person at the Fort Peck Tribes for purposes of verification and keeping their registration current in accordance with the following time frames:

(1) For "Tier 1" offenders, once every year for the rest of their lives from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.

(2) For "Tier 2" offenders, once every 180 days for the rest of their lives from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.

(3) For "Tier 3" offenders, once every 90 days for the rest of their lives.

**Sec. 829. Requirements for in-person appearances.**

(a) Photographs. At each in-person verification, the sex offender shall permit the Fort Peck Tribes to take a photograph of the offender.

(b) Review of Information. At each in-person verification, the sex offender shall review existing information for accuracy.

(c) Notification. If any new information or change in information is obtained at an in-person verification, the Fort Peck Tribes shall immediately notify all other jurisdictions in which the sex offender is required to register of the information or change in information. If any new information or change in information is obtained at an in-person verification, the Fort Peck Tribes shall immediately update the public website and update information on NCIC/NSOR.

**Subchapter 5. Registration**

**Sec. 830. Where registration is required.**

(a) Jurisdiction of Conviction. A sex offender must initially register with the Fort Peck Tribes if the sex offender was convicted by the Tribal Court of a covered sex offense regardless of the sex offender's actual or intended residency.

(b) Jurisdiction of Incarceration. A sex offender must register with the Fort Peck Tribes if the sex offender is incarcerated by the Tribes while completing any sentence for a covered sex offense,

regardless of whether it is the same jurisdiction as the jurisdiction of conviction or residence.

(c) Jurisdiction of Residence. A sex offender must register with the Fort Peck Tribes if the sex offender resides within lands subject to the jurisdiction of the Tribes.

(d) Jurisdiction of Employment. A sex offender must register with the Fort Peck Tribes if he or she is employed by the Tribes in any capacity or otherwise is employed within lands subject to the jurisdiction of the Tribes.

(e) Jurisdiction of School Attendance. A sex offender must register with the Fort Peck Tribes if the sex offender is a student in any capacity within lands subject to the jurisdiction of the Tribes.

### **Sec. 831. Timing of registration.**

(a) Timing. A sex offender required to register with the Tribes under this ordinance shall do so in the following time frame:

(1) If convicted by the Tribes for a covered sex offense and incarcerated, the sex offender must register before being released from incarceration;

(2) If convicted by the Tribes but not incarcerated, within 3 business days of sentencing for the registration offense, and

(3) Within 3 business days of establishing a residence, commencing employment, or becoming a student on lands subject to the jurisdiction of the Tribes, a sex offender must appear in person to register with the Fort Peck Tribes.

(b) Duties of the Fort Peck Tribes. The Fort Peck Tribes shall have policies and procedures in place to ensure the following:

(1) That the sex offender is informed of his or her duties under SORNA and the duties are explained to the sex offender,

(2) That any sex offender incarcerated or sentenced by the Tribes for a covered sex offense completes their initial registration with the Tribes,

(3) That the sex offender reads, or has read to them, and signs a form stating that the duty to register has been explained to them and that the sex

offender understands the registration requirement. The form will be digitized and available for transfer to another jurisdiction if requested,

(4) That the sex offender is registered,

(5) That upon entry of the sex offender's information into the registry, that information is immediately forwarded to all other jurisdictions in which the sex offender is required to register due to the sex offender's residency, employment, or student status.

(6) That all information is entered and updated in NCIC/NSOR, and

(7) That the sex offender registration information is posted on the Fort Peck Tribes' public website.

### **Sec. 832. Retroactive registration.**

(a) Retroactive Registration. The Fort Peck Tribes shall have in place policies and procedures to ensure the following three categories of sex offenders are subject to the registration and updating requirements of this ordinance:

(1) Sex offenders incarcerated or under the supervision of the Tribes, whether for a covered sex offense or other crime,

(2) Sex offenders already registered or subject to a pre-existing sex offender registration requirement under the Tribes' laws, and

(3) Sex offenders reentering the justice system due to conviction for any crime.

(b) Timing of Recapture. The Fort Peck Tribes shall ensure recapture of the sex offenders mentioned in section 832(a) within the following time frame to be calculated from the date of passage of this ordinance:

(1) For Tier 1 sex offenders, 1 year,

(2) For Tier 2 sex offenders, 180 days, and

(3) For Tier 3 sex offenders, 90 days.

### **Sec. 833. Keeping registration current.**

(a) Jurisdiction of Residency. All sex offenders required to register in this jurisdiction shall immediately appear in person at the Fort Peck Tribes to update any changes to their name, residence (including termination of residency), employment, or school attendance. All sex offenders

required to register in this jurisdiction shall immediately inform the Fort Peck Tribes of any changes to their temporary lodging information, vehicle information, internet identifiers, or telephone numbers. In the event of a change in temporary lodging, the sex offender and the Fort Peck Tribes shall immediately notify the jurisdiction in which the sex offender will be temporarily staying.

(b) Jurisdiction of School Attendance. Any sex offender who is a student in any capacity within lands subject to the jurisdiction of the Tribes regardless of location that change their school, or otherwise terminate their schooling, shall immediately appear in person at the Fort Peck Tribes to update that information. The Fort Peck Tribes shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, are immediately notified of the change.

(c) Jurisdiction of Employment. Any sex offender who is employed by the Tribes in any capacity or otherwise is employed within lands subject to the jurisdiction of the Tribes regardless of location that change their employment, or otherwise terminate their employment, shall immediately appear in person at the Fort Peck Tribes to update the information. The Fort Peck Tribes shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, are immediately notified of the change.

(d) Duties of the Fort Peck Tribes. With regard to changes in a sex offender's registration information, the Fort Peck Tribes or designee shall immediately notify:

(1) All jurisdictions where a sex offender intends to reside, work, or attend school.

(2) Any jurisdiction where the sex offender is either registered or required to register, and

(3) Specifically with respect to information relating to a sex offender's intent to commence residence, school, or employment outside of the United States, any jurisdiction where the sex offender is either registered or required to register,

and the U.S. Marshals Service. The Tribal police shall also ensure this information is immediately updated on NSOR.

#### **Sec. 834. Failure to appear for registration and absconding.**

(a) Failure to Appear. In the event a sex offender fails to register with the Tribes as required by this ordinance, the Fort Peck Tribes or designee shall immediately inform the jurisdiction that provided notification that the sex offender was to commence residency, employment, or school attendance with the Tribes that the sex offender failed to appear for registration.

(b) Absconded Sex Offenders. If the Fort Peck Tribes or designee receives information that a sex offender has absconded the Fort Peck Tribes shall make an effort to determine if the sex offender has actually absconded.

(1) In the event no determination can be made, the Fort Peck Tribes or designee shall ensure that the Tribal police and any other appropriate law enforcement agency is notified.

(2) If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, they shall be informed that the sex offender has failed to appear and register.

(3) If an absconded sex offender cannot be located, then the Tribal police shall take the following steps:

(A) Update the registry to reflect the sex offender has absconded or is otherwise not capable of being located,

(B) Notify the U.S. Marshals Service,

(C) Seek a warrant for the sex offender's arrest. The U.S. Marshals Service or FBI may be contacted in an attempt to obtain a federal warrant for the sex offender's arrest,

(D) Update the NCIC/ NSOR to reflect the sex offender's status as an absconder, or is otherwise not capable of being located, and

(E) Enter the sex offender in the National Crime Information Center Wanted Person File.

(c) Failure to Register. In the event a sex offender who is required to register due to their employment or school attendance status fails to do

so or otherwise violates a registration requirement of this ordinance, the Fort Peck Tribes shall take all appropriate follow-up measures including those outlined in section 505(b). The Fort Peck Tribes shall first make an effort to determine if the sex offender is actually employed or attending school in lands subject to the Tribes' jurisdiction.

### **Subchapter 6. Public Sex Offender Registry Website**

#### **Sec. 835. Website.**

(a) Website. The Fort Peck Tribes shall use and maintain a public sex offender registry website.

(b) Links. The registry website shall include links to sex offender safety and education resources.

(c) Instructions. The registry website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.

(d) Warnings. The registry website shall include a warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties.

(e) Search Capabilities. The registry website shall have the capability of conducting searches by

- (1) Name;
- (2) County, city, and/or town; and,
- (3) Zip code and/or geographic radius.

(f) Dru Sjodin National Sex Offender Public Website. The Tribes shall include in the design of its website all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General of the United States.

#### **Sec. 836. Required and prohibited information.**

(a) Required Information. The following information shall be made available to the public on the sex offender registry website:

(1) Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded,

(2) All sex offenses for which the sex offender has been convicted,

(3) The sex offense(s) for which the offender is currently registered,

(4) The address of the sex offender's employer(s),

(5) The name of the sex offender including all aliases,

(6) A current photograph of the sex offender,

(7) A physical description of the sex offender,

(8) The residential address and, if relevant, a description of a habitual residence of the sex offender,

(9) All addresses of schools attended by the sex offender, and

(10) The sex offender's vehicle license plate number along with a description of the vehicle.

(b) Prohibited Information. The following information shall not be available to the public on the sex offender registry website:

(1) Any arrest that did not result in conviction,

(2) The sex offender's Social Security number,

(3) Any travel and immigration documents,

(4) The identity of the victim, and

(5) Internet identifiers (as defined in 42 U.S.C. 16911).

(c) Witness Protection. For sex offenders who are under a witness protection program, the Tribal police may honor the request of the United States Marshals Service or other agency responsible for witness protection by not including the original identity of the offender on the publicly accessible sex offender registry website.

#### **Sec. 837. Community notification.**

(a) Law Enforcement Notification. Whenever a sex offender registers or updates his or her information with the Tribes, the Fort Peck Tribes shall:

(1) Immediately notify the SORNA Exchange Portal and immediately update NCIC/NSOR or other relevant databases.

(2) Immediately notify any agency, department, or program within the Tribes that is responsible for criminal investigation, prosecution, child welfare or sex offender supervision functions, including but not limited to, police, whether BIA, Tribal, or FBI, Tribal prosecutors, and Tribal probation.

(3) Immediately notify any and all other registration jurisdictions where the sex offender is registered due to the sex offender's residency, school attendance, or employment.

(4) Immediately notify National Child Protection Act agencies, which includes any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a) when a sex offender registers or updates registration.

(b) Community Notification. The Fort Peck Tribes shall ensure there is an automated community notification process in place that ensures the following:

(1) Upon a sex offender's registration or update information with the Tribes, the Tribes' public sex offender registry website is immediately updated, and

(2) The Tribes' public sex offender registry has a function that enables the general public to request an e-mail notice that will notify them when a sex offender commences residence, employment, or school attendance with the Tribes, within a specified zip code, or within a certain geographic radius. This e-mail notice shall include the sex offender's identity so that the public can access the public registry for the new information.

## **Subchapter 7. Immunity**

### **Sec. 838. Immunity.**

(a) No Waiver of Immunity. Nothing under this ordinance shall be construed as a waiver of sovereign immunity for the Fort Peck Tribes, its departments, agencies, employees or agents.

(b) Good Faith. Any person acting under good faith of this ordinance shall be immune from any civil liability arising out of such actions.

## **Subchapter 8. Crimes and Civil Sanctions**

### **Sec. 839. Crimes and civil sanctions.**

(a) Criminal Penalty. Each violation of a provision of this ordinance by a sex offender who is an Indian shall be considered a felony.

(b) Civil Penalty. Each violation of a provision of this ordinance by a sex offender who is not an Indian shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of fines, forfeitures, civil contempt.

(c) Hindrance of Sex Offender Registration. A person is guilty of a felony if he or she:

(1) Intentionally harbors or intentionally attempts to harbor, or intentionally assists another person in harboring or attempting to harbor a sex offender who is in violation of this ordinance.

(2) Intentionally assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this ordinance; or

(3) Provides information to a law enforcement agency regarding a sex offender which the person knows to be false.

### **Sec. 840. Powers of the SORNA compliance officer.**

(a) A SORNA compliance officer, in his or her supervision of an adult offender, is vested with:

(1) The authority to arrest and/or detain the supervised offender and orally request any officer with the power to arrest to do so by giving the officer oral authorization and within 12 hours, delivering to the detention center a written statement setting forth that the supervised offender has, in the judgment of the SORNA compliance officer, violated the conditions of the SORNA registration and notification process. A written statement or oral authorization delivered with the supervised offender by the arresting officer to the official in charge of the detention center is sufficient warrant for the detention of the supervised offender if the SORNA compliance officer delivers the written statement within 12 hours of the supervised offender's arrest.

(2) The authority to conduct a search without a warrant upon reasonable cause or upon terms agreed upon in the signed Sex Offender Acknowledgment Form.

**(AS PER RESOLUTION NO.  
28-1719-2017-03; DATED 3/27/2017)**

**Sec. 841-849 Reserved**

## **Subchapter 9. Violent Offender Registration**

### **Sec. 850. Registration of violent offenders.**

(a) A person convicted in the Fort Peck Tribal Court for offenses of any Sections 201, 202, 210, 230, 244 (for third and sequent offenses), 301, 321, 415, and/or 423 shall be required to notify within 10 days, the Fort Peck Tribal police of their residential address, whether upon their conviction and release from Court, or as a condition for release from the Tribal jail, and regardless of whether released on probation or for having finished their jail sentence. Failure to register shall be convicted as a felony, punishable as per 7 CCOJ 501(1).

(b) A violent offender required to register under this section shall register:

(1) For the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing, but the offender is not relieved of the duty to register until a petition is granted under subsection (c) or

(2) If convicted during the 10-year period provided in subsection (b)(1) of failing to register or keep registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to register as provided in subsection (c).

(c) An offender required to register for 10 years under subsection (b)(1) may, after 10 years have passed, petition the Court for an order relieving the offender of the duty to register. The petition must be served on the Fort Peck Tribal Court Prosecutor. The petition must be granted if the defendant has not been convicted under subsection (b)(2).

(d) Before releasing a violent offender from custody or confinement, the official in charge of such custody or confinement shall:

(1) Again notify the violent offender orally and in writing of the violent offender's duty to register under this section; and

(2) Obtain from the violent offender and record with the Fort Peck Tribal police and law enforcement of Roosevelt, Valley, Daniels, and Phillips counties the registration materials appropriate for that offender. The police of Wolf Point and Poplar shall be notified.

(e) Registration Requirements.

(1) There shall be a Tribal and State world wide web site containing the registered notices of all current violent offenders within the boundaries of the Fort Peck Reservation.

(2) There shall be a publicly available binder with the Tribal Police Department office listing the violent offenders in their jurisdiction.

(f) A violent offender residing with the exterior boundaries of the Fort Peck Reservation shall give the Fort Peck Tribal police notice of an intention to move outside the Reservation as soon as the decision to move is made. The Fort Peck Tribal police, within 3 days after receipt of being

informed that the convicted violent offender is moving outside the Fort Peck Reservation, shall forward to law enforcement agencies having jurisdiction over the new address, notification of the violent offender's new address, and shall cooperate in furnishing the appropriate public records.

**(AMENDED AS PER RESOLUTION NO. 1454-2010-12, DATED 12/13/2010.)**

## **Chapter 9. Expungement**

### **Sections:**

- Sec. 901. Expungement. .... 31
- Sec. 902. Expungement procedure. .... 31

### **Sec. 901. Expungement.**

(a) Any person charged with any criminal offense under the jurisdiction of the Tribal Court and has been adjudged not guilty either by judge or jury may petition the Court to have all records (Court and Law Enforcement) of the matter expunged.

(b) Any person charged with any criminal offense under the jurisdiction of the Tribal Court that has been dismissed may petition the Court to have all records (Court and Law Enforcement) of the matter expunged.

(c) Any person charged with any criminal offense under the jurisdiction of the Tribal Court and has been adjudged guilty either by judge or jury and that qualifies under any of the below-mentioned criteria, may petition the Court to have all records (Court and Law Enforcement) of the matter expunged:

- (1) Successful completion of sentence; or
- (2) Successful completion of suspension or deferred imposition of sentence; or
- (3) Successful completion of probation.

### **Sec. 902. Expungement procedure.**

(a) A Petition for Expungement shall contain a request for expungement of records of one cause only.

(b) A Petition for Expungement of records shall include:

- (1) The date of Petition,

- (2) Petitioner's name,
- (3) Petitioner's age,
- (4) The cause number of the charged offense for which petitioner seeks expungement.
- (5) The crime charged,
- (6) The disposition of the Court,
- (7) The applicable qualification under Section 901 of this chapter,
- (8) A statement provided by the Clerk of Court that any applicable qualification under Section 901 of this chapter was successfully completed.

(c) Upon receipt of Petition for Expungement, the Court shall issue an order with 30 days of the filing date of the Petition.

(d) Upon receipt of Petition for Expungement, the Court shall review all court and law enforcement documents in consideration of the Petition.

(e) The Court shall use its discretion in determination of whether to order expungement of records.

**(RESOLUTION NO. 1453-2020-10, DATED 12/13/2010.)**



**Chapter 10. Fort Peck Wellness Court Programs**

**Sections:**

Sec. 1001. Purpose.....32  
Sec. 1002. Definitions.....32  
Sec. 1003. Jurisdiction. ....32  
Sec. 1004. Rules of evidence. ....33  
Sec. 1005. Wellness Court procedures.....33

**Sec. 1001. Purpose.**

This chapter shall be interpreted and construed so as to implement the following purposes and policies:

(a) To offer treatment to both juvenile and adult offenders who have committed a crime that is directly or indirectly related to a substance abuse or addiction issue;

(b) To identify and recommend potential Wellness Court participants to the Wellness Court Team for legal and clinical screening as soon as possible during the sentencing or dispositional stage of the court process;

(c) To strictly monitor and supervise each participant through regular and frequent drug and alcohol testing, court appearances and program requirements;

(d) To impose immediate sanctions and offer immediate rewards or incentives when a participant’s behavior warrants such actions; and

(e) To make the participant a part of the Wellness Court Team and to encourage and support each participant in the goal of individual wellness.

**Sec. 1002. Definitions.**

**Wellness Court.** The Wellness Court means the entire Wellness Court programs. The Wellness Court includes the Family to Healing to Wellness Court and the DUI Court (Driving Under the Influence). Every section in this Chapter applies equally to the Family Healing to Wellness Court and the DUI Court. The Wellness Court is a Trial Court of Special Jurisdiction with jurisdiction to hear all cases referred to it pursuant to Fort Peck Tribal Law.

**Wellness Court Judge.** The Wellness Court Judge shall be designated by the Chief Judge.

**Sec. 1003. Jurisdiction.**

(a) The Wellness Court shall have jurisdiction over any case that is transferred to it by the Fort Peck Tribal Court. Upon successful completion of the Wellness Court program, or at such time when a participant of the Wellness Court becomes ineligible to continue in the program as set out in the Wellness Court policies and procedures, the Wellness Court will transfer jurisdiction of each case back to the Fort Peck Tribal Court for any final disposition.

(b) Referrals to the Wellness Court shall be made by prosecutors, public defenders, social workers and case managers who work within the Fort Peck Tribal Court system once a criminal defendant has plead guilty to or has been convicted of at least one criminal charge where alcohol or drugs is at issue. Wellness Court referrals may be made as a part of a conditional sentence or may be made as part of a mixed or suspended sentence.

(c) Once a referral is made to the Wellness Court, the Wellness Court caseworker shall be assigned to the case to evaluate the eligibility of the individual and shall report any ineligible individuals back to the appropriate court.

**Sec. 1004. Rules of evidence.**

The Wellness Court shall not be a court of record. Any information obtained, used or disclosed by a member of the Wellness Court Team, including the participant, while the participant is under the jurisdiction of the Wellness Court shall not be used as evidence against the participant in any other proceeding in the Fort Peck Tribal Court or any other court in any other jurisdiction. All Wellness Court records are privileged and confidential and shall not be disclosed except to the members of the Wellness Court Team. The Rules of Evidence adopted by the Fort Peck Tribes shall not apply in any Wellness Court proceedings.

**Sec. 1005. Wellness Court procedures.**

(a) Establishment of policies and procedures.

(1) Policies and procedures for the Wellness Court shall be established by the Fort Peck Tribal Wellness Court Planning Team.

(2) Thereafter, the Wellness Court Team shall amend and modify the policies and procedures as necessary to improve the Wellness Court process. Any such amendments or modifications shall be by a majority vote at a Wellness Court Team Meeting and only after notice of the meeting is given each member of the Wellness Court Team at least 10 days prior to the meeting.

(3) In order for the policies and procedures to be amended or modified, there shall be present at the Wellness Court Team meeting the judge and at least four other members of the Wellness Court Team.

(b) Hearings.

(1) All Wellness Court hearings shall be closed to the public. Only participants and members of the Wellness Court Team shall be present during the court hearings. An individual participant may request that other participants be barred from the courtroom during a court hearing and the judge shall honor the request.

(2) The Wellness Court is strictly a non-adversarial forum and there shall be no prosecuting or defense attorneys/lay counselors allowed to participate in any court proceedings.

(3) The Wellness Court Judge shall make all findings relevant to each participant’s case pursuant to the policies and procedures adopted by the Wellness Court Team.

(4) Wellness Court hearings shall proceed pursuant to the policies and procedures adopted by the Wellness Court Team.

(5) Wellness Court hearings shall require a quorum of the Wellness Court Team in order to proceed. A quorum of the Wellness Court Team shall be defined as the judge, the case manager or court coordinator, the treatment specialist and at least one other member of the Wellness Court Team as may be described in the policies and procedures adopted by the Wellness Court Team.

(c) Sanctions. If a participant is not compliant with the requirements of the Wellness Court, sanctions against the non-compliant individual may be issued by the Wellness Court Judge. Sanctions include but are not limited to incarceration, community service work and an increase in requirements issued by the Wellness Court Team. **(AS PER RESOLUTION #26-1953-2013-02; DATED 02/11/2013)**

**Chapter 11. Traffic Court Procedure**

**Sections:**

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- Sec. 1102. Traffic Court Proceedings. .... 34
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**Sec. 1101. Purpose.**

The Traffic Court is a division of the Tribal Court of the Fort Peck Tribes. The procedure in this part is intended to provide for the just determination of traffic cases through a simple and uniform process and the elimination of unnecessary expense and delay.

**Sec. 1102. Traffic Court Proceedings.**

All proceedings in Traffic Court shall be held before a judge of the Tribal Court designated to hear such cases. Traffic Court trials shall be tape recorded and the tape shall be maintained for a period of 20 days after entry of judgment, but the tape will not be archived unless a timely appeal is filed in the manner provided by this Code.

**Sec. 1103. Presumption of Innocence and Burden of Proof.**

Traffic Court defendants shall be presumed innocent until proven guilty or until a plea of guilty or no contest is entered. A plea of not guilty requires the Tribes to prove beyond a reasonable doubt that the defendant committed the cited traffic offense.

**Sec. 1104. Defendant's Rights in Traffic Court.**

All defendants in Traffic Court shall have the following rights:

- (a) The right to be informed of the charge(s) against the defendant and the maximum penalty allowed under Tribal law for each charge;
- (b) The right to have assistance from or be represented by an attorney/lay advocate ( at the defendant's own expense);
- (c) The right to plead either guilty, not guilty, or no contest, and if the defendants pleads guilty or no contest, to have the judge immediately sentence the defendant or if the defendant pleads not guilty, to have the judge immediately schedule a trial of the charge(s);
- (d) The right to a prompt, open and public trial before the judge and at that hearing to cross-examine the Tribes witnesses and to call witnesses and present relevant evidence on the defendant's behalf;

(e) The right to remain silent and, if the defendant chooses to remain silent, the right to have no inference drawn from the defendant's silence;

(f) The right to be advised that any statement made by the defendant may be used in evidence against the defendant;

(g) The right to request that the Court issue subpoenas for witnesses;

(h) The right to appeal the judge's final judgment to the Fort Peck Court of Appeals within 15 working days of the date of final judgment.

**Sec. 1105. Initial appearance in Traffic Court.**

(a) A defendant shall make an initial appearance in Traffic Court on the date and time specified on the traffic citation or upon legal notice by the Court.

(b) At the initial appearance, the judge shall advise the defendant of his or her rights and the Traffic Court procedures.

(c) After informing the defendant of the charge(s) and possible penalties, the judge shall ask the defendant how he or she pleads.

(d) If the defendant pleads guilty or no contest, the judge shall then proceed to sentencing. After the judge informs the defendant of the sentence, the defendant may request to make arrangements for the payment of any fines imposed. A judgment form shall be completed and signed by the judge and a copy shall be provided to the defendant. The judgment shall state the judgment rendered, sentence imposed, and the fine payment deadline.

(e) If the defendant pleads not guilty, the judge shall schedule a date and time for a Traffic Court bench trial. Jury trials are not provided in Traffic Court.

(f) If the defendant pleads not guilty, the judge shall order the prosecutor to provide the defendant with a written report describing the circumstances of the offense. The report shall be provided at least 10 working days before the pretrial conference.

**Sec. 1106. Forfeiture of Bond in Lieu of Appearance.**

A defendant may pay and forfeit the scheduled bond for the cited offense and thereby be relieved of the obligation to appear. Forfeiture of the bond shall constitute a conviction on the cited offense.

**Sec. 1107. Traffic Court Bench Trials.**

(a) The Traffic Court bench trial shall be held in the Tribal courtroom on the date and time set in the Scheduling Order. Either the defendant or the prosecutor may request a continuance of the bench trial which shall be granted for good cause by the Court.

(b) The prosecutor and the defendant each bear the responsibility of notifying the witnesses they wish to call to testify at the bench trial. Upon request by either party, the Court shall issue subpoenas for any witness whose testimony is necessary for a just adjudication of the case at trial.

(c) Traffic Court bench trials shall be recorded as provided in Sec. 1102 of this Chapter and all witnesses shall be sworn before being allowed to testify.

(d) The prosecutor shall present the Tribes case first. The defendant may cross-examine any witnesses called by the prosecutor.

(e) After the prosecutor has presented the Tribes case, the defendant may then present his or her case to the Court. The defendant may elect to testify, but may not be required to testify. The defendant may call witnesses to testify on his or her behalf and may present other evidence regarding the charge(s). The prosecutor may cross-examine the defendant's witnesses.

(f) After the defendant has concluded his or her case, the parties may make concluding arguments before the Court.

(g) On the record, after considering the testimony and evidence presented at trial, the judge shall find the defendant either guilty or not guilty on the charge(s). If the defendant is found guilty, the judge shall announce the sentence for each offense and the deadline for payment of fines or the completion of other penalties. The defendant request to may enter into a payment schedule agreement with the Court.

**Sec. 1108. Failure to Appear.**

If a defendant fails to appear in Traffic Court on the date and time scheduled for initial appearance or on the date and time scheduled for trial, the judge may issue a warrant for the defendant's arrest pursuant to 17 CCOJ 125(c).

**Sec. 1109. Sentencing in Traffic Court.**

Traffic Court may only hear cases involving violations punishable by a fine or other penalty which does not include jail time. No one appearing in Traffic Court may be sentenced to serve time in jail unless he or she is found in contempt. Violations cited into Traffic Court which carry a possible jail sentence shall be transferred to the Criminal Court Division.

**Sec. 1110. Appeal.**

Decisions rendered in Traffic Court may be appealed according to the Rules of Appellate Procedure. Pursuant to 17 CCOJ 128, there is no right of appeal when the sentence is a monetary fine.

**Sec. 1111. Record of Convictions.**

The clerk of court shall not submit a record of the conviction to the Montana Department of Motor Vehicles for Traffic Court convictions.

**(AS PER RESOLUTION NO. 26-2292-2013-04; DATED 4/30/2013)**

**Fort Peck Tribal Court**  
**807 Court Avenue - P.O. Box 1027**  
**Poplar, MT 59255**



**Title 7 – Criminal Offenses**

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### Subchapter A. General Provisions

#### Sec. 101. Reserved.

#### Sec. 102. Criminal offenses based on voluntary conduct.

No person shall be convicted of an offense except based on conduct which includes a voluntary act or the omission to perform an act of which the defendant is physically capable. Unless otherwise provided in this Code with respect to a particular offense, an offense is established only if a person acts intentionally with respect thereto.

#### Sec. 103. States of Mind.

(a) "Intentional". A defendant's state of mind is intentional with respect to result or to conduct if the defendant's conscious objective is to engage in such conduct or to cause such a result.

(b) "Negligent". Conduct is negligent if, with respect to a result or to a circumstance, a person should be aware of a substantial and unjustifiable risk that such a result will occur or that such a circumstance exists, and his/her conduct involves a significant deviation from the standard of care that a reasonable person would observe.

(c) "Reckless". Conduct is reckless if, with respect to a result or to a circumstance, a person consciously disregards a substantial risk that such result will occur or that such a circumstance exists, and the risk is of such a nature and degree that its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the situation.

#### Sec. 104. Burden of proof.

(a) The Tribes have the burden of proving each element of an offense beyond a reasonable doubt.

(b) Whenever the defendant introduces sufficient evidence of a defense to support a reasonable belief as to the existence of that defense, the Tribes have the burden of disproving such defense beyond a reasonable doubt, unless this Code or another ordinance expressly requires the defendant to prove the defense by a preponderance of evidence.

#### Sec. 105-109. Reserved

### Subchapter B. Defenses

#### Sec. 110. Ignorance or mistake.

(a) Ignorance or mistake as to a matter of fact or law is a defense if:

(1) The ignorance or mistake negates the necessary mental state required for the commission of an offense; or

(2) The law provides that the state of mind established by such ignorance or mistake constitutes a defense.

(b) Whenever in this Code, an offense depends on a child being below the age of twelve (12) years of age, it is no defense that the defendant did not know the child's age, or reasonably believed the child to be older than twelve (12) years of age. When criminality depends on the child's being below a critical age other than twelve (12) years of age, it is an affirmative defense for the defendant to prove that he/she reasonably believed the child to be above the critical age.

**Sec. 111. Intoxication.**

(a) Intoxication is not a defense unless it negates an element of the offense.

(b) When negligence or recklessness establishes an element of the offense, self-induced intoxication is no defense.

(c) Intoxication does not, in itself, constitute a mental disease or defect within the meaning of Section 112.

**Sec. 112. Mental disease or defect.**

(a) A person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect, he/she lacks substantial capacity either to appreciate the wrongfulness of that conduct or to conform that conduct to the requirements of law.

(b) As used in this Section, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

**Sec. 113. Self-defense.**

(a) The use of reasonable force is a defense when a person reasonably believes that such force is immediately necessary to protect himself/herself.

(b) A person is not justified in using force for the purpose of resisting arrest, execution of process, or other performance of duty by a public servant regardless of whether the conduct of the public servant is lawful; but clearly excessive force on the part of the public servant may be resisted.

(c) A person is not justified in using force if the conduct of the person against whom force is used was provoked by the defendant himself/herself with the intent to cause physical injury to that other person.

**Sec. 114. Defense of others.**

The use of force in order to defend a third person is a defense if:

(a) The defendant reasonably believes that the person whom he/she seeks to protect would be justified in using such protective force; and

(b) The defendant has not, by provocation or otherwise, forfeited the right of self-defense; and

(c) The defendant reasonably believes that intervention is necessary for the protection of such other person.

**Sec. 115. Defense of property.**

The use of force, other than deadly force, is a defense if the defendant reasonably believes that such force is necessary to prevent or terminate conduct which the defendant reasonably believes to be the commission or attempted commission of a crime involving trespass, damage to, or theft of property.

**Sec. 116. Use of deadly force.**

The use of deadly force is a defense only where the defendant reasonably believes that such force is necessary to protect himself/herself or another person against death, serious bodily harm, kidnapping, a sexual act as defined in Section 220 compelled by force or threat, or to prevent or terminate the commission or attempted commission of arson.

**Sec. 117-119. Reserved**

**Subchapter C. Inchoate Offenses**

**Sec. 120. Criminal complicity and solicitation.**

(a) A person may be convicted of an offense based upon the conduct of another person when:

(1) Acting with the state of mind sufficient for the commission of the offense, the defendant causes another person to engage in such conduct; or

(2) With the intent that an offense be committed, the defendant solicits, requests, commands, induces or intentionally aids another person to engage in such conduct; or

(3) Having a legal duty as a law enforcement officer to prevent the offense, the defendant fails to make proper effort to do so.

(b) The penalty for being an accomplice to a crime is the same as the penalty for being a principal in the crime.

(c) A person is not liable under this Section for the conduct of another if he/she terminates his/her complicity prior to the commission of the offense and gives timely warning to law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

**Sec. 121. Attempts.**

(a) A person is guilty of an attempt to commit a crime who intentionally does or omits to do anything which, under the circumstances as the defendant believes them to be, is an act or omission constituting a substantial step toward the commission of a crime.

(b) A person who engages in conduct designed to aid another person to commit a crime which would establish complicity under Section 120(a) (2) If the crime were committed by such other person is guilty of an attempt to commit the crime, although the crime is not actually committed or attempted.

(c) Conduct is not criminal which could only be characterized as an attempt to commit a crime which is itself defined solely in terms of attempt.

(d) The penalty for an attempted crime is the same as the penalty for the completed crime.

**Chapter 2. Crimes Against Persons**

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**Subchapter A. Homicide and related offenses**

**Sec. 201. Murder.**

Whoever intentionally causes the death of another human being is guilty of murder.

Murder is a felony.

**Sec. 202. Manslaughter.**

A person who recklessly causes the death of another human being is guilty of manslaughter.

Manslaughter is a felony.

**Sec. 203. Negligent homicide.**

A person who negligently causes the death of another human being is guilty of negligent homicide.

Negligent homicide is a felony.

**Sec. 204. Causing or aiding suicide.**

A person who intentionally causes another person to commit or attempt to commit suicide by force, duress or deception, or aids or solicits another to commit or attempt to commit suicide, is guilty of causing or aiding suicide.

Causing or aiding suicide is a Class A misdemeanor.

**Subchapter B. Kidnaping and Related Offenses**

**Sec. 210. Kidnaping.**

(a) Any person who by force, threat or deception:

(1) Removes another against his/her will from his/her place of residence or business, or a substantial distance from the vicinity from where he/she is located; or

(2) Confines another for a significant period against his/her will is guilty of kidnaping. Where the victim is twelve (12) years of age or less, it

shall be presumed that the removal or confinement was against the victim's will.

(b) Any natural or adoptive parent who by force, threat, or deception, or without knowledge or agreement of the child's custodian, removes that parent's child from the physical custody of any person who has custody of the child pursuant to a court order, and keeps that child for a significant period, is guilty of kidnaping. In determining whether a period of time is significant for purposes of this subsection, the Court must evaluate the surrounding facts and circumstances, including but not limited to the age of the child and the length of previous authorized visits with the offender. In a particular case, a relatively brief period may be considered significant.

**(AMENDED AS PER RESOLUTION NO. 1287-86- 7, DATED 07/28/86.)**

**Sec. 211. Harboring a child.**

Whoever removes, confines, harbors or keeps a minor or other incompetent without the consent of a parent, guardian or other person responsible for general supervision of the welfare of the minor or other incompetent is guilty of harboring a child; provided however, that no person shall be guilty of harboring a child who notifies a law enforcement officer of the child's whereabouts

Harboring a child is a Class B misdemeanor for the first offense, and a Class A misdemeanor for each subsequent offense.

**Sec. 212. False imprisonment.**

A person who intentionally makes or causes the unlawful arrest, imprisonment or detention of another person is guilty of false imprisonment if the defendant knows or reasonably should have known that the arrest, imprisonment or detention is without lawful authority.

False imprisonment is a Class A misdemeanor.

**Sec. 213. Custodial interference.**

(a) A person commits the offense of custodial interference if, knowing that the person has no legal right to do so, the person takes, entices, or

withholds from lawful custody any child, incompetent person or other person entrusted by authority of law to the custody of another person or institution.

(1) A person convicted of the offense of custodial interference under subsection (a) is guilty of a Class A misdemeanor.

(b) A person commits the offense of custodial interference if, knowing that the person has no legal right to do so, the person takes, entices or withholds from lawful custody a person placed by authority of law in protective custody in foster care or institutional placement.

(1) A person convicted of the offense of custodial interference under subsection (b) is guilty of a felony.

(c) With respect to the first alleged commission of the offense only, a person who has not left the Reservation does not commit an offense under this section if the person voluntarily returns the child, incompetent person, or other person to lawful custody before arraignment. With respect to the first alleged commission of the offense only, a person who has left the Reservation does not commit an offense under this section if the person voluntarily returns the child, incompetent person, or other person to lawful custody before arrest.

**(AS PER RESOLUTION NO. 26-2221-2013-04; DATED 04/08/2013)**

### **Subchapter C. Sexual Trafficking**

#### **Sec. 214. Sex trafficking.**

(a) A person commits the offense of sex trafficking if the person intentionally or knowingly

(1) Entices, recruits, transports, harbors, isolates, provides, obtains, maintains, facilitates, directs, or arranges for an individual to provide commercial sexual activity;

(2) Offers or agrees to compensate an individual for sexual activity; or

(3) Benefits financially or by receiving anything of value from participation, other than as a victim of sex trafficking, in a venture, knowing that the venture has engaged or will engage in an of sex trafficking that is classified as a felony under Subsection (b).

(b) Sex trafficking is a Class A misdemeanor. However, if force, fraud, or coercion are used to obtain cooperation from the individual providing sexual activity, or that individual was under 18 at the time of the offense, it is a felony. It is not a defense that the offender lacked knowledge that the individual was under 18.

(c) For the purposes of this Subchapter, the following definitions apply:

(1) *Coercion* means:

(A) Threatening to use force; or

(B) Abusing a position of power or another individual's position of vulnerability;

(C) Abusing or threatening to abuse the law or legal process;

(D) Controlling or threatening to control an individual's access to an intoxicating beverage, toxic or controlled substance, or narcotic as defined in Chapter 4 of this Title.

(E) Destroying, taking or threatening to destroy or take an individual's property;

(F) Inducing an individual to provide commercial sexual activity in payment toward a real or purported debt; or

(G) Exploiting an individual's physical or mental impairment when the impairment has a substantial adverse effect on the individual's cognitive or volitional function.

(2) *Commercial sexual activity* means sexual activity for which anything of value is given to, promised to, or received by an individual.

(3) *Force* includes, but is not limited to abduction, physical restraint or confinement, sexual or physical violence, or serious harm.

(4) *Fraud* means intentional misrepresentation of a material existing fact made with knowledge of its falsity, including, but not limited to written or verbal statements about employment, wages, working conditions or other opportunities.

(5) *Sexual activity* means sexual act or sexual contact as those terms are defined in Sections 220 and 226.

(6) *Venture* means any group of two or more individuals associated in business, whether or not a legal entity.

(7) *Victim of sex trafficking* means an individual who is called upon to provide commercial sexual activity under Subsections (a) or (b).

**Sec. 215. Forfeiture of assets aiding in or derived from a sex trafficking crime.**

(a) Any person convicted of a felony violation of Section 214 of this Title shall forfeit to the Fort Peck Tribes, irrespective of any provision of State law:

(1) Any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as a result of such violation; and

(2) Any of the person's property used, intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

(b) The Court, in imposing a sentence on such person, shall order, in addition to any other sentence imposed pursuant to Section 214 of this Title, that the person forfeit to the Fort Peck Tribes any property described in Subsection (a).

**Sec. 216. Victim immunity and affirmative defense.**

A person is not criminally liable or subject to a criminal proceeding for a nonviolent offense if the person committed the offense while a victim of sex trafficking under 7 CCOJ 214.

**Sec. 217. Victim access to expungement.**

(a) A person convicted of a non-violent offense, including prostitution, committed while a victim of, or as a result of being a victim of sex trafficking, may apply to the Fort Peck Tribal Court to expunge the applicant's record of conviction for the offense. The Court may grant such motion on a finding that the applicant's participation in the offense occurred while the defendant was a victim or as the result of being a victim.

(b) While not necessary, official documentation from a federal, state, local, or tribal government agency indicating that the defendant was a victim at the time of the offense creates a presumption that the defendant's participation in the offense was a direct result of being a victim.

(c) A petition filed under this Section is governed by the procedures laid out in 6 CCOJ 902.

**Sec. 218. Public-awareness sign.**

Hospitals, emergency-care providers, and transit stations must display a public awareness sign containing information on local services for victims of sex trafficking and the National Human Trafficking Resource Center hotline number. This information must be in a place that is clearly visible to employees and the public.

**(AS PER RESOLUTION NO. 28-0465-2016-03; DATED 3/14/2016)**

**Subchapter D. Sexual Offenses**

**Sec. 220. Rape.**

A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of rape if:

(a) The defendant compels the other person to submit by force or by any threat that would render a person of reasonable firmness incapable of resisting; or

(b) The defendant or someone else, with the defendant's knowledge, has substantially impaired the other person's power to appraise or control the person's conduct by administering or employing, without the other person's knowledge, intoxicants, drugs or another similar substance with intent to prevent resistance; or

(c) The other person is unconscious; or

(d) The defendant knows that the other person submits because the other person falsely supposes the defendant to be someone else;

(e) The other person is under 12 years of age; or

(f) The defendant knows that the other person submits suffers from a mental disease or defect which renders that person incapable of understanding the nature of his/her conduct;

(g) The other person is in official custody or otherwise detained in a hospital, prison, or other similar institution and the defendant has supervisory or disciplinary authority over the detained person.

(h) Sexual act means:

(1) Contact between the penis and vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however, slight;

(2) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(3) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(4) The intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

Rape is a felony.

**(AMENDED AS PER RESOLUTION # 206-642-2012-04; DATED 4/11/2012)**

#### **Sec. 221. Statutory rape.**

A person eighteen (18) years of age or over who engages in a sexual act (as defined in Section 220) with another person who is between the ages of twelve (12) and fifteen (15) years, inclusive, is guilty of statutory rape.

Statutory rape is a Class A misdemeanor.

#### **Sec. 222. Indecent exposure.**

A person who exposes his/her genitals or other intimate parts under circumstances likely to cause affront or alarm is guilty of indecent exposure.

Indecent exposure is a Class B misdemeanor, except that second and subsequent offenses shall be a Class A misdemeanor.

#### **Sec. 223. Prostitution and patronizing a prostitute.**

**Repealed by Resolution # 28-0465-2016-03, dated 3/14/2016.**

**See 7 CCOJ 214, *Sex Trafficking*.**

#### **Sec. 224. Stalking.**

(a) A person commits the offense of stalking if the person intentionally causes another person

substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly:

(1) Following the stalked person; or

(2) Harassing, threatening, or intimidating the stalked person, in person or by electronic communication, by mail, or by other action, devise or method.

(b) Stalking is a Class A misdemeanor. A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

(c) Upon presentation of credible evidence of a violation of this section, an order may be granted restraining a person from engaging in the activity described in subsection (a).

(d) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person intentionally followed, harassed, threatened, or intimidated the stalked person.

**(AMENDED AS PER RESOLUTION NO. 2303-94-11, DATED 11/21/1994; AMENDED AS PER RESOLUTION NO. 25-2166-2011-05; DATED 05/23/2011.)**

#### **Sec. 225. Adultery.**

A person who engages in a sexual act as defined in Section 220 with another person, either of whom is married to a third person, is guilty of adultery.

No prosecution shall be instituted under this Section except on the complaint of the spouse of an alleged offender, and the prosecution shall not be commenced later than one (1) year from commission of the offense.

Adultery is a Class B misdemeanor.

#### **Sec. 226. Sexual assault.**

(a) A person who intentionally subjects another person to any sexual contact without consent commits the offense of sexual assault.

Sexual contact means any intentional touching of the sexual or other intimate parts of the person of another, whether clothed or unclothed, with no valid medical purpose.

(b) A person convicted of sexual assault is guilty of a Class A misdemeanor.

(c) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender is guilty of a felony.

(d) Consent is ineffective under this section if the victim is:

(1) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search.

(2) Less than 14 years old and the offender is 3 or more years older than the victim.

**(AMENDED AS PER RESOLUTION NO. 26-908-2012-05; DATED 05/25/2012.)**

**Sec. 227. Aggravated sexual assault of a child.**

Any person who commits sexual assault as defined in Section 226 of this Title where the victim is under eighteen (18) years of age and where any one of the following additional factors is present:

(a) The victim is under sixteen (16) years of age;

(b) The offender is the natural or adoptive parent, grandparent, sibling, aunt, or uncle of the victim;

(c) The offender has temporary or permanent care, custody, control, or supervision over the victim;

(d) There were repeated assaults over a period of time;

(e) Force or threats were employed during the assault is guilty of aggravated sexual assault of a child.

Aggravated sexual assault of a child is a felony.

**(AMENDED AS PER RESOLUTION NO. 1287-86- 7, DATED 07/28/86 AND RESOLUTION NO. 1541-2007-4 DATED 04/09/07.)**

**Sec. 228. Sexual exploitation of a child.**

(a) A person commits the offense of a sexual exploitation of a child if the person:

(1) Intentionally employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(2) Intentionally photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(3) Intentionally, by any means of communication, including electronic communication, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

(4) Intentionally processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(5) Intentionally possesses any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(6) Finances any of the activities described in subsections (a)(1) through (a)(4) and (a)(7), knowing that the activity is of the nature described in those subsections;

(7) Possesses with intent to sell any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(8) Intentionally travels within, from or to this Reservation with the intention of meeting a child under 16 years of age or a person the offender believes to be a child under 16 years of age in order to engage in sexual conduct, actual or simulated; or

(9) Intentionally coerces, entices, persuades, arranges for, or facilitates a child under 16 years

of age or a person the offender believes to be a child under 16 years of age to travel within, from or to this Reservation with the intention of engaging in sexual conduct, actual or simulated.

(b) A person convicted of sexual exploitation of a child is guilty of a felony.

(c) An offense is not committed under subsections (a)(4) through (a)(7) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sexual offender information or treatment course or program conducted or approved by the Court and/or the Branch of Corrections of the Department of Law and Justice.

(d) As used in this section, the following definitions apply:

(1) Electronic communication means a sign, signal, writing, image, sound, data, or intelligence of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

(2) Sexual conduct means:

(A) Actual or simulated:

(i) Sexual intercourse, whether between persons of the same or opposite sex;

(ii) Penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;

(iii) Bestiality;

(iv) Masturbation;

(v) Sadomasochistic abuse;

(vi) Lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person; or

(vii) Defecation or urination for the purpose of the sexual stimulation of the viewer; or

(B) Depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.

(3) Simulated means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

(4) Visual medium means:

(A) Any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(B) Any disk, diskette, or other physical media that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

**(AMENDED AS PER RESOLUTION NO. 26-2220-2013-04; DATED 04/08/2013)**

### **Sec. 229. Failure to register as a sexual offender.**

Failure to register as a sexual offender by not following any of the provisions of 6 CCOJ Chap. 8, shall be convicted as a felony, punishable as per 7 CCOJ 501(1).

**(AS PER RESOLUTION NO. 26-737-2012-05; DATED 05/15/2012.)**

### **Sec. 229-A. Hindrance of sex offender registration.**

A person is guilty of a felony if he/she:

(a) Intentionally harbors or intentionally attempts to harbor, or intentionally assists another person in harboring or attempting to harbor a sex offender who is in violation of 6 CCOJ Chap. 8;

(b) Intentionally assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of 6 CCOJ Chap. 8; or

(c) Provides information to a law enforcement agency regarding a sex offender which the person knows to be false.

**(AS PER RESOLUTION NO. 26-737-2012-05; DATED 05/15/2012.)**

**Sec. 229-B. Failure to register as a violent offender.**

Failure to register as a violent offender by not following any of the provisions of 6 CCOJ 850 shall be convicted as a felony, punishable as per 7 CCOJ 505(1).

**(AS PER RESOLUTION 26-737-2012-05; DATED 05/15/2012.)**

**Subchapter E. Assault and Related Offenses**

**Sec. 230. Aggravated assault.**

Whoever;

(a) Intentionally causes serious bodily injury to another; or

(b) Intentionally causes bodily injury to another with a deadly weapon; or

(c) Recklessly causes serious bodily injury to another under circumstances manifesting indifference to the value of human life is guilty of aggravated assault.

Aggravated assault is a felony.

**Sec. 231. Simple assault.**

A person who

(a) Intentionally causes bodily injury to another; or

(b) Recklessly or negligently causes bodily injury to another with a deadly weapon; or

(c) Attempts by physical menace to put another in fear of serious bodily harm, or by physical menace causes another to harm himself/herself is guilty of an assault.

Simple assault is a Class A misdemeanor.

**(AMENDED AS PER RESOLUTION NO. 1444-96-8, DATED 08/26/96.)**

**Sec. 232. Assault with bodily fluid.**

(a) A person commits the offense of assault with a bodily fluid if the person intentionally causes one of the person's bodily fluids to make physical contact with:

(1) A law enforcement officer, a staff person of a correctional or detention facility, or a health care provider, including a health care provider performing emergency services, while the health care provider is acting in the course and scope of

the health care provider's profession and occupation:

(A) During or after an arrest for a criminal offense;

(B) While the person is incarcerated in or being transported to or from a jail or detention facility, or health care facility; or

(C) If the person is a minor, while the youth is detained in or being transported to or from a jail or detention or correctional facility, health care facility or shelter care facility; or

(2) An emergency responder.

(b) A person convicted under this section shall be guilty of a Class A misdemeanor, punishable pursuant to 7 CCOJ 501(2).

(c) As used in this section, the following definitions apply:

(1) "Bodily fluid" means any bodily secretion, including but not limited to feces, urine, blood, and saliva.

(2) "Health care provider" means a person who is licensed, certified, or otherwise authorized by law to provide health care in the ordinary course of business or practice of a profession.

(3) "Emergency responder" means a licensed medical services provider, law enforcement officer, firefighter, volunteer firefighter or officer of a nonprofit volunteer fire company, emergency medical technician, emergency nurse, ambulance operator, provider of civil defense services, or any other person who in good faith renders emergency care or assistance at a crime scene or the scene of an emergency or accident.

**Sec. 233. Intimidation, bullying, harassment.**

(a) A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, he communicates to another, under circumstances which reasonably tend to produce a fear that it will be carried out, a threat to perform without lawful authority any of the following acts:

(1) Inflict physical harm on the person threatened or any other person;

(2) Subject any person to physical confinement or restraint; or

(3) Commit any felony.

(b) A person commits the offense of intimidation if he intentionally communicates a threat or false report of a pending fire, explosion, or disaster which would endanger life or property.

(c) A person is guilty of bullying or harassment when a person by means of any persistent threatening, insulting, or demeaning gesture or physical conduct, including any intentional written, verbal, or electronic communication (as defined in 7 CCOJ 408) or threat directed at a person that causes a person physical harm, damages a person's property, or places a person in reasonable fear of harm to the person or the person's property. This bullying or harassment or intimidation includes retaliation against a victim or witness who reports information about an act of bullying, harassment or intimidation.

(d) Conviction under this Section is a Class B misdemeanor for the first offense and a Class A misdemeanor for the second and subsequent offenses.

If any of the actions listed in subsection (c) result in serious bodily injury, attempted suicide or suicide of the victim, the perpetrator(s) will be charged with a felony.

**(AMENDED AS PER RESOLUTION NO. 26-1329-2012-08; DATED 8/27/2012.)**

#### **Sec. 234. Criminal endangerment.**

A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment.

For the purposes of this section, "knowingly" means that the person is aware of the high probability that the conduct in which he or she is engaging, whatever the conduct may be, will cause substantial risk of death or serious bodily injury to another.

Criminal endangerment is a felony.

**(RESOLUTION NO. 606-2008-04; DATED 4/28/2008)**

#### **Sec. 235. Negligent endangerment.**

A person who negligently engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of negligent endangerment.

Negligent endangerment is a Class A misdemeanor.

**(RESOLUTION NO. 606-2008-04; DATED 4/28/2008)**

#### **Sec. 236. Serious bodily or physical injury defined.**

(a) Serious bodily or physical injury means bodily injury that:

(1) Creates a substantial risk of death;

(2) Causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or

(3) At the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.

(b) The term includes serious mental illness or impairment.

#### **Sec. 237. Assaults by strangling or suffocating.**

Whoever assaults another by strangling or suffocating is guilty of a felony.

(a) The term strangling means intentionally or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether such conduct results in any visible injury and regardless of whether there is any intent to kill or protractedly injure the victim.

(b) The term suffocating means intentionally or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether such conduct results in any visible injury and regardless of whether there is any intent to kill or protractedly injure the victim.

**(AS PER RESOLUTION NO. 26-737a-2012-05; DATED 05/15/2012.)**



## **Subchapter F. Crimes Against the Family**

### **Sec. 240. Abuse of a child.**

Any person having the responsibility for the care and welfare of a child under eighteen (18) years of age who engages in the abuse of that child or fails to make reasonable efforts to prevent the infliction of abuse by another of that child shall be guilty of abuse of a child. An abused child is a child who has suffered or is likely in the immediate future to suffer physical and/or emotional harm as a result of any person inflicting or failing to make reasonable efforts to prevent the infliction of physical and/or emotional injury upon a child, including excessive corporal punishment or act of sexual abuse or molestation.

Abuse of a child is a Class A misdemeanor for the first offense and a felony for all subsequent offenses.

**(AMENDED AS PER RESOLUTION NO. 1287-86- 7, DATED 07/28/86 AND AS PER RESOLUTION NO. 1566-88-11, DATED 11/10/88.)**

#### **Sec. 240-A. Felony abuse of a child.**

Any person:

(a) Who inflicts severe physical injury to a child under eighteen years of age or who fails to make reasonable efforts to prevent the infliction of severe physical injury to a child; or

(b) Who, with a child in close proximity, commits the acts prohibited under 7 CCOJ Chapter 2 and 7 CCOJ Chapter 4, Subsection B, is guilty of a felony.

**(RESOLUTION NO. 605-2008-04; DATED 4/28/2008)**

#### **Sec. 240-B. Endangering welfare of children.**

(a) A parent, guardian, or other person supervising the welfare of a child less than 18 years old commits the offense of endangering the welfare of children if the parent, guardian, or other person intentionally endangers the child's welfare by violating a duty of care, protection, or support.

(b) A parent or guardian or any person who is 18 years of age or older, whether or not the parent, guardian, or other person is supervising the welfare of the child, commits the offense of endangering the welfare of children if the parent, guardian, or other person intentionally contributes to the delinquency of a child less than:

(1) 18 years old by:

(A) Supplying or encouraging the use of an intoxicating substance by the child; or

(B) Assisting, promoting, or encouraging the child to enter a place of prostitution; or

(2) 16 years old by assisting, promoting, or encouraging the child to:

(A) Abandon the child's place of residence without the consent of the child's parents or a guardian; or

(B) Engage in sexual conduct.

(c) A parent, guardian, or other person supervising the welfare of a child less than 16 years of age may verbally or in writing request a person who is 18 years of age or older and who has no legal right of supervision or control over the child to stop contacting the child if the requester believes that the contact is not in the child's best interests. If the person continues to contact the child, the parent, guardian, or other person supervising the welfare of the child may petition or the Tribal Prosecutor may upon the person's request petition for a temporary restraining order under 8 CCOJ 401. A person who intentionally violates this temporary restraining order commits the offense of endangering the welfare of children and upon conviction shall be sentenced as provided in subsection (d).

(d) A person convicted of endangering the welfare of children commits a Class A misdemeanor for the first conviction and commits a felony for the second and subsequent convictions.

**(RESOLUTION NO. 1451-2010-12, DATED 12/13/2010.)**

#### **Sec. 240-C. Reckless assault of a child.**

(a) A person is guilty of reckless assault of a child when, being 18 years of age or more, such person recklessly causes serious physical injury

to the brain of a child less than 5 years old by shaking the child, or by slamming or throwing the child so as to impact the child's head on a hard surface or object.

(b) For purposes of this section, the following shall constitute "serious physical injury":

(1) "Serious physical injury" as defined in 7 CCOJ 236 of this Title; or

(2) Extreme rotational cranial acceleration and deceleration and one or more of the following:

(i) Subdural hemorrhaging;

(ii) Intracranial hemorrhaging; or (iii) retinal hemorrhaging.

(c) Reckless assault of a child is a felony.

**(AS PER RESOLUTION NO. 26-1201-2012-08, DATED 8/13/2012.)**

#### **Sec. 240-D. Endangering an unborn child - substance abuse.**

(a) A person commits this offense by:

(1) Intentionally inhaling, injecting, ingesting or otherwise introducing into her bloodstream any illegal substances, drugs, non-prescribed prescription drugs, intoxicants, or any other dangerous drug as defined in 7 CCOJ 413-B knowing that she is pregnant.

(2) Intentionally ingesting alcoholic beverages so as to raise her blood alcohol content to any measurable level, knowing she is pregnant.

(3) Providing any illegal substance, drug, nonprescription drug, intoxicant, or alcoholic beverage to a pregnant female, knowing that the female is pregnant.

(4) Obtaining narcotics without notifying the

medical provider that she is pregnant.

(b) Refusal to submit to analysis of breath, blood or urine upon the request of a law enforcement officer having probable cause to suspect violation of this Section shall be prima facie evidence of guilt. However, the consequences of such refusal must be explained to the person.

(c) Upon probable cause, samples of blood or urine taken in furtherance of investigation into possible violation of this Section may only be taken by trained medical persons.

(d) A person found guilty under this Section is guilty of a felony.

(e) At the time of sentencing, the Court may suspend part of the sentence if the person completes a court-ordered alcohol or other drug treatment program and parenting classes. If the person does not complete the program, the Court shall issue an Order to Show Cause why the suspended portion of the sentence should not be served.

**(AS PER RESOLUTION NO. 28-0702-2016-05; DATED 5/23/2016)**

**Sec. 241. Neglect of a child.**

A parent or custodian who fails to provide such food, clothing, shelter, medical attention, hygiene, education, or supervision as the child needs for development, although the parent or custodian was able to furnish such needs or has refused Tribal or other assistance for furnishing such needs, and such failure is likely to result in serious bodily injury and/or emotional harm to the child as determined by appropriate medical or professional persons, is guilty of the offense of Neglect of a child.

Neglect of a child is a Class A misdemeanor for the first offense and a felony for all subsequent offenses.

**(AMENDED AS PER RESOLUTION NO. 1287-87-7, DATED 07/28/86; AMENDED AS PER RESOLUTION NO. 1567-88-11, DATED 11/10/88; AMENDED AS PER RESOLUTION NO. 1451-2010-12, DATED 12/13/2010.) RESOLUTION NO. 1567-88-11, DATED 11/10/88.)**

**Sec. 242. Abandonment of a child.**

Any person having the responsibility for the care and welfare of a child under eighteen (18) years of age who abandons that child as defined

in Title 9, Section 102(c) of this Code is guilty of abandonment of a child.

Abandonment of a child is a Class A misdemeanor for the first offense and a felony for all subsequent offenses.

**(AMENDED AS PER RESOLUTION NO. 1287-86- 7, DATED 07/28/86 AND AS PER RESOLUTION NO. 1568-88-11, DATED 11/10/88.)**

**Sec. 243. Reserved.**

**Sec. 244. Partner or Family Member Assault**

(a) A person commits the offense of partner or family member assault if the person:

(1) intentionally causes bodily injury to a partner or family member;

(2) negligently causes bodily injury to a partner or family member with a weapon; or

(3) intentionally causes reasonable apprehension of bodily injury in a partner or family member.

(b) For the purpose of this section, the following definitions apply:

(1) *Family member* means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(2) *Partners* means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship.

(c) Partner and family member assault is a Class A misdemeanor for the first offense and a felony for the second and subsequent offenses.

(d) Those arrested and charged under this section shall not be released from custody except at arraignment as described in 6 CCOJ 402.

**(AMENDED AS PER RESOLUTION NO. 28-1581-2017-02, DATED 2/14/2017)**

**Sec. 245 Domestic Abuse.**

Repealed by Resolution No. 28-1581-2017-02;  
Dated 2/14/2017

**Sec. 246. Added punishment for offenses in conjunction with Partner or Family Member Assault**

(a) If someone convicted under 7 CCOJ 244 is also convicted of any of the following acts and the acts are done at or very near to the same time as the incident of abuse for which the defendant was convicted, then the defendant shall be considered to have committed a felony. *Very near to the same time* shall be defined as within 24 hours of the severe physical domestic abuse or domestic abuse. The acts are:

- (1) Assault Offenses; Aggravated assault, Simple assault, Intimidation;
- (2) Criminal trespass
- (3) Criminal mischief
- (4) Stalking;
- (5) Theft;
- (6) Carrying a concealed dangerous weapon, Unlawful discharge of firearms;
- (7) Abuse of a child, Neglect of a child, Abandonment of a child.

(b) If the Tribal Prosecutor intends to seek this enhanced punishment, the Tribal Prosecutor shall file notice of this intention in the charging document.

**(AMENDED AS PER RESOLUTION NO. 26-1202-2012-08; 28-1581-2017-02, DATED 2/14/2017.)**

**Sec. 247. Duties of law enforcement officer to victim of domestic or family violence; notice to victim upon law enforcement’s arrival to domestic violence situation.**

(a) Whenever a law enforcement officer reports to the scene of an incidence of domestic abuse, if the victim is present, the office shall advise the victim of the availability of a battered person/at risk shelter and the other child and family services in the community. Domestic abuse is defined in Sections 244 and/or 249 of this Title. The law enforcement officer shall give the victim a copy of the following statement:

IF YOU ARE A VICTIM OF DOMESTIC ABUSE OR FEEL UNSAFE IN THIS HOUSE, YOU ARE STRONGLY ENCOURAGED TO REMOVE YOURSELF AND ANY PEOPLE DEPENDENT ON YOU FROM THE SOURCE OF DANGER, OR ELSE BE PERSISTENT IN MAKING SURE THE DANGER IS REMOVED FROM YOUR HOUSE.

You must not allow yourself to continue to be harmed. You may ask the police person who gave THIS TO YOU TO TAKE YOU AND YOUR DEPENDANTS TO A DOMESTIC VIOLENCE SAFE HOUSE, TO THE FORT PECK CRISIS CENTER, OR THE POLICE STATION.

ALLOWING YOURSELF AND ANY CHILDREN IN YOUR HOME TO CONTINUE BEING NEAR A SOURCE OF PHYSICAL AND EMOTIONAL DAMAGE IS NEGLIGENCE ON YOUR PART, AND IS BASIS FOR LEGAL ACTION TO BE BROUGHT AGAINST YOU BY TRIBAL AND STATE CHILD AND FAMILY PROTECTIVE SERVICES.

If you are the victim of domestic abuse, you may ask the tribal prosecutor to file criminal charges against your abuser, but to effectively punish your abuser, you must cooperate with the tribal prosecutor by explaining to her/him the facts relevant to the abuse you received in this incident.

You have the right to go to Court and file a petition requesting any of the civil orders for relief, but you must go to the Tribal Court building to make them happen. Under Chapter 4, Title 8 of the Fort Peck Comprehensive Code of Justice (CCOJ) you can ask for:

(1) A temporary order of protection's purpose is to force your abuser from being in your presence, but is only for a maximum of ten days, and can only be enforced if you inform the police when the abuser violates the temporary order of protection, and sign an affidavit which you must ensure the police deliver to the Tribal Court so that your abuser can be arrested. While the temporary order of protection is in effect, you should keep a copy of its Order with you at all times.

(2) After you have obtained a temporary order of protection against your abuser, the Court will schedule a hearing in 10 days for a determination if the temporary order of protection will become permanent. You must attend the 10 day hearing and present to the Court the reasons why the permanent order of protection should be placed against your abuser. Your abuser may appear at this hearing and attempt to avoid having the permanent order of protection ordered, or to modify it.

(3) If you have asked the prosecutor to bring charges, the prosecutor will notify you when your abuser will be arraigned. You may attend the criminal proceedings against your abuser. The prosecutor should inform you of the pretrial hearing and any other hearing time or dates, the

status of litigation progress, and should accept your input as to whether your abuser could be trusted or deserve a probation, parole, or a reduced, mitigated jail sentence.

*Elective Civil Actions.* You may file a civil complaint with the Fort Peck Tribal Court against your abuser for the tortious battery, if you are physically injured; or assault, if you were threatened and had the impression you were going to be hurt; and for the intentional infliction of emotional distress.

(b) For the temporary or permanent custody of your children, you may file a complaint in the Fort Peck Tribal Court under Section 304 or 304a of Title 10, CCOJ. Section 304 also provides that the Court may order child support payments to be made to the non-custodial parent.

*Contacts:*

-Family Violence Resource Center, 629 7<sup>th</sup> Ave. S., Wolf Point; 653-1494.

-State of Montana Public Health and Human Services, Child and Family Services  
100 Main, Wolf Point; 653-3520.

-Wolf Point Police non-emergency, 2014<sup>th</sup> Ave. S.; 653-1093. -Poplar Police non-emergency; 653-6216.

-Tribal Police non-emergency; 653-3556;  
768-5565.

Law enforcement with jurisdiction in the Fort Peck Reservation are expected to keep updated copies of this notice in their patrol vehicles, and to ensure the phone numbers and addresses are current and up to date.

(c) Law enforcement officers responding to calls alleging domestic or family violence shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:

(1) Confiscating any weapons involved in the alleged violence;

(2) Transporting or arranging transport for the victim and dependents of the victim to a safe house/shelter, hospital, police station, or a friend or relative's residence.

(3) Assisting the victim and dependents in removing essential personal effects; see also 8 CCOJ 402(7).

**(AMENDED AS PER RESOLUTION NOS. 1251-88-9; DATED 09/12/88; 28-1581-2017-02, DATED 2/14/2017.)**

**Sec. 248. Determination by law enforcement officer of primary aggressor and the power to arrest.**

(a) If a law enforcement officer has probable cause [defined in 6 CCOJ 201(c)] to believe a person has committed an offense of domestic abuse, as per Section 244 and/or 249 of this Title, whether the offense was committed in or outside the presence of the officer, the law enforcement officer shall presume that arresting and charging the person is the appropriate response.

(b) When a law enforcement officer receives a complaint of domestic or family violence from two or more opposing persons of the same residence, the officer shall evaluate the situation to determine who is the primary aggressor. The officer need only arrest the primary aggressor. Factors for determining the primary aggressor include:

(1) Prior complaints of family and domestic abuse from the residence: who made them, what was alleged;

(2) The relative severity of injuries inflicted to the people present;

(3) The likelihood of future injury to each person; and

(4) Whether one of the persons acted in self-defense.

(c) The law enforcement officer shall use professional methods at all times, and shall not threaten a person in order to shirk an obligation to make an arrest or to compel an arrest. See 7 CCOJ 120(a)(3). An officer shall not base an arrest decision purely on the request of a victim to do so, or on the officer's perception of the willingness of a victim or witness to testify or other wise participate in a judicial proceeding.

**(ENACTED AS PER RESOLUTION NO. 821-2002-8, DATED 8/12/2002;**

**AMENDED AS PER RESOLUTION NO. 28-1581-2017-02, DATED 2/14/2017)**

**Sec. 249. Special domestic violence criminal offense.**

(a) *Jurisdiction.* The Fort Peck Tribal Court is vested with jurisdiction to enforce this section against any person who has committed an act of Dating Violence, Domestic Violence or Violation of a Protection Order against an Indian victim within the Indian country of the Assiniboine and Sioux Tribes provided the defendant has sufficient ties to the Fort Peck Tribes.

A defendant has sufficient ties if the defendant resides or is employed in the Indian country of the Assiniboine and Sioux Tribes; or if the defendant is a spouse, intimate partner, or dating partner of any Indian who resides in the Indian country of the Assiniboine and Sioux Tribes.

(b) *Definitions.*

(1) *Dating Violence* - The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(2) *Domestic Violence* - The term *domestic violence* means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim. 7 CCOJ 244.

(3) *Indian Country* - The term *Indian country* has the meaning given the term in section 1151 of title 18, United States Code.

(4) *Protection Order* - The term *protection order* means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(5) *Spouse or Intimate Partner* - The terms *spouse or intimate partner* has the meaning given the term in section 2266 of title 18, United States Code.

(c) *Offenses; Domestic and Dating Violence, Violations of Protection Orders.*

Every person who commits an act of domestic violence, dating violence or violation of a protective order is punishable by imprisonment not exceeding three years or by fine not exceeding \$15,000, or by both. Domestic and dating violence include the offenses as stated in 7 CCOJ 244 as well as emotional abuse, controlling or domineering, intimidation, stalking, neglect or economic deprivation. Violation of a Protection Order includes any act where the protection order was issued against the defendant, the protection order is consistent with 18 U.S.C. 2265(b), and the violation relates to that portion of the protection order that provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, the protected person.

(d) *Rights of Defendants.* In any criminal proceeding under this section, the defendant shall be entitled to:

- (1) all applicable rights under the Indian Civil Rights Act, 25 U.S.C.

(2) if a term of imprisonment of any length may be imposed, the Tribal Court shall:

(A) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and

(B) at the expense of the Fort Peck tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

(C) require that the judge presiding over the criminal proceeding has sufficient legal training to preside over criminal proceedings; and is licensed to practice law by any jurisdiction in the United States;

(D) prior to charging the defendant, make publicly available the criminal laws, rules of evidence, and rules of criminal procedure (including rules of governing the recusal of judges in appropriate circumstances) of the Fort Peck Tribes; and

(E) maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

(3) the right to a trial by an impartial jury that is drawn from sources that reflect a fair cross section of the Fort Peck Reservation community; and do not systematically exclude any distinctive group in the community;

(4) timely notification of the right to petition for a writ of habeas corpus in a court of the United States under section 25 U.S.C. 1303, and the right to petition that court to stay further detention pursuant to 25 U.S.C. 1304(e);

(5) all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the Fort Peck Tribes to exercise special domestic violence criminal jurisdiction over the defendant. **(AS PER RESOLUTION NOS.**

**27-201-2013-12, DATED 12/23/2013;**

**26-788-2014-06, DATED 6/09/2014; 28-1581-2017-02, DATED 2/14/2017.)**



(AS PER RESOLUTION NO. 51-2003-11,  
DATED NOVEMBER 25, 2003.)

**Sec. 252-299. Reserved.**

**Sec. 250. Spousal privileges inapplicable in criminal proceedings involving domestic abuse.**

(a) The following evidentiary privileges do not necessarily apply in any criminal proceeding in which a spouse or other family or household member is the victim of an alleged crime involving domestic or family violence perpetrated by the other spouse:

(1) The privilege of confidential communication between spouses.

(2) The testimonial privilege of spouses.

(b) It shall be an election of the Court to decide if the situation merits suspension of any of such spousal privileges.

**(AS PER RESOLUTION NO.821-2002-8,  
DATED AUGUST 12, 2002.)**

**Sec. 251 Elder Abuse**

(a) A person commits the offense of elder abuse by knowingly or purposely, physically or mentally, abusing or exploiting an elder person.

(b) "Exploiting" means the unjust use of an individual's money or property for another's advantage by means of duress, menace, fraud or undue influence.

(c) "Older person" means a Tribal member or other person residing on the Reservation who is:

(1) 60 years of age or older;

(2) Determined by the Tribal Court to be an elder; or

(3) At least 45 years of age and unable to protect herself or himself from abuse, neglect, or exploitation because of a mental disorder or physical impairment, or frailties or dependencies brought about by age or disease or alcoholism.

(d) Elder abuse is a Class A misdemeanor.

**Chapter 3. Crimes Against Property  
(AMENDED AS PER RESOLUTION NO.  
890-96-5, DATED 05/13/96.)**

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**Subchapter A. Arson**

**Sec. 301. Arson.**

A person who starts or maintains a fire or causes an explosion with intent to destroy or damage a building or occupied structure, motor vehicle, field, crop or standing timber of another is guilty of arson.

Arson is a felony.

**Sec. 302-309. Reserved.**

**Subchapter B. Burglary and Related Offenses**

**Sec. 310. Burglary.**

A person who enters a building or occupied structure, or separately secured or occupied portion thereof, with intent to commit a crime therein

is guilty of burglary, unless the premises are at the time open to the public or the defendant is licensed or privileged to enter.

Burglary is a felony.

**Sec. 311. Criminal trespass.**

Whoever knowing that he/she is not licensed or privileged to do so:

(a) Enters or surreptitiously remains in any building or occupied structure, or separately secured or occupied portion thereof; or

(b) Enters or remains in any place as to which notice against trespass is given by:

(1) Actual communication to the defendant;

(2) Posting in a manner reasonably likely to come to the attention of intruders; or

(3) Fencing or other enclosure manifestly designed to exclude intruders; or

(c) Intentionally allows livestock to occupy or graze on the lands of another person is guilty of criminal trespass.

Criminal trespass is a Class A misdemeanor if the defendant enters or remains in any building or occupied structure, and otherwise is a Class B misdemeanor.

**Sec. 312. Criminal damage; aggravated.**

(a) A person who commits the following is guilty of aggravated criminal damage:

(1) Defacing, damaging, or in any way changing the appearance of any tribal governmental building or tribally owned building.

(2) Defacing, damaging, or in any way changing the appearance of any tribal structure, sacred site, holy grounds and any other property, or place used for worship or any religious purpose; or

(3) Defacing or damaging any building, structure or place used as a school or as an educational facility; or

(4) Defacing, damaging, or tampering with any cemetery, mortuary, or personal property of the cemetery or mortuary or other facility used for the purpose of burial or memorializing the dead.

(b) A person convicted of aggravated criminal damage must be ordered to make restitution in an amount and manner to be set by the Court. The Court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the restitution. Upon good cause shown by the convicted person, the Court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered must be made prior to the release of the Tribes' jurisdiction over the convicted person.

Violation of this section is a felony.

**(RESOLUTION NO. 1451-2010-12, DATED 12/13/2010.)**

**Sec. 313-319. Reserved.**

**Subchapter C. Theft and Related Crimes**

**Sec. 320. Theft.**

Whoever:

(a) Intentionally takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof; or

(b) Intentionally obtains the property of another by misrepresentation or deception; or

(c) Intentionally obtains the property of another by threat; or

(d) Receives, retains or disposes of the property of another knowing that it has been stolen or believing that it has probably been stolen, unless the property is received, retained or disposed of with intent to restore it to the owner; or

(e) Comes into control of property of another that the defendant knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, and with intent to deprive the owner thereof, fails to take reasonable measures to restore the property to a person entitled to have it; or

(f) Intentionally obtains services, known by the defendant to be available only for compensation, by avoiding payment for the services, or, having control over the disposition of services of

another to which he/she is not entitled, knowingly diverts those services to the defendant's own benefit or to the benefit of another not entitled thereto; or

(g) Intentionally disposes of, uses, or transfers any interest in property which has been entrusted to the defendant as a parent or guardian of a minor, or for any other reason, for other than the purpose or purposes for which the property was placed in trust; or

(h) Intentionally misbrands or alters any brand or mark on any livestock or another person is guilty of theft.

Conduct denominated "theft" in this Section constitutes a single offense embracing the several offenses heretofore known as embezzlement, extortion, fraud, larceny, receiving stolen property, misbranding, and the like.

Theft is a felony if the amount involved exceeds five hundred dollars (\$500.00). Otherwise, it is a Class A misdemeanor, except that theft by an unemancipated minor of an item or items of less than twenty dollars (\$20.00) in value is a Class B misdemeanor.

### **Sec. 321. Robbery.**

Whoever, in the course of committing or attempting to commit a theft, or while fleeing from the commission or attempted commission of a theft:

(a) Inflicts or attempts to inflict bodily injury upon another; or

(b) Threatens or menaces another with immediate bodily injury is guilty of robbery.

Robbery is a felony.

### **Sec. 322. Criminal mischief.**

(a) A person commits the offense of criminal mischief if the person intentionally or recklessly:

(1) Injures, damages, or destroys any property of another or public property without consent;

(2) Without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(3) Damages or destroys property with the purpose to defraud an insurer; or

(4) Fails to close a gate previously unopened that the person has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(b) A person convicted of criminal mischief must be ordered to make restitution in an amount and manner to be set by the Court. The Court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the restitution. Upon good cause shown by the convicted person, the Court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered must be made prior to the release of the Tribes' jurisdiction over the convicted person.

Criminal mischief is a Class A misdemeanor if the person intentionally causes pecuniary loss in excess of one hundred dollars (\$100.00). Otherwise, it is a Class B misdemeanor.

**(AMENDED AS PER RESOLUTION NO. 822-2008-06; DATED 6/19/2008)**

### **Sec. 323. Injury to public property.**

Whoever, without proper authority, intentionally, recklessly or negligently:

(a) Uses or injures any Tribal or other public property; or

(b) Causes a substantial interruption or impairment of a public service is guilty of injury to public property.

Injury to public property is a Class A misdemeanor if the defendant causes pecuniary loss in excess of one hundred dollars (\$100.00); otherwise, it is a Class B misdemeanor.

### **Sec. 324. Issuing bad checks.**

Whoever issues any check, draft or order upon any bank or other depository knowing that there are not sufficient funds in the defendant's account to pay such check, draft or order in full upon presentation is guilty of issuing bad checks.

Issuing bad checks shall be a Class B misdemeanor, except that a third or subsequent offense shall be a Class A misdemeanor.

**Sec. 325. Unlawful use of a protected archaeological resource.**

It is a felony, punishable by a maximum fine of \$5,000 and/or 1 year incarceration, for any Indian to sell, barter, exchange, purchase, offer to sell or transport any protected archaeological resource (defined at 32 CCOJ 201).

**(PER RESOLUTION NO. 26-1382-2012-09, DATED 9/11/2012.)**

**Sec. 326-329. Reserved.**

**Subchapter D. Forgery**

**Sec. 330. Forgery.**

Whoever, with intent to deceive or harm the Tribes or any other person

(a) Knowingly and falsely makes, completes, executes, authenticates, issues, transfers or alters any writing; or

(b) Knowingly utters a forged writing is guilty of forgery.

Forgery is a felony if the amount involved exceeds one hundred dollars (\$100.00). Otherwise, it is a Class A misdemeanor.

**Sec. 331-339. Reserved.**

**Subchapter E. Subsidized Tribal Permits and Leases**

**Sec. 340. Violation of subsidized tribal permits and leases.**

Any lessee of a tribal lease, or any permittee of a tribal permit, who, subleases or assigns, or otherwise transfers, or attempts to sublease, or assign, or otherwise transfer, directly or indirectly, any of the lessee's or permittee's rights or benefits under the lease or permit, shall be guilty of a Class A offense.

**(AMENDED AS PER RESOLUTION NO. 890-96-5, DATED 05/13/96.)**

**Subchapter F. Void Liens**

**Sec. 350. Void Liens.**

Any person who files a lien created by State law, including without limitation agricultural and mechanics liens, against any property of the Tribes or of any Indian, which property is located on the Reservation, shall be guilty of a Class A offense.

**(ADOPTED AS PER RESOLUTION NO. 2643-97-4, DATED 04/25/97.)**

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**Subchapter A. Explosives and Weapons Offenses**

**Sec. 401. Carrying concealed weapon.**

Whoever carries, concealed about his/her person, any weapon, unless the weapon is carried with specific governmental approval, is guilty of carrying a concealed weapon.

Weapon means any type of firearm, any type of knife, a sword, a straight razor, throwing star, nunchucks, brass or other metal knuckles, stun gun, taser or an object indistinguishable from a firearm, such that a reasonable person, without specialized training in firearms, would conclude that it appears to be a firearm. The term also includes any other article or instrument possessed with the purpose to commit a criminal offense.

Carrying a concealed weapon is a Class A misdemeanor. In addition to the penalty prescribed for such an offense, any person convicted of carrying a concealed weapon may be ordered by the Court to forfeit any such weapon to the Tribes.

**(AMENDED AS PER RESOLUTION NO. 27-686-2014-05; DATED 5/12/2014)**

**Sec. 402. Possession of explosives.**

Whoever possesses, transports or controls any nitroglycerin, dynamite or other dangerous explosive, unless such explosive is possessed in the prosecution of or to effect a lawful purpose, is guilty of possession of explosives.

Possession of explosives is a Class A misdemeanor. In addition to the penalty prescribed for such an offense, any person convicted of possession of explosives may be ordered by the Fort

Peck Tribal Court to forfeit any such explosives to the Tribes.

**Sec. 403. Use of dangerous weapons by children.**

Whoever is a parent, guardian, or other person having charge or custody of any minor under fifteen (15) years of age, and knowingly allows such child to carry or use in public any dangerous weapon as defined in Section 401, except when such child is in the company and under the direct control of such parent, guardian, or other adult person authorized by the parent or guardian, is guilty of use of dangerous weapons by children.

Use of a dangerous weapon by children is a Class A misdemeanor. In addition to the penalty prescribed for such an offense, any person convicted of use of a dangerous weapon by children may be ordered by the Fort Peck Tribal Court to forfeit any such weapon to the Tribes.

**(AMENDED AS PER RESOLUTION NO. 2276-2005-10, DATED 10/24/05.)**

**Sec. 404. Unlawful discharge of firearms.**

(a) Whoever discharges firearms within five hundred (500) yards of an occupied building or structure, unless the defendant is entitled to possession of the building or structure or authorized to do so by a person entitled to possession, is guilty of unlawful discharge of firearms, with the exception of a police officer in the performance of duty.

(b) Whoever discharges firearms within the limits of a city or town, with the exception of a police officer in the performance of duty, is guilty of unlawful discharge of firearms.

Unlawful discharge of firearms is a Class A misdemeanor. In addition to the penalty prescribed for such an offense, any person convicted of unlawful discharge of firearms may be ordered by the Fort Peck Tribal Court to forfeit any such firearm to the Tribes.

**Sec. 405. Sale, transportation, possession or placement of a destructive device.**

(a) Any person who knowingly sells, offers for sale, transports or possesses any destructive device, or who places a destructive device in any location which is calculated to endanger health, life or property, is guilty of a Class A misdemeanor. This section shall not apply to:

(1) Any tribal law enforcement officer acting in the lawful discharge of his/her duties;

(2) Any person who possesses a valid seller's or user's permit issued by the United States government for explosive or destructive devices.

(b) Destructive device used in this Code, unless the context plainly requires otherwise, means any box, package, contrivance, bomb, grenade, explosive missile, launching device, or an apparatus containing an explosive, flammable, poisonous or other dangerous or harmful weapon or substance which is construed so as to explode, ignite or throw forth its contents after passage of time, when moved, handled, fired or opened. The term does not include "permissible fireworks, any device (although originally designed for use as a weapon which is redesigned for use as a signaling, safety, or similar device), or any other device which is antique or is a rifle which the owner intends to use solely for sporting or collecting purposes.

**Sec. 406. Unauthorized possession of substances with intent to make destructive device.**

Any person who, without first obtaining a permit from lawful authorities, possesses any substance or material with the intent to make a destructive device is guilty of a Class A misdemeanor.

**Sec. 407. Forfeiture of weapon or destructive device.**

Any controlled weapon, destructive device, or substance used or possessed in violation of this Chapter shall be forfeited to the Tribes. The Tribes may order that the forfeited property be

destroyed, sold, or kept for lawful use by Tribal law enforcement officers.

**(RESOLUTION NO. 607-2008-04; DATED 4/28/2008)**

**Sec. 408. Privacy in communications.**

(a) A person commits the offense of violating privacy in communications if the person intentionally:

(1) With the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by electronic communication and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.

(2) Uses an electronic communication to attempt to extort money or any other thing of value from a person or to disturb by repeated communications the peace, quiet, or right of privacy of a person at the place where the communications are received;

(3) Records or causes to be recorded a conversation by use of hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation. This subsection (a)(3) does not apply to:

(A) Elected or appointed public officials or to public employees when the transcription or recording is done in the performance of official duty;

(B) Persons speaking at public meetings;

(C) Persons given warning of the transcription or recording, or if one person provides the warning, either party may record; or

(D) A health care facility or a government agency that deals with health care if the recording is of a health care emergency telephone communication made to the facility or agency.

(b) A person commits the offense of violating privacy in communications if the person intentionally intercepts an electronic communication. This subsection does not apply to elected or appointed officials or to public employees when the interception is done in the performance of official duty or to persons given warning of the interception.

(c) The first conviction of violating privacy in communications is a Class A misdemeanor. The second and subsequent convictions of violating privacy in communications is a Felony.

(d) Electronic communication means any transfer between persons of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

**(AS PER RESOLUTION NO. 25-2127-2011-05; DATED 05/23/2011.)**

**Sec. 409. Possession or allowing possession of weapon on school property – exceptions – penalties – seizure and forfeiture or return authorized – definitions.**

(a) A person commits the offense of possession of a weapon on school property if the person intentionally possesses, carries, or stores a weapon on school property.

(b) A parent or guardian of a minor commits the offense of allowing possession of a weapon on school property if the parent or guardian intentionally permits the minor to possess, carry, or store a weapon on school property.

(c) (1) Subsection (a) does not apply to law enforcement personnel.

(2) Subsection (a) does not apply to any person carrying a weapon for a special purpose when permission is obtained from the governing body of the school, however, no one may carry a concealed weapon on school property who does not have a valid concealed weapon permit issued by a lawful jurisdiction.

(d) (1) A person convicted under this section shall be guilty of a felony. The Court shall consider alternatives to incarceration that are available in the community.

(2) (A) A weapon in violation of this section may be seized, and, upon conviction of the person possessing or permitting possession of the weapon, may be forfeited to the Tribes or returned to the lawful owner.

(B) If a weapon seized under the provisions of this section is subsequently determined to have been stolen or otherwise taken from the owner's possession without permission, the weapon must be returned to the lawful owner.

(e) As used in this section:

(1) School property means all property owned or leased by a local school district. The term does not include a home school provided for in Title 16, Chapter 9 of this Code.

(2) Weapon means any type of firearm, any type of knife, a sword, a straight razor, throwing star, nunchucks, brass or other metal knuckles, stun gun, taser or an object indistinguishable from a firearm, such that a reasonable person, without specialized training in firearms, would conclude that it appears to be a firearm. The term also includes any other article or instrument possessed with the purpose to commit a criminal offense.

**(AS PER RESOLUTION NO. 26-2216-2013-04; 04/08/2013)**

**Sec. 409-A. Possession of stun gun; possession of taser.**

(a) Any person, under the age of 21, who possesses a stun gun and/or who possesses a taser is guilty of possession of a stun gun and/or taser.

(b) Possession of stun gun and/or taser is a Class A misdemeanor. In addition to the penalty prescribed for such an offense, any person convicted of possession of a stun gun and/or taser may be ordered by the Fort Peck Tribal Court to forfeit any stun gun and/or taser to the Tribes.

(c) Use of a stun gun and/or taser in the commission of any criminal act is a felony.

(d) Stun gun/taser means (1) a device designed to propel darts or other projectiles attached to



wires that, on contact, will deliver an electrical pulse capable of incapacitating a person or (2) an electroshock weapon that uses electrical current to disrupt voluntary control of muscles causing neuromuscular incapacitation.

**(AS PER RESOLUTION NO. 26-2218-2013-04; DATED 04/08/2013)**

**Sec. 409-B. Carrying a weapon in a prohibited place.**

(a) Except for officers authorized to carry a weapon (weapon defined at 7 CCOJ 409(e)(2), a person commits the offense of carrying weapon in a prohibited place if the person intentionally carries a weapon in:

(1) Portions of any tribally owned or leased building; or

(2) Portions of any building leased by the Department of Interior, Indian Health Service; or

(3) Portions of any building of the Fort Peck Community College or any building occupied by any agency providing services to the Fort Peck Tribes.

(4) A bank, credit union, savings and loan institution, or similar institution during the institution's normal business hours. It is not an offense under this section to carry a weapon while:

(A) Using an institution's drive-up window, automatic teller machine, or unstaffed night depository; or

(B) At or near a branch office of an institution in a grocery store, or other place unless the person is inside the enclosure used for the institution's financial services or is using the institution's financial services.

(5) A room in which alcoholic beverages are sold, dispensed, and consumed under a license issued by the State of Montana for the sale of alcoholic beverages for consumption on the premises.

(b) It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of this offense is guilty of a Class A misdemeanor.

**(AS PER RESOLUTION NO. 26-2217-2013-04; DATED 04/08/2013)**

**Subchapter B. Alcohol, Drugs and Related Offenses**

**Sec. 410. Unlawful possession of an open vessel containing an intoxicating beverage in a public place.**

(a) A person who possesses in a public place on the Reservation an open vessel containing an intoxicating beverage, or causes or allows to be opened or broken in a public place a vessel containing an intoxicating beverage, or consumes in a public place any portion of an intoxicating beverage contained in such an open vessel, is guilty of unlawful possession of an open vessel of an intoxicating beverage.

(b) For purposes of this Section, 410-A, and 411 of this Title, "intoxicating beverages" shall mean any potable compound that contains more than point five percent (.5%) alcohol.

(c) The term "public place" shall include, but not be limited to, streets, parks, playgrounds, and other unenclosed areas, and schools, stores, and tribal buildings. It shall not include restaurants or other establishments that are permitted by law to serve intoxicating beverages.

(d) Unlawful possession of an intoxicating beverage in a public place is a Class B misdemeanor, punishable pursuant 7 CCOJ 501(3).

(e) Conviction of a non-violent Minor offender. Either in the alternative or in addition, the presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

**(AMENDED AS PER RESOLUTION NO. 3305-87- 10, DATED 10/12/87, RESOLUTION NO. 2084C-89- 3, DATED 03/13/89, and RESOLUTION NO. 2646-97-4, DATED 04/25/97.)**

**Sec. 410-A. Unlawful possession of intoxicating beverages by those younger than twenty-one years of age.**

A person who is under the age of twenty-one, and purchases or has in his/her possession any intoxicating beverage, is guilty of unlawful possession of intoxicating beverages.

(1) Unlawful possession of intoxicating beverages by those under the age of twenty-one as a first time offender shall be a Class B misdemeanor, punishable pursuant 7 CCOJ 501(3), and a Class A misdemeanor for the second and any subsequent offenses, punishable pursuant 7 CCOJ 501(2).

(2) Additionally, any person found in violation of this Section while in physical control of a motor vehicle shall incur the following penalties:

(A) First offense: Driver's License confiscated by the Court for not less than thirty (30) days and not more than ninety (90) days, and/or a fine of not less than twenty-five dollars (\$25.00).

(B) Second offense: Driver's license confiscated by the Court for not less than sixty (60) days, and not more than one hundred-twenty (120) days, and/or a fine of not less than fifty dollars (\$50.00).

(C) Third offense: Driver's license confiscated by the Court for between ninety (90) and three-hundred-and-sixty-five (365) days, and a mandatory fine of two-hundred-fifty dollars (\$250.00).

(3) Conviction of a non-violent Minor offender. Either in the alternative or in addition, the presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

**Sec. 411. Unlawful sales, gifts, deliveries or otherwise furnishing alcoholic beverages to a minor, or a person who is actually, or visibly, or obviously, or apparently intoxicated.**

Any person or entity that sells, gives, delivers, or otherwise furnishes or procures an alcoholic beverage to or for a person under twenty-one years of age, or to or for a person who is actually, or visibly, or obviously, or apparently intoxicated is guilty of a Class A misdemeanor, punishable pursuant to 7 CCOJ 501(2), and specifically:

(1) A mandatory minimum sentence shall be given for a person offending this section a second time of sixty (60) days in the Fort Peck Tribal Jail, and for a third and thereafter offender of this section, ninety (90) days shall be prescribed in the Fort Peck Tribal Jail.

(2) Conviction of a non-violent Minor offender. The presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

**(AMENDED AS PER RESOLUTION NO. 2646-97-4, DATED 04/25/97.)**

**Sec. 411-A. Prohibition of serving alcohol between two a.m. and 8 a.m. on commercial properties of Fort Peck Tribal trust land.**

The serving and consumption of any intoxicating substance between 2 a.m. and 8 a.m. on a commercial premises that is Fort Peck Tribal trust land is prohibited. Infraction of this Section is punishable as a Class B misdemeanor, punishable pursuant 7 CCOJ 501(3).

**Sec. 412. Unlawful possession or consumption of tobacco by persons under the age of 18 years.**

Any person under eighteen (18) years of age, who knowingly possesses or consumes cigarettes,

chewing tobacco, or other tobacco products, commits the offense of possession or consumption of tobacco.

(1) A Minor found in violation of this section shall have a mandatory fine of twenty dollars (\$20.00) for the first offense, no less than a forty dollar (\$40.00) fine for the second offense, and no less than one hundred dollars (\$100.00) for the third or subsequent offense.

(2) A Minor on the third or subsequent offense may be adjudicated on a petition alleging the youth to be delinquent youth under the provisions set out in 9 CCOJ 102(g), and for any violation of this section the Court may render a disposition under 9 CCOJ 306(d), and/or to recommend the youth's participation in the Fort Peck Wellness Court pursuant Section 419 of this Title. **(AMENDED AS PER RESOLUTION NO. 807-98-9, DATED 9/15/98.)**

**Sec. 412-A. Unlawful sales, gifts, deliveries or otherwise furnishing tobacco to or for a Minor.**

Excepting any family member, any person or business that sells, gives, delivers, or otherwise furnishes or procures tobacco in any form to a Minor is guilty of a Class A misdemeanor, punishable pursuant 7 CCOJ 501(2), and specifically:

(1) A mandatory minimum sentence shall be given for a person offending this section a second time of twenty (20) days in the Fort Peck Tribal Jail, and for a third and thereafter offender of this section, sixty (60) days shall be prescribed in the Fort Peck Tribal Jail.

(A) 'Family' shall be defined as grandparents, parents, aunts, uncles, first cousins, children, grandchildren, and siblings.

(2) Conviction of a non-violent Minor offender. The presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

**Sec. 413. Unlawful sale of dangerous drugs.**

(a) Whoever knowingly: sells, transfers or otherwise furnishes marijuana, any narcotic drug, including any substance containing opium, coca leaves, cocain derivatives; any opiate or any substance, compound or derivative thereof; any salt; compound, isomer; derivative; or preparation; including amphetamines and methamphetamine; MDMA (3,4-methylenedioxi-methamphetamine; popularly known as ecstasy); ketamine; GHB (gammahydroxybutyrate); Rohypnol (flunitrazepam); and LSD (lysergic acid diathyamide); and other substances as define in Chapter 13, Title 21 USC 812 and Sections 50-32-221-233 Montana Code Annotated, and preparations thereof being sold, transferred or otherwise furnished for physiological and psychoactive effects, which are chemically equivalent or identical with any of the substances referred to above is guilty of unlawful sale of dangerous drugs.

(b) Unlawful sale of drugs shall be a felony, punishable pursuant to 7 CCOJ 501(1).

(1) There shall be a mandatory minimum sentence of 6 months imprisonment and \$2,500 fine for the first conviction under this Section for the sale of drugs, and a mandatory minimum sentence of 1 year imprisonment and a \$5,000 fine for the second and each subsequent conviction for the sale of dangerous drugs.

(2) Additionally, anyone convicted under this Section may be banished from the Reservation for a period of 1 year for the first offense, and shall be banished 2 years for the second offense, and shall have a lifetime banishment for the third offense.

(A) As an exception to the above, the presiding judge may, for defendants who, by evidence properly admissible in a court of law, demonstrate alcohol and/or drug dependency, and have never before participated in a multi-day drug and/or alcohol treatment program, give the convicted defendant a reduced sentence in exchange for the written agreement by the defendant to participate in a Tribally approved drug

and/or alcohol treatment program, and to abide by the program's advice once having completed it.

(B) For defendants who are found to have completed one or more drug and/or alcohol treatment programs as part of an order from a previous offense of this Section or of another jurisdiction's law substantively the same as this Section 413, but have failed to abide by the advice for abstinence or temperance, a reduction of sentence shall only be available upon a strong showing that the offender will benefit from the therapy, as testified to by a social worker who can document a pattern of positive behavior modification subsequent to the prior failed therapy.

(3) A person who was an adult at the time of sale and or transfer and who is convicted of unlawful sale of dangerous drugs to a anyone under 21 years of age shall be sentenced to a mandatory 1 year imprisonment and a fine of \$5,000 for the first and any subsequent convictions.

(4) Any person convicted under this Section of distributing, possessing with intent to distribute, or manufacturing a dangerous drug in or on, within 1000 feet of the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or a playground, or housing facility owned by a public housing authority, or within 1000 feet of a public or private youth center, public swimming pool, or video arcade facility, shall be considered to have committed a felony, punishable pursuant to 7 CCOJ 501(1).

(5) *Conviction of a non-violent minor offender.* The presiding judge over a hearing or trial in which a minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted minor.

**(AMENDED AS PER RESOLUTION NO. 2084C-89-3, DATED 03/13/89; AMENDED AS PER RESOLUTION NO. 50-2003-11, DATED 11/25/03; AMENDED AS PER RESOLUTION NO. 1451-2010-12, DATED**

**12/13/2010; AMENDED AS PER RESOLUTION NO. 27-2235-2015-09, DATED 09/14/2015)**

**Sec. 413-A. Unlawful possession of dangerous drugs.**

(a) A person commits the offense of unlawful possession of dangerous drugs if she/he possesses any of the dangerous drugs defined in Section 413(a) of this Title.

(1) A person convicted under this section shall be guilty of a Class A misdemeanor, punishable pursuant 7 CCOJ 501(2), and taking into account the possible mitigation of drug and/or alcohol treatment, as set out in Section 413(b)(1)(A) and (B) of this Title.

(2) Conviction of a non-violent Minor offender. The presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

**Sec. 413-B. Unlawful possession of dangerous drugs with intent to sell.**

(a) Where probable cause, as defined in 6 CCOJ 201(c) and law enforcement investigation provide evidence of an intent to sell, transfer or otherwise furnish dangerous drugs, a person commits the offense of unlawful possession of dangerous drugs with intent to sell if he/she possesses any of the dangerous drugs defined in Section 413(a) of this Title.

(b) A person convicted under this Section shall be guilty of a felony, punishable pursuant to 7 CCOJ 501(1), and taking into account the possible mitigation of drug and/or alcohol treatment, as set out in Section 413(b)(1)(A) and (B) of this Title. Additionally there shall:

(1) Be a mandatory minimum sentence of 6 months imprisonment and a fine of \$2,500 for the second and each subsequent conviction; and

(2) Anyone convicted under this Section may be banished from the Reservation for 1 year for the first offense, and shall be banished 2 years for the second offense, and shall have a lifetime banishment for the third offense.

(3) *Conviction of a non-violent minor offender.* The presiding judge over a hearing or trial in which a minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted minor.

**(AMENDED AS PER RESOLUTION NO. 27-2235-2015-09; DATED 9/14/2015)**

**Sec. 414. Unlawful possession of toxic substances.**

(a) A person commits the offense of unlawful possession of a toxic substance if he/she inhales or ingests or possesses with the purpose to inhale or ingest, for the purposes of altering his/her mental or physical state, any substance with toxic effects that is not manufactured for human consumption or inhalation.

(b) A person convicted under this section shall be guilty of a Class A misdemeanor, punishable pursuant 7 CCOJ 501(2) and taking into account the possible mitigation of drug and/or alcohol treatment, as set out in Section 413(b)(1)(A) and (B).

(1) Conviction of a non-violent Minor offender. The presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

(c) Definitions. For purposes of this section, toxic substances include, but are not limited to, glue, fingernail polish, paint, paint thinners, petroleum products, aerosol propellants, or chemical solvents containing toluene, benzene, xylene,

any nitrate, butyl nitrate, nitrous oxide, or other aromatic hydrocarbon, or any other similar substance declared to have potential for abuse and/or toxic effect on the central nervous system.

**Sec. 415. Unlawful production or manufacture of dangerous drugs.**

(a) A person commits the offense of unlawful production or manufacture of dangerous drugs if the person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes the dangerous drugs listed in Section 413(a) of this Title.

(b) Conviction under this Section shall be a felony, punishable pursuant 7 CCOJ 501(1), and specifically:

(1) There shall be a mandatory minimum sentence of six (6) months imprisonment and a two thousand, five hundred dollar (\$2,500.00) fine for the first conviction under this Section; and:

(2) A mandatory minimum sentence of one year imprisonment and a fine of five thousand dollars. (\$5,000.00 for the second and each subsequent conviction.

(3) Additionally, the Judge shall take into account the possible mitigation of drug and/or alcohol treatment, as set out in Section 413(b)(1)(A) and (B) of this Title.

(4) Conviction of a non-violent Minor offender. The presiding judge over a hearing or trial in which a Minor is convicted of offending this statute shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

(c) Impact on environment. Conviction by evidence properly admissible in a court of law that containers, byproducts, and precursor chemicals dumped on Fort Peck Tribal trust land were dumped there by a certain individual or individuals shall, with reference to 14 CCOJ 201(a)(c) and (d), and 202(a)(b) and (f), be punishable as a class A misdemeanor pursuant 7 CCOJ 501(2).

**Sec. 415-A. Unlawful possession of precursors to dangerous drugs.**

(a) A person commits the offense of unlawful possession of precursors to dangerous drugs if he/she possesses any of the following substances or combinations of the following, and is shown by evidence admissible in a court of law to possess them with the intent of manufacturing dangerous drugs.

(b) Definition. "Precursor" means the principal compound commonly used or produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture of dangerous drugs. Suspect precursors include:

- (1) phenyl-2-propanone (phenylacetone);
- (2) piperidine in conjunction with cyclohexanone;
- (3) ephedrine [methamphetamine precursor];
- (4) lead acetate;
- (5) methylamine;
- (6) methylformamide;
- (7) n-methylephedrine;
- (8) phenylpropanolamine;
- (9) pseudoephedrine;
- (10) anhydrous ammonia;
- (11) hydriodic acid;
- (12) red phosphorus;
- (13) iodine in conjunction with ephedrine, pseudoephedrine, or red phosphorus;
- (14) lithium in conjunction with anhydrous ammonia.

(c) Conviction under this Section shall be a felony, punishable pursuant Title 7 Section 501(1), and specifically:

- (1) There shall be a mandatory minimum sentence of six (6) months imprisonment and a two thousand, five hundred dollar (\$2,500.00) fine for the first conviction under this Section; and
- (2) A mandatory minimum sentence of one year imprisonment and a fine of five thousand dollars. (\$5,000.00 for the second and each subsequent conviction.

(3) Additionally, the Judge shall take into account the possible mitigation of drug and/or alcohol treatment, as set out in Section 108(2)(a)(i) and (ii) of this Title.

(4) Conviction of a non-violent Minor offender. The presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

**Sec. 415-B. Possession of firearm in drug related crimes.**

Any person who, during and in relation to the crime of 7 CCOJ 413, 413-B and/or 415, uses, or carries, or possesses a firearm shall be guilty of a felony.

**(AS PER RESOLUTION NO. 26-2809-2013-08; DATED 9/26/2013.)**

**Sec. 416. Forfeiture of assets aiding in a drug crime.**

(a) Any person convicted of a violation of any Sections of Subchapter C of Chapter 1 of this Title punishable by imprisonment for up to one year shall forfeit to the Fort Peck Tribes, irrespective of any provision of State law:

- (1) Any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;
- (2) Any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

(3) In the case of a person convicted of engaging in a continuing criminal enterprise in violation of Section 413 of this Title, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over the continuing criminal enterprise.

(b) The court, in imposing a sentence on such person, shall order, in addition to any other sentence imposed pursuant to this Subchapter B of this Title, that the person forfeit to the Fort Peck Tribes any property described in this subsection, but not to exceed a total fair market value of five thousand dollars (\$5,000.00) for any one infraction of this Section. Proceeds from forfeited property shall be specifically placed in the annual budget of that police department dedicated to funding investigations of illegal drug presence within the Fort Peck Tribal boundaries. In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

**Sec. 417. Illegal to sell, trade, or bargain in drug paraphernalia.**

(a) In general, it is unlawful for any person:

(1) To possess, sell, trade, bargain, or offer for sale drug paraphernalia;

(2) To use the mails or any other facility of interstate commerce to transport drug paraphernalia; or

(3) To import or export drug paraphernalia.

(4) "Drug paraphernalia" defined. The term "drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this Subchapter. It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, methamphetamine, or amphetamines into the human body, including:

(A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(B) Water pipes;

(C) Carburetion tubes and devices;

(D) Smoking and carburetion masks;

(E) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(F) Miniature spoons with level capacities of one-tenth cubic centimeter or less;

(G) Chamber pipes;

(H) Carburetor pipes;

(I) Electric pipes;

(J) Air-driven pipes;

(K) Chillums;

(L) Bongs;

(M) Ice pipes or chillers;

(N) Wired cigarette papers;

(O) Cocaine freebase kits; or

(P) Syringes of any size, with or without a needle attached.

(b) Penalties: Conviction under this Section shall be a class A misdemeanor, punishable pursuant 7 CCOJ 501(2), and specifically, any drug paraphernalia involved in any violation of subsection (1) of this Section shall be subject to seizure and forfeiture upon the conviction of a person for such violation. Additionally, the Judge shall take into account the possible mitigation of drug and/or alcohol treatment, as set out in Section 108(b)(1)(A) and (B) of this Title. Any such paraphernalia may be held by the arresting police as potential evidence, or destroyed, or delivered to the state crime lab of Montana, who may order such paraphernalia destroyed or may authorize its use for law enforcement or educational purposes by Federal, State, or local authorities.

(c) Conviction of a non-violent Minor offender. The presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

(d) Matters considered in determination of what constitutes drug paraphernalia. In determining whether an item constitutes drug paraphernalia,

in addition to all other logically relevant factors, the following may be considered:

- (1) Instructions, oral or written, provided with the item concerning its use;
- (2) Descriptive materials accompanying the item which explain or depict its use;
- (3) National and local advertising concerning its use;
- (4) The manner in which the item is displayed for sale;
- (5) Whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (6) Direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;
- (7) The existence and scope of legitimate uses of the item in the community; and
- 8) Expert testimony concerning its use.

(e) Exemptions. This section shall not apply to:

1) Any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items; or

(2) Any item that, in the normal lawful course of business, is imported, exported, transported, or sold through the mail or by any other means, and traditionally intended for use with tobacco products, including any pipe, paper, or accessory.

**(AMENDED AS PER RESOLUTION NO. 774-2006-7 DATED 07/10/06)**

**Sec. 418. Unauthorized use, possession, dispensing, and acquisition of prescription drugs.**

(a) Within the exterior boundaries of the Fort Peck Reservation, businesses and their employees, including public and private hospital dispensaries, with the requisite federal and state licenses to buy and sell prescription drugs shall only sell such controlled drugs if the customer presents the original of a prescription signed by a licensed and authorized physician or medical provider, and the pharmacist or pharmacy employees shall request photo identification from the customer to verify that the customer is the same person as for whom

the prescription from the physician/ medical provider was made.

(1) Any business or employee of such business operating as a pharmacy that knowingly sells prescription drugs in the absence of a bona fide prescription, or sells anything other than, and in any other dosage, than what was prescribed, if convicted, shall be guilty of a felony, punishable pursuant 7 CCOJ 501(1), for each offense of this Section.

(2) Any customer to a business operating as a pharmacy that knowingly attempts or succeeds in obtaining prescription drugs using a forged, copied, stolen, or fictitious prescription, if convicted, shall be guilty of a felony, punishable pursuant 7 CCOJ 501(1), for each offense of this Section.

(3) Additionally, the Judge shall take into account the possible mitigation of drug and/or alcohol treatment, as set out in Section 413(b)(1)(A) and (B).

(4) Conviction of a non-violent Minor offender. The presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

**Sec. 418-A. Unlawful sale, use, abuse, possession of prescription medication.**

(a) A person who sells prescription medication is guilty of the offense of the unlawful sale of prescription medication. Unlawful sale of prescription medication is a felony.

(b) A person who uses or possesses the prescription medication of another is guilty of the unlawful use and/or possession of prescription medication.

(c) A person who abuses prescription medication is guilty of abuse of prescription medication.

(d) Conviction under subsections (b) and/or (c) of this Section is a Class A misdemeanor for the



first offense and a felony for the second and subsequent convictions.

Prescription medication is defined as a licensed medication that is regulated by legislation to require a prescription before it can be obtained.

**(RESOLUTION NO. 1451-2010-12, DATED 12/13/2010.)**

**Sec. 419. Sentencing of Minors: Fort Peck Tribal Wellness Court and ‘cultural diversion programs’.**

(a) Wellness Court.

(1) Minors convicted for the first time under any of Sections 410-411, 412-414, 415-A, 417, and/or 418 of this Title may, at the presiding judge’s discretion but in preference to the adult punishments prescribed specifically in each of those Sections, be recommended by the judge to participate with their parent(s) or guardian(s) in the Fort Peck Tribal Wellness Court. For minors who are first time offenders, participation in the Wellness Court may be recommended, in conjunction with and/or subsequent to:

(A) Detention in the Fort Peck Juvenile Detention Facility for a period to be determined by the Court; and/or

(B) A drug/alcohol treatment program, including commitment to a Tribal detoxification facility, where appropriate, following 11 CCOJ 204.

(2) Minors who are second time offenders of any of Sections 410-411, 412-414, 415-A, 417, and/or 418 of this Title may be ordered, in conjunction with and subsequent to, up to four months detention in the Fort Peck Juvenile Detention Facility, for offenses otherwise punishable as felonies, and up to two months for offenses otherwise punishable as Class A misdemeanors, to be participants, along with their parent(s) or guardian(s) in the Fort Peck Tribal Wellness Court.

(3) Repeat Minor offenders may be subject to the sentence parameters of 7 CCOJ 501, and as specifically set out in each section of Sections 410-A, 411, 417, 418 or 412 through 415-A of this Title.

(4) Following 9 CCOJ 102(a), a Minor is any Indian person under eighteen years of age.

(b) Cultural Diversion Programs. If programs meeting the approval of the Tribal Executive Board and designed with the purposes of:

(1) Connecting people, and especially at-risk youth, to the cultural values, traditions, and ways of life of the Assiniboine and Sioux Peoples; and

(2) Building the self-esteem, physical health, mental health, and moral integrity of the participants; then:

Such program shall be an acceptable alternative sentence for juvenile offenders, and may, depending on the program, even be considered for adult offenders. The program may be used by the Court to reduce imprisonment terms, as the sole punishment, or in conjunction with other treatment programs. Recidivist offenders shall not necessarily be disqualified from being ordered to participate in such programs. Such programs could include:

(A) Buffalo Ranch. Participants in this program would live for a year to five years on a ranch, in a supervised home, within the exterior boundaries of the Fort Peck Reservation, with the personal responsibility to raise a certain number of buffalo to be grown and sold for meat production.

(B) Self-sustaining farm. Participants living in supervised household(s) on a farm that attempts to grow the entirety of their food needs.

(C) Regular meetings and presentations to a Council of Elders. Participants must meet regularly, preferably with their family in attendance, and describe to and answer questions from the Council as to what they are doing for positive personal growth and learning, and helping others in positive efforts.

(D) Commitment to a Tribal detoxification center which provides therapy and medical supervision, particularly for where 11 CCOJ 204 applies.

**Subchapter C. Offenses Involving Governmental Processes**

**Sec. 420. Bribery.**

Whoever intentionally offers, gives, or agrees to give to another, or solicits, accepts, or agrees to accept from another, anything of value as consideration:

- (1) To influence the recipient's official action as a public servant; or
- (2) To induce the recipient's violation of a known legal duty as a public servant is guilty of bribery.

Bribery is a felony.

**Sec. 421. Interfering with elections.**

A person is guilty of interfering with elections who:

- (a) Coerces, threatens, injures or intimidates another person with respect to voting, qualifying to vote, qualifying or campaigning as or for a candidate for elective office, or qualifying or acting as an election official, in any primary, special, or general election of the Assiniboine and Sioux Tribes; or
- (b) In connection with any election of the Assiniboine and Sioux Tribes, makes or induces any false voting registration; or
- (c) In connection with any election of the Assiniboine and Sioux Tribes, offers, gives, or agrees to give anything of pecuniary value to another person as consideration for the recipient's voting or withholding his/her vote or voting for or against any candidate or issue or for such conduct by another; or
- (d) Solicits, accepts, or agrees to accept anything of pecuniary value as consideration for conduct prohibited under Subsections (b) or (c); or
- (e) Otherwise obstructs or interferes with the lawful conduct of an election of the Assiniboine and Sioux Tribes or registration therefor.

Interfering with elections in violation of Subsections (a), (b), (c) or (d) is a felony.

Interfering with elections in violation of subsection (e) is a Class A misdemeanor.

**Sec. 422-A. Protection of government officials, employees and law enforcement officers.**

- (a) A person violates this section who forcibly assaults, intimidates or interferes with:
  - (1) Any elected official; or
  - (2) Any judge, justice or acting judge or justice of any court created by the Tribes or created under the authority of the United States; or

(3) Any official or employee of the Tribes, the United States or the State of Montana; or

(4) Law enforcement officer; or

(5) Judicial officer

on account of the performance of official duties, or while such member, judge, officer or employee is engaged in official duties.

(b) *Assault* is defined as a person intentionally causing or attempting to cause:

(1) Bodily injury,

(2) Reasonable apprehension of serious bodily injury with or without the use of a weapon;

(3) Bodily injury with a weapon; or

(4) Serious bodily injury.

(c) *Intimidation* is defined as communicating, with the purpose to cause another to perform or to omit the performance of any act, under circumstances which reasonably tend to produce a fear that it will be carried out, a threat to perform without lawful authority any of the following acts:

(1) Inflict physical harm on the person threatened or any other person;

(2) Subject any person to physical confinement or restraint.

(d) *Interfere* is defined as preventing or delaying the performance of official duties without lawful authority.

(e) Violation of this Section also includes anyone who forcibly assaults or intimidates any person who served as a person designated in Subsection (a) on account of the performance of official duties during such person's term of service.

(f) Where the victim of an assault is against a person designated in Subsection (a), it shall be no defense that the action of such person is contrary to law, so long as the action or failure to act is within the scope of such person's duties or employment.

(g) *Law enforcement officer* means a person who by virtue of the person's office or public

(h) *Bodily injury* means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.

(i) Conviction of this offense shall be a felony. If the commission of an act involved the use of a weapon (weapon defined at 7 CCOJ 401), the Court must impose a sentence of a minimum of one year incarceration, which cannot be suspended for probation or parole.

**(AS PER RESOLUTION NO. 28-1720-2017-03; DATED 2/27/2017)**

**Sec. 423-A. Harming a police dog.**

(a) A person commits the offense of harming a police dog if the person intentionally shoots, kills, or otherwise injures a police dog being used by a:

(1) Law enforcement officer in discharging or attempting to discharge a legal duty in a reasonable and proper manner; or

(2) Person while the person is under the control of and acting under the direction of an officer of an official law enforcement agency during the performance of the agency's law enforcement or search and rescue duties.

Harming a police dog is a Class A misdemeanor.

**(RESOLUTION NO. 1451-2010-12; DATED 12/13/2010.)**

**Sec. 424. Hindering law enforcement.**

A person is guilty of hindering law enforcement if he/she intentionally interferes with, hinders, delays or prevents the discovery, arrest, prosecution, conviction, or punishment in any way of himself/herself or another for the commission of an offense.

Hindering law enforcement is a Class A misdemeanor.

**(AMENDED AS PER RESOLUTION NO. 3171-87-9, DATED 09/14/87 AND AS PER RESOLUTION NO. 2275-2005-10, DATED 10/24/05.)**

**Sec. 425. Perjury.**

A person who, in any official proceeding of the Assiniboine and Sioux Tribes, makes a false statement or interpretation under oath or equivalent affirmation, or swears or affirms the truth of a statement or interpretation previously made, when the statement or interpretation is material and the defendant does not believe it to be true, is guilty of perjury. Falsification is material if it could have affected the course or outcome of the proceeding. Perjury is a felony.

**Sec. 426. Criminal contempt.**

All courts of the Assiniboine and Sioux Tribes authority the following offenses:

(a) Misbehavior of any person in its presence of justice; or

(b) Disobedience or resistance to any process, order, subpoena, warrant or command of the Court.

Criminal contempt is a Class A misdemeanor.

**Sec. 427. Violation of a Temporary Restraining Order, Temporary Order of Protection, Order of Protection.**

(a) An individual who violates the orders of a Temporary Restraining Order, Temporary Order of Protection commits a Class A misdemeanor. A individual who violates an Order of Protection commits a felony.

(b) *Procedural requirements.* At the hearing creating the Temporary Restraining Order, Temporary Order of Protection or Order of Protection, the Court shall instruct the moving party that it is that party's responsibility to promptly inform law enforcement of any infractions of the Order by the one restrained. Law enforcement shall main-

tain blank photocopies of a standardized affidavit stating that the one restrained violated the order against him/her. The affidavit shall include the date and time, which shall be filled in by the moving party or a law enforcement official at the station, and shall be signed by the moving party. The law enforcement officer shall then immediately deliver it to the Tribal Court, which shall issue an arrest warrant upon finding of necessary probable cause by the law enforcement officer that the abuser did violate the Temporary Restraining Order, Temporary Order of Protection, or Order of Protection. The judges of the Tribal Court may issue an arrest warrant at any time on any day.

**(AS PER RESOLUTION NOS. 821-2002-8, DATED 8/12/2002; 26-1384-2012-09, DATED 9/11/2012; 27-1633-2015-03, DATED 3/9/2015.)**

**Sec. 428. Resisting arrest.**

Whoever, with the intent to prevent a law enforcement officer from effecting an arrest:

(a) Flees from a law enforcement officer after being told by an officer that he/she is under arrest; or

(b) Uses or threatens to use physical force or violence against the law enforcement officer or another; or

(c) Creates a substantial risk of bodily harm to the officer or any other person, or employs means justifying substantial force to overcome the resistance is guilty of resisting arrest. The Court, in its discretion, may require the guilty defendant to make restitution to the law enforcement officer for property of the officer that was damaged as the result of the defendant's resistance.

A person is guilty of an offense under this Section regardless of whether the arrest resisted is lawful or unlawful; but clearly excessive force may be resisted.

Resisting arrest is a Class A misdemeanor for the first and second offense and a felony for a third and subsequent offenses.

**(AMENDED AS PER RESOLUTION #26-1950-2013-02; DATED 02/11/2013)**

**Sec. 429. Escape.**

A person who unlawfully removes himself/herself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period is guilty of escape.

"Official detention" does not include supervision of probation or parole, or constraint incidental to release on bail.

Escape is a felony.

**Sec. 430. Tampering with witnesses or informants.**

A person commits the offense of tampering with a witness or informant if, believing that an official proceeding or investigation is pending or about to be instituted, that person purposely attempts to induce or otherwise cause a witness or informant to:

(a) Testify or inform falsely;

(b) Withhold any testimony, information, document or thing;

(c) Elude legal process summoning a witness or informant to testify or supply evidence; or

(d) Absent himself or herself from any proceeding or investigation to which the witness or informant has been summoned.

An offense committed under this section is a Class A misdemeanor.

An offense committed under this section in a case charged as a felony is a felony.

**(AMENDED AS PER RESOLUTION NO. 27-643-2014-04; DATE 4/28/2014)**

**Sec. 431. Threats and other improper influences in official matters.**

An individual commits an offense under this section if that individual purposely:

(a) Coerces, threatens harm to, injures, or intimidates any person including any public servant, with the purpose to influence that person's decision, opinion, recommendation, vote, or exercise of discretion as a public servant, or voter, or in a judicial or administrative proceeding;

(b) As a juror, or officer in charge of a jury, receives or permits to be received, any communication relating to any matter pending before such jury, except according to the regular course of proceedings.

Definition of juror. "Juror" means any person who is a member of any jury impaneled under authority of tribal law in any action or proceeding in the courts of the Assiniboine and Sioux Tribes. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror. For purposes of this Section 429-B a juror is a public servant. An offense under this section shall be a

Class A misdemeanor.

**(AMENDED AS PER SOLUTION NO. 1148-92-7, DATED 07/13/92.)**

**Sec. 432. False and harassing reports to law enforcement officers and emergency providers.**

(a) A person commits the offense of giving false reports to law enforcement officers by intentionally:

(1) Giving false information to any law enforcement officer with the purpose to implicate another, or

(2) Reporting to a law enforcement officer an offense or other incident within their concern, knowing that the alleged offense or incident did not occur, or

(3) Pretending to furnish such officers with information relating to an offense or incident when the person does not have information relating to such an offense or incident.

(b) A person commits the offense of making false or harassing reports to emergency providers by intentionally:

(1) Making a false report; or

(2) Making repetitive telephone calls and/or reports involving the same incident.

(3) Emergency providers include but are not limited to 911 dispatch, police and fire departments, and emergency medical services.

(c) A person convicted of the offense of making false or harassing reports to emergency providers must be ordered to make restitution to cover the expense of the emergency response.

Giving false and harassing reports to law enforcement officers and emergency providers is a Class B misdemeanor. The second and any subsequent conviction under this Section is a Class A misdemeanor. **(RESOLUTION NO. 1451-2010-12, DATED 12/13/2010.)**

**Sec. 433 Impersonation of public servant.**

(a) A person commits the offense of impersonating a public servant if the person falsely pretends to hold a position in the public service with the purpose to induce another individual to submit to the pretended official authority or otherwise to act in reliance upon that pretense to the individual's prejudice.

(b) A person convicted of impersonating a public servant is guilty of a Class A misdemeanor. **(AS PER RESOLUTION NO. 28-1468-2016-12, DATED 12/27/2016.)**

**Subchapter D. Disorderly Conduct and Related Offenses**

**Sec. 440. Disorderly conduct.**

Whoever, with intent to harass, alarm or annoy another person, or in reckless disregard of the fact that another person is harassed, annoyed or alarmed by his/her behavior:

(a) Engages in fighting, or in violent, tumultuous, or threatening behavior;

(b) Makes unreasonable noise;

(c) In a public place, uses abusive or obscene language, or makes an obscene gesture;

(d) Obstructs vehicular or pedestrian traffic, or the use of a public facility;

(e) Persistently follows another person in or about a public place or places;

(f) Solicits sexual activity as defined in Section 220 while loitering in a public place; or

(g) Creates a hazardous, physically, offensive, or seriously alarming condition by any act which serves no legitimate purpose is guilty of disorderly conduct.

Disorderly conduct is a Class A misdemeanor.

**Sec. 441. Cruelty to animals.**

Whoever intentionally, recklessly, or negligently subjects any animal to cruel mistreatment is guilty of cruelty to animals.

Cruelty to animals is a Class B misdemeanor for the first offense and a Class A misdemeanor for every subsequent offense.

**(AMENDED AS PER RESOLUTION NO. 27-537-2014-04; DATED 4/14/2014)**

**Sec. 442. Desecration of tribal flag.**

A person who violates Title 3 (Governmental Organization), Section 105, shall be guilty of desecration of the tribal flag.

Desecration of the tribal flag is a Class A misdemeanor.

**Sec. 443. Operating a motorboat while under the influence.**

(a) A person may not operate a motorboat, including a sailboat propelled by a motor of any kind, personal watercraft, or manipulate water-skis, a surfboard, or a similar device attached to a motorboat while under the influence of alcohol, drugs or a combination of the two.

(b) The presumptions contained 17 CCOJ 107(b) apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of this Section.

(c) Evidence of any measured amount or detected presence of alcohol in a person at time of the act alleged, as shown by analysis of a person's blood, breath, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of this Section.

(d) If a person charged with a violation under this Section refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of this Section.

(e) The provisions relating to administration of tests provided in 17 CCOJ 108 and the definition of alcohol concentration provided in 17 CCOJ 107 apply to any testing done to a person charged with violation of this Section.

(f) As used in this Section, the term under the influence means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

(g) Violation of this Section is a Class A misdemeanor.

**(RESOLUTION NO. 1451-2010-12, DATED 12/13/2010.)**

**Sec. 444. Public urination.**

A person is guilty of public urination if the person urinates or defecates in a place open or visible to the public.

Public urination is a Class B misdemeanor.

**(RESOLUTION NO. 1451-2010-12, DATED 12/13/2010.)**

**Sec. 445. Aggravated disorderly conduct.**

(a) Whoever creates a harmful or threatening situation to themselves or others is guilty of aggravated disorderly conduct. Aggravated disorderly conduct is a Class A misdemeanor.

(b) Those arrested and charged with aggravated disorderly conduct shall not be released from custody except at arraignment as described in 6 CCOJ 402.

(c) If the law enforcement officer perceives that the harmful or threatening conduct involves a suicide attempt, the officer shall state this in his/her report and request that the prosecutor petition for emergency detention pursuant to 11CCOJ 106.

**(RESOLUTION NO. 1451-2010-12, DATED 12/13/2010.)**

**Sec. 446. Public intoxication.**

(a) Any person who shall appear in a public place in an intoxicated condition shall be guilty of a Class B misdemeanor.

(b) Intoxicated shall mean the physical or mental impairment produced by the use of drugs, noxious substances, or drinking to such excess that one's physical and/or mental control is markedly diminished.

**(ADOPTED AS PER RESOLUTION NO. 25-2167-2011-05; DATED 05/23/2011.)**

**Sec. 447. Loitering.**

(a) No person or persons shall, either individually or with others, stand, loiter, walk or collect in groups for any unlawful, violent, destructive or mischievous purpose or without reasonable lawful cause, nor in any manner which would intentionally inconvenience or interfere with others lawfully, peacefully and properly occupying any place, either public or private; and no such person or persons shall refuse to leave any such place upon the request of any person having lawful supervision or control of the place. The foregoing places shall include, among others, any and all roads and governmental or municipal properties.

(b) No person or persons shall loiter in or about any place where liquor is sold, or wander about the roads of the Reservation without any lawful means of support or without being able to furnish a legal and truthful reason for his or her presence in the particular location, or without identifying, upon request, his or her legal place of residence.

(c) Violation of this Section is a Class B misdemeanor.

**(ADOPTED AS PER RESOLUTION NO. 25-2167-2011-05); DATED 05/23/2011).**

**Sec. 448. Noise violation.**

(a) It is unlawful for any person to intentionally make or continue to make, or cause to be made or continued, any loud, unnecessary, or unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitivity residing in the area. The standards which shall be considered in determining whether a violation of the provisions of this section exists shall include the following:

- (1) The volume of noise;
- (2) The intensity of the noise;
- (3) Whether the nature of the noise is usual or unusual;
- (4) Whether the noise is produced by a commercial or noncommercial activity;
- (5) The volume and intensity of the background noise, if any;

(6) The proximity of the noise to residential sleeping facilities;

(7) The nature and zoning of the area within which the noise emanates;

(8) The density of the inhabitation of the area within which the noise emanates;

(9) The time of the day or night the noise occurs;

(10) The duration of the noise;

(11) Whether the noise is recurrent, intermittent or constant; and

(12) The public benefit derived from the source of the noise.

(b) The following uses and activities shall be exempt from noise level regulations;

(1) Noise from safety signals and warning devices;

(2) Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency;

(3) Noise resulting from emergency work;

(4) Noise resulting from the operating of motorized lawnmowers fitted with equipment-type mufflers between the hours of 7:00 a.m. and 8:00 p.m.;

(5) Noise caused by home or building repair, construction, or grounds maintenance between the hours of 7:00 a.m. and 8:00 p.m.;

(6) Permitted events held in stadiums or parks;

(7) Noise from public parks, schools, and recreational facilities between the hours of 7:00 a.m. and 8:00 p.m.;

(8) Noise from construction or maintenance activities performed by a municipality or at the direction of the municipality, including but not limited to solid waste retrieval, street sweeping, road maintenance, and snow removal.

(c) Any person who is convicted under this section is guilty of a Class B misdemeanor for the first offense and a Class A misdemeanor for the second and subsequent offenses.

**(AS PER RESOLUTION NO. 26-2494-2013-06; DATED 6/11/2013)**

**Subchapter E. Gambling**

**Sec. 450. Gambling.**

- (a) A person is guilty of gambling who
  - (1) Conducts a wagering pool or lottery for his/her own profit; or
  - (2) Receives wagers for or on behalf of another person for his/her own profit; or
  - (3) Alone or with others owns, controls, manages, or finances a gambling business; or
  - (4) Knowingly leases or otherwise permits a place to be regularly used to carry on a gambling business or maintain a gambling house; or
  - (5) Maintains and operates an unlicensed Class II or Class III gaming device for his/her own profit.

Gambling is a Class A misdemeanor.

(b) Gambling does not include:

- (1) Lawful contests of speed, strength, or endurance in which awards are made only to entrants or to the owners of entrants; or
- (2) Lawful business transactions; or
- (3) Bingo, raffles or other like activities conducted by a religious, charitable, or other non-profit organization; or
- (4) Any gaming activity licensed by the Tribes pursuant to Title 27.

**(AMENDED AS PER RESOLUTION NO. 1301-92-8, DATED 08/04/92, and RESOLUTION NO. 690-98-8, DATED 08/06/98).**

**Subchapter F. Exploitation of minors and others**

**Sec. 460. Contributing to the delinquency of a minor.**

Any person, including any parent or other person with lawful custody of a minor, who intentionally, negligently, or recklessly causes, encourages, contributes to or aids a minor in committing a delinquent act or status offense, shall be guilty of a Class A misdemeanor.

**Sec. 461. Failure to support dependent persons.**

A person who persistently fails to provide support which the defendant can provide and knows he/she is legally obliged to provide to a spouse, child, whether born in or out of wedlock, or other

dependent, is guilty of failure to support dependent persons.

Failure to support dependent persons is a Class B misdemeanor for the first offense and a Class A misdemeanor for each subsequent offense.

**Sec. 462. Failure to send children to school.**

A person who, without justification or excuse, fails to send a child under his/her care to school, is guilty of failure to send children to school. For purposes of this Section, a child is any person under the age of 18 years who is or would be enrolled in kindergarten through 12th grades. Students must remain in school until they are 18 years of age or receive a high school diploma or its equivalent.

Failure to send children to school is a Class B misdemeanor for the first offense, and a Class A misdemeanor for each subsequent offense.

**(AMENDED AS PER RESOLUTION NO. 2884-87-7, DATED 07/14/87; AS PER RESOLUTION NO. 3159-87-9, DATED 09/14/87; AS PER RESOLUTION 1451-2010-12, DATED 12/13/2010.)**

**Sec. 463. Unlawful possession, or acquisition, or consumption of alcoholic beverages or intoxicating beverages by persons under the age of twenty-one.**

A person under the age of twenty-one who purchases, or takes as a gift or treat, or otherwise acquires, or who consumes, or who possesses any alcoholic beverage is guilty of a Class B misdemeanor for the first offense and a Class A misdemeanor for the second and subsequent offenses.

Either in the alternative sentencing would be reasonably deemed capable of helping the convicted minor.

**(AMENDED AS PER RESOLUTION NO. 2646-97-4, DATED 04/25/97; AS PER RESOLUTION NO. 588-2010-03, DATED 04/25/2010).**



**Sec. 464. Misrepresentation of age in connection with alcoholic beverages.**

Any person who misrepresents or misstates that person's age or the age of any other person, or who misrepresents or misstates that person's age through the presentation of any document purporting to show that person to be at least twenty-one years of age in order to purchase or otherwise acquire, or consume an alcoholic beverage, is guilty of a Class B misdemeanor.

**(AMENDED AS PER RESOLUTION NO. 2646-97-4, DATED 04/25/97).**

**Sec. 465. Persons under twenty-one years of age prohibited from entering licensed premises.**

Except as permitted in this section any person under twenty-one years of age entering or remaining in any licensed premises where alcoholic beverages are being sold or displayed, except (1) a restaurant, when accompanied by a parent or a legal guardian, or (2) if employed by a restaurant as a food waiter or waitress, busboy or busgirl, under the direct supervision of a person twenty-one or more years of age, or (3) if the person is a law enforcement officer entering the premises in the performance of official duties, or (4) to work as a musician under the direct supervision of a person twenty-one or more years of age, is guilty of a Class B misdemeanor.

Any licensee may keep a book and may require anyone who has shown documentary proof of age that substantiates that person's age to allow the purchase of alcoholic beverages, to sign the book if the age of that person is in question. The book must show the date of the purchase, the identification used in making the purchase and the appropriate numbers of such identification, the address of the purchaser, and the purchaser's signature.

**(AMENDED AS PER RESOLUTION NO. 2646-97-4, DATED 04/25/97).**

**Sec. 466. Curfew.**

All persons who are parents or legal guardians of any Indian child under the age of eighteen (18)

shall cause such child to be within a private residence and off the streets between the hours of 11:00 p.m. and 5:00 a.m. on each night of the week, except when the child is accompanied by his/her parent or guardian or is attending or returning from a school or community function authorized by parent or guardian.

Violation of the above curfew section shall be:

First Offense: Diversion. The parent, legal guardian, or custodian of the child may be ordered to participate in a parenting skills class or family communications class as available. The minor child may be referred to family counseling, and/or rehabilitative community agency or activity.

Second Offense: A mandatory fine of fifty dollars (\$50.00) shall be imposed. Should parenting skills class, family communication skills, or any other counseling or intervention not be utilized prior to the second offense, the parent, legal guardian, or custodian of the minor child shall be ordered to successfully complete such counseling, class, or activity, and shall be ordered to participate in any and all rehabilitative and/or treatment efforts regarding said child.

Third Offense: Class A misdemeanor; maximum penalty of three months imprisonment, a mandatory fine of at least seventy-five dollars (\$75.00), but not more than five hundred dollars (\$500.00), or both imprisonment and/or fine may be imposed.

Community service may be utilized in lieu of fines.

The parent, guardian, legal custodian, or child shall be exempt from this offense if, the juvenile is on an emergency errand, or where the juvenile is on a reasonable, legitimate, and specific business or activity which is directed or permitted by his/her parent, guardian or adult person having custody or supervision of the minor.

It shall be the duty of any law enforcement officer to apprehend and take into custody any minor found to be in violation of this section, and to hold such minor until his or her parents, legal guardian, or custodian has been notified, at which time the child may be released to his or her parent

or guardian. Such apprehended child may be charged under the Youth Code of the Fort Peck Tribes as a “Status Offender” or “Child in Need of Supervision”, and for the second and subsequent offense under the Youth Code as a “Delinquent Child”.

**(AMENDED AS PER RESOLUTION NO. 3365-87- 10, DATED 10/26/87, AS PER RESOLUTION NO. 3772-95-8, DATED 08/15/95, AND AS PER RESOLUTION NO. 1623-2003-5, DATED 05/27/2003.)**

**Sec. 467-469. Reserved.**

### **Subchapter G. Violations of Regulatory Provisions**

#### **Sec. 470. Littering.**

Whoever violates 14 CCOJ 201 shall be guilty of littering.

Littering shall be a Class B misdemeanor with a mandatory fine of \$100.00. Any person convicted of littering may also be ordered by the Court to immediately remove any destructive, injurious or unsightly material from the right of way, public road or highway area.

**(AMENDED AS PER RESOLUTION NO. 27-1681-2015-03; DATED 3/23/2015)**

#### **Sec. 471. Sewage and waste disposal facilities.**

(a) Any Indian found not in compliance with Sections 202 or 203 of Title 14 (Health and Sanitation) by a law enforcement officer shall be given a reasonable, specified time to make the necessary corrections. Any Indian still in violation after the specified period shall be guilty of criminal violation of sewage and waste disposal ordinances. Each day the condition exists after the expiration of the period allowed for making corrections shall constitute a separate offense.

(b) Any Indian preventing a law enforcement official from entering a premises, dwelling or housing structure pursuant to a warrant under Section 204 of Title 14 (Health and Sanitation) shall be guilty of criminal violation of sewage and waste disposal ordinances.

(c) Violation of sewage and waste disposal ordinances, as defined above, is a Class B misdemeanor.

#### **Sec. 472. Restaurants and itinerant restaurants.**

Whoever:

(a) After being given a reasonable time to correct violations under Section 304 of Title 14 (Health and Sanitation) fails to do so; or

(b) Unreasonably fails to permit, or hinders, an inspection under Section 304 of Title 14 (Health and Sanitation); or

(c) Continues to sell food or drink at an itinerant restaurant after being forbidden to do so under Section 305(c) of Title 14 (Health and Sanitation); or

(d) Operates a restaurant or itinerant restaurant without the permit required by Chapter 3 of Title 14 (Health and Sanitation) or when the permit is suspended is guilty of criminal violation of the restaurant ordinance.

Criminal violation of the restaurant ordinance is a Class A misdemeanor.

#### **Sec. 473. Entering closed areas.**

(a) Whoever violates Section 404 of Title 14 (Health and Sanitation), or who, having been warned under Section 403(a) of Title 14 (Health and Sanitation), willfully fails or refuses to leave a closed area, shall be guilty of illegally entering a closed area.

(b) Illegally entering a closed area is a Class A misdemeanor.

(c) Any non-Indian who violates any provision of Chapter 4 of Title 14 (Health and Sanitation) may be excluded from Tribal land by order of the Tribal Court after a hearing.

(d) If any person excluded pursuant to subsection (c) does not promptly obey the exclusion order, the Chairman of the Tribal Executive Board shall refer the case to the Superintendent of the Fort Peck Agency or the United States Attorney for action. If after a reasonable time no effective action has been taken to enforce the order, the Chairman shall refer the case to the legal counsel

of the Tribes, who shall take the legal action deemed necessary.

**Sec. 474. False and malicious petitions for involuntary commitment.**

Any person filing a false and malicious petition to have another committed under Chapter 1 or Chapter 2 of Title 14 (Involuntary Commitment) shall be guilty of filing false commitment petitions. Filing false commitment petitions shall be a Class B misdemeanor. However, no person acting in good faith under said chapters shall be liable under civil or criminal law.

**(AMENDED AS PER RESOLUTION NO. 1901-84- 12, DATED 12/11/84.)**

**Sec. 475-479. Reserved.**

**Subchapter H. Obscenity and Related Offenses**

**Sec. 480. Threatening letters and telephone calls.**

Any person who, with the purpose to terrify, intimidate, threaten, or harass:

(1) Communicates with any person by mail and uses any obscene language, suggests the performance of sexual acts, or threatens to inflict injury or physical harm on the person or property of any person, or transmits obscene material of a pictorial or photographic nature, or

(2) Communicates with any person by telephone and uses any obscene language, suggests the performance of sexual acts, or threatens to inflict injury or physical harm on a person or property of any person, is guilty of sending threatening letters or making threatening telephone calls, respectively.

Threatening letters and telephone calls are a Class B misdemeanor.

For purposes of this Section, the term "obscene" shall mean any clearly offensive representation or description of sexual acts as defined in Section 220 of this Title, either actual or simulated, or any clearly offensive representation or description of masturbation, excretory functions, or exhibition of the genitals, which taken as a

whole, appeals to an interest in sex considered lewd or indecent by prevailing community standards, and which lacks serious literary, artistic, political, or scientific value.

**(AMENDED AS PER RESOLUTION NO. 1287-86-7, DATED 07/28/86.)**

**Subchapter I. Gang Ordinance**

**Sec. 490. Findings and purposes.**

The Fort Peck Tribal Executive Board has determined that the presence of gangs and gang activity on the Fort Peck Reservation has a direct and negative effect on the health, safety, and welfare of Fort Peck Reservation communities. Gang activity has a particularly negative effect on Reservation youth, which are the Fort Peck Tribes' most valuable resource. The Assiniboine and Sioux Tribal Government has the inherent sovereign power to pass laws to protect the interests, health, safety, and general welfare of the Tribal membership. The Fort Peck Tribal Executive Board has determined that the Assiniboine and Sioux Tribes have a compelling interest in adopting a gang ordinance to combat gangs and gang activity on the Reservation.

**Sec. 491. Definitions.**

(a) Gang means any group of two or more persons whose purposes include the commission of illegal acts. It may include any combination of persons organized formally or informally, so constructed that the organization will continue in operation even if individual members enter or leave the organization, which:

(1) Has a common name or identifying symbol;

(2) Has particular conduct, status, and customs indicative of it; and

(3) Has as one of its common activities engaging in criminal activity punishable as an offense under the Fort Peck Comprehensive Code of Justice.

(b) Graffiti means any unauthorized inscription, word, figure, or design that is marked, etched, scratched, drawn, painted on, or affixed

to any public or private property (real or personal) of another which defaces the property.

**Sec. 492. Prohibited activity.**

(a) No person on the Fort Peck Reservation, shall:

(1) Wear, possess, use, distribute, display, or sell any clothing, jewelry, emblem, badge, symbol, sign, or other things which are evidence of membership in or affiliation with a gang;

(2) Commit any act or omission in furtherance of the interest of gang or gang-related activity, including but not limited to:

(A) Soliciting, recruiting, encouraging, inducing, coercing another person to join a gang or to participate in gang-related activity; or

(B) Requesting any person to pay protection or otherwise intimidating or threatening any person; or

(C) Inciting other persons to act with physical violence upon any other person; or

(D) Supplying, selling or giving possession or control of any firearm to a gang or gang member.

(3) Place graffiti on or otherwise deface property; or

(4) Acquire, obtain or maintain, directly or indirectly, through criminal gang activity, or proceeds derived therefrom, any interest in or control of any real or personal property of any nature, including money.

(b) A person does not violate this Section if they are in possession of any clothing, jewelry, emblem, badge, symbol, or sign referenced in subsection (a)(1) of this section for legitimate and lawful purposes. A person charged with violating this Section shall have the burden of establishing the legitimate and lawful possession of such clothing, jewelry, emblem, badge, symbol, or sign. A person may not be arrested or charged with violating this Section unless there is probable cause to believe that such person possessed such clothing, jewelry, emblem, badge, symbol, or sign for gang purposes.

**Sec. 493. Fort Peck law enforcement authority.**

If a Fort Peck law enforcement officer has probable cause to believe that any person has committed one of the above-mentioned offenses, the officer has the authority to request the removal of any item of clothing, jewelry, emblem, badge, symbol, sign, or other things which are indicative of gang-related activity and are possessed contrary to this ordinance. If the person refuses to remove the item in violation of this ordinance, the officer may confiscate that item.

**Sec. 494. Punishment.**

(a) Any Indian person guilty of violating any provision of this ordinance shall be subject to a detention, community service, and/or a fine in appropriate amounts not to exceed the penalties set forth below.

Community Service:

First Offense: up to 50 hours

Second Offense: up to 100 hours

Third Offense: up to 200 hours

Fine:

First Offense: up to \$40.00

Second Offense: up to \$200.00

Third Offense: up to \$1,000.00

Detention Time:

First Offense: up to 2 days detention

Second Offense: up to 30 days detention

Third Offense: up to 6 months detention

Subsequent Offenses: up to 1 year detention

Restitution: A person found guilty of violating this ordinance shall also be required as part of any sentence to pay restitution for any damages caused by his or her illegal actions. A person who is required to pay restitution as part of any sentence under this ordinance shall upon request be entitled to a hearing to determine the amount of the economic loss referenced in this section.

(b) A judge may, at his or her discretion, withhold or suspend a sentence of detention or incarceration and place the defendant on probation under appropriate terms which may include counseling, treatment, or other remedial measures.

**Sec. 495-499. Reserved.**

**Chapter 5. Penalties**

**Sections:**

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**Sec. 501. Penalties.**

Offenses are divided into 3 classes, which are denominated and subject to maximum penalties, as follows:

(1) Felony, (except for felony charged pursuant to VI CCOJ 511,512) for which a maximum penalty of 1 year's imprisonment, a fine of \$5,000.00, or both, may be imposed.

(2) Class A misdemeanor, for which a maximum penalty of three months' imprisonment, a fine of \$500.00, or both, may be imposed.

(3) Class B misdemeanor, for which a maximum penalty of \$100.00 may be imposed.

(4) Offenders convicted of sexual exploitation, physical abuse, neglect, or abandonment of a child, sex trafficking, or rape or sexual assault where the victim is under 18 years of age, must be ordered to pay at least a \$50.00 fine. The fines so collected shall be placed in a special fund to be used, as determined by the Tribal Executive Board, for programs designed to alleviate the problems of physical and sexual abuse of children on the Fort Peck Indian Reservation.

**(AMENDED AS PER RESOLUTION NOS. 1287-86-7; DATED 07/28/1986; 26-2811-2013-08, DATED 9/26/2013; 28-0465-2016-03; DATED 3/14/2016)**

**Chapter 6. Social Host Ordinance**

**Sections:**

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**Sec. 601. Purpose.**

Consumption of alcoholic beverages by minors at parties, or gatherings where minors consume alcoholic beverages, present numerous problems for the Fort Peck Tribes, minors, law enforcement, the judicial system, the health system and relative services provided by the Tribes.

Alcohol abuse is linked to numerous health issues for our youth, including sexual assault, unprotected sexual activity, teenage pregnancy, sexually transmitted diseases, physical assault and academic difficulties.

The Tribal Executive Board as the governing body of the Fort Peck Assiniboine and Sioux Tribes finds and declares that the purpose of this ordinance is:

(a) To protect public health, safety, and general welfare;

(b) To enforce laws prohibiting the consumption of alcohol by minors;

(c) To reduce the cost of providing police services to parties, gatherings, or events that call for a response by requiring that social hosts ensure minors are not consuming alcoholic beverages.

**Sec. 602. Definitions.**

(a) Alcohol means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(b) Alcoholic beverage means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume; the term also includes, but is not limited to, beer, hard cider, liquor, malt beverages, table wine and wine.

(c) Beer means a malt beverage containing not more than 7% of alcohol by weight.

(d) Gathering means a party or event where a group of three or more persons has assembled or is assembling for a social occasion or social activity.

(e) Hard cider means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% alcohol by volume and not more than

6.9% alcohol by volume, including but not limited to, flavored, sparkling, or carbonated cider.

(f) Liquor means an alcoholic beverage except beer and table wine.

(g) Malt beverage means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

(h) Table wine means wine that contains not more than 16% alcohol by volume and includes cider.

(i) Wine means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine.

(j) Reservation means the area within the exterior boundaries of the Fort Peck Assiniboine and Sioux Indian Reservation.

(k) Immediate family means a spouse, dependent child or children, or dependent parents.

(l) Person means any individual, business association, partnership, corporation, or other legal entity and an individual acting or purporting to act for or on behalf of a joint-stock company, unincorporated association or society, or other corporation of any character whatsoever as defined in the CCOJ.

(m) Parent means any person having legal custody of a juvenile, including a natural parent,

adoptive parent, step-parent, legal guardian, person to whom a court order has given temporary or permanent legal custody.

(n) Premises means any home, yard, farm, field, land, apartment, condominium, hotel or motel room, or other dwelling unit, hall or meeting room, park, pavilion, or any other place of assembly, public or private, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or specifically for a party, gathering, or other social function, and whether owned, leased, rented, or used with or without permission or compensation.

(o) Social host means any person who conducts, allows, organizes, supervises, controls, permits or aids another in conducting, allowing, organizing, supervising, controlling, or permitting a party, event, or gathering of any number of individuals. The term shall include, but is not limited to the following:

(1) Any person or persons who own, rent, lease, or otherwise control the premises where an event, a gathering, activity, or party takes place;

(2) The person or persons in charge of or responsible for the premises;

(3) The person or persons who organized the activity, event, gathering, or party.

The term shall not include a property owner or parent who does not have knowledge that the activity, event, gathering, or party, whether or not the activity, event, gathering, or party was permitted or allowed, would result in an underage person being in possession of or consuming an alcoholic beverage.

(p) Underage person means any person younger than 21 years of age.

(q) Emergency responders means law enforcement officers, firefighters, emergency medical service personnel, and any other person having emergency response duties.

(r) Enforcement services or response costs means the monetary cost of salaries and benefits of emergency responders for the amount of time spent responding to or remaining at an event, gathering or party and administrative costs attributable to the incident; the costs for medical

treatment for any injured emergency responder, and the costs of repairing any damage to emergency responder equipment or vehicles, and the cost of such equipment or vehicle.

**Sec. 603. Prohibited acts.**

A person violates this ordinance when, as a social host, a person knows or reasonably should have known that an underage person is in possession of, is consuming, or has consumed, an alcoholic beverage on premises within the exterior boundaries of the Reservation and fails to take reasonable steps, including, but not limited to, notifying law enforcement to prevent the underage consumption or possession by the underage person. The social host does not have to be present or on the premises at the time the prohibited act occurs.

**Sec. 604. Penalties.**

(a) A person convicted of violating this ordinance shall be punished as follows:

(1) For the first offense, penalties shall be imprisonment for not more than 3 months and a fine not less than \$250 or more than \$500, plus Court costs;

(2) For the second offense, penalties shall be imprisonment for not more than 6 months and by a fine not less than \$500 or more than \$2,500, plus Court costs;

(3) For the third and subsequent offense shall be a felony and penalties shall be imprisonment for not more than 12 months and by a fine of not less than \$2,500 or more than \$5,000, plus Court costs;

(b) The imposition or execution of the first 5 days of any sentence of jail may not be suspended and the Court may not defer imposition of sentence.

(c) Notwithstanding the penalties listed above, a person convicted of violating this ordinance shall be responsible for reimbursing the cost of enforcement services or response costs to agencies furnishing emergency responders. Any claims for restitution, including, but not limited to, those for enforcement services or response

costs, must be filed with the Court within 90 days of a conviction under this ordinance.

(d) A prosecution for violation of this ordinance may not be deferred.

**(RESOLUTION NO. 1452, DATED 12/13/2010.)**

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 8 –Civil Procedures**

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### Sec. 101. Complaint.

A complaint is a concise written statement of the essential facts constituting the claim. All civil proceedings shall be commenced by filing a complaint with the clerk, accompanied by a filing fee of twenty-five dollars (\$25.00) and the costs of service. Tribal Civil Form No. 1, or its equivalent may be used. The complaint shall be verified before a judge, clerk or assistant clerk, or any notary public.

### Sec. 102. Service of process.

(a) Each defendant shall be served with a copy of the complaint.

(b) Service shall be made in one of the following ways:

(1) To the defendant personally;

(2) To a person of suitable age and discretion at the defendant's residence or usual place of business who also resides or works there;

(3) To an agent authorized by appointment or by law to receive service of process;

(4) By registered or certified mail, return receipt requested, to the defendant's usual residence or principal place of business. If the Court orders, service may be made by publication of the required papers in any local newspaper of general circulation on the Reservation, at least once per week for 4 weeks.

(c) Service of process upon the Tribes, or an office of the Tribes named as a party defendant, shall be made by delivering a copy of the complaint to the Tribal Chairman, the tribal attorney and the officer or employee named in the manner prescribed in subsection (b) above, except that service by publication is not permitted.

(d) Service in person shall be made by any law enforcement officer or by any adult not a party to the case.

(e) Where the Court has jurisdiction of the cause of action, service may be made anywhere within the United States.

(f) The return postal receipt, filed in the case record, shall constitute proof of service by mail. The affidavit of service by the person making service, filed in the case record, shall constitute proof of service.

**(AMENDED AS PER RESOLUTION NO. 28-0475-2016-03; DATED 3/14/2016)**

### Sec. 103. Hearing.

At the time the verified complaint is filed, the clerk shall schedule a hearing on the claim not less than 15 days after the complaint is filed, except the clerk shall not schedule a hearing on any complaint which names any official or employee of the Tribes as a party defendant earlier than 60 days after proof of service, as required in Section 102(c), has been received by the Court. The clerk shall furnish the plaintiff with a copy of the notice showing the time and place of the hearing and shall affix such notice to the copy of the complaint to be served on each defendant. At the hearing, the presiding judge shall ascertain whether:

(a) The defendant has any defenses to the claim, or wishes to present any counterclaim against the plaintiff or cross-claim against any other party or person concerning the same transaction or occurrence;

(b) Any party wishes to present evidence to the Court concerning the facts of the transaction or occurrence;

(c) The interest of justice requires any party to answer interrogatories, produce any documents or other evidence, or otherwise engage in any pre-trial discovery considered proper by the judge.

(d) Some or all of the issues in dispute can be settled without a formal adjudication; and

(e) The claim is ready for trial:

(1) If the claim is ready for trial, the judge may try it immediately or set a subsequent date for trial.

(2) If the claim is not ready for trial, the judge shall set a subsequent date for trial and order such preparation by the parties as he/she deems necessary.

**(AMENDED AS PER RESOLUTION NO. 28-0475-2016-03; DATED 3/14/2016)**

**Sec. 104. Issuance of subpoenas.**

(a) The power to subpoena or otherwise to order attendance in Court or the production of evidence, shall not extend to any member of the Executive Board with respect to matters or actions arising in the member's official capacity, or in the exercise of the member's official duties.

(b) Upon request of any party or upon the Court's own initiative, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. An employee of the Court may act on behalf of the Court and issue subpoenas which have been signed by a judge and which are to be served within the confines of the Reservation. Each subpoena shall be accompanied by a certified check or money order, prepaying the witness fees and expenses required by Section 107, and no subpoena shall be valid in the absence of such a check or money order.

(c) A subpoena shall bear the signature of the Chief Judge or an Associate Judge of the Court and it shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

**(AMENDED AS PER RESOLUTION NO. 232-91-12, DATED 12/23/91.)**

**Sec. 105. Service of subpoenas.**

A subpoena may be served in the manner prescribed in Section 102, except that service by publication is not permitted.

**Sec. 106. Failure to obey subpoena.**

In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena

issued and served in accordance with the provisions of this Code may be cited and held in contempt of court.

**Sec. 107. Witness fee and expenses.**

(a) Each witness answering a subpoena shall be entitled to reimbursement of his/her mileage expenses at the current rate paid by General Services Administration, and to witness fees at the rate of twenty five dollars (\$25.00) per day except that the custodian of any public books; records; documents or other physical evidence subpoenaed shall not be entitled to witness fees. A certified check or money order for these fees and expenses shall be attached by the party issuing the subpoena to the subpoena served on the witness.

(b) The fees and expenses provided for in this Section shall be taxed as court costs, and assessed against the parties as provided in the judgment in the case.

(c) An exception shall be made in cases where the Fort Peck Tribes is the petitioning party; witnesses called on their behalf shall be entitled to the same rate of compensation as in (a) of this section, but such expenses shall be paid by the Tribes upon completion of the hearing or trial.

**(AMENDED AS PER RESOLUTION NO. 1922-94-9, DATED 09/26/94).**

**Chapter 2. Trials**

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**Sec. 201. Trial procedure.**

(a) The time and place of court sessions, the rules of evidence to be followed by the court and all other details of judicial procedure may be set out in rules of court.

(b) All testimony of witnesses shall be given orally under oath in open court and subject to the right of cross- examination. Documentary and tangible evidence shall also be received in open court.

(c) Civil cases shall be tried before a judge and not a jury, except that either party has the right to a jury trial if the amount in controversy in the claim or any counterclaim exceeds two thousand, five hundred dollars (\$2,500.00), and the Court in its discretion may grant a jury trial where the amount in controversy is less than two thousand, five hundred dollars (\$2,500.00). If a jury trial is granted, the Court shall follow the provisions of Section 507 of Title 6. The compensation and expenses of the jurors shall be taxed as court costs, and assessed against the parties as provided in the judgment in the case.

(d) The case of the plaintiff shall be presented first followed by the case of the defendant. If rebuttal is required, the plaintiff shall proceed first, followed by the defendants.

(e) At the conclusion of the evidence, the plaintiff and defendant each in turn may summarize the proof and make final argument.

**Sec. 202. Consolidated and separate trials.**

(a) Consolidation. The Court may, upon motion of any party or on its own motion, order some or all of the issues of separate actions tried together when there is a common issue of fact or law relating to the actions or if such will tend to avoid unnecessary cost or delay.

(b) Separate trials. The Court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

**Sec. 203. Intervention.**

A person may be permitted in the discretion of the Court to intervene as a party to an action in cases where property in which he/she claims an interest may be substantially affected by disposition of the action or where the applicant for intervention asserts a claim or defense which presents a question of law or fact common to the main action.

**Sec. 204. Substitution of parties.**

If a party dies, becomes incompetent or transfers his/her interest, a substitute or successor party may be joined or substituted as justice requires.

**Chapter 3. Judgments**

**Sections:**

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**Sec. 301. Judgments.**

A judgment shall be entered in each civil case. The judgment shall be for money or other relief or for dismissal. A judgment is complete and shall be deemed entered when it is signed by the judge and filed with the clerk.

**Sec. 302. Judgment by default.**

Where any party, after being served with a copy of the complaint as provided in Section 102 in the case of a defendant, fails to appear at the hearing, at trial, or otherwise to prosecute or defend a case, the Court may enter a default judgment granting the relief sought in the complaint, upon such showing of proof by the plaintiff as the Court deems appropriate, or may dismiss the case for failure to prosecute. The Court may, for good cause shown, set aside entry of a default judgment or dismissal for failure to prosecute.

**Sec. 303. Proof of satisfaction.**

A judgment may be satisfied in whole or in part as to any or all of the judgment debtors by the owner thereof or his/her attorney of record executing under oath and filing an acknowledgment

of satisfaction specifying the amount paid and whether it is full or partial satisfaction. The clerk shall file all satisfactions of judgment and note the amount thereof in the judgment docket.

**Sec. 304. Execution.**

(a) If any final judgment for money rendered by the Court is not satisfied within 60 days of entry, or such other time fixed by the Court, the judgment creditor may apply to the Court for an order directing the judgment debtor to appear before the Court for purposes of itemizing his/her property.

(b) After giving the judgment debtor an opportunity for hearing, the Court shall determine what property is available for execution, and shall order Tribal law enforcement officers to seize such property as may be necessary to satisfy the judgment. In addition, the judgment may be paid out of any funds on deposit to the credit of the judgment debtor at the agency, not exempt under Section 310, when such payment is authorized by the Secretary of the Interior, or his/her authorized representative, on such terms and conditions as the Secretary may prescribe.

(c) When the judgment is for the payment of child support, the party in whose favor the judgment is given may, at any time within 5 years after the termination of the support obligation or within 5 years from entry of a lump-sum judgment or order for support arrears, whichever is later, have a writ of execution issued for its enforcement.

**(AMENDED AS PER RESOLUTION 326-1954-2013-02; DATED 02/11/2013)**

**Sec. 305. Judgment constitutes a lien.**

A judgment shall constitute a lien on any non-exempt property of the judgment debtor. Notice of this lien may be filed by the judgment creditor in the public records of any county or state where such property is located.

**Sec. 306. Life of judgment.**

No judgment of the Court for money shall be enforceable after five (5) years from the date of entry, unless application to renew the judgment

shall have been filed before the date of expiration pursuant to Section 307.

**Sec. 307. Renewal of judgment.**

Upon application of the judgment creditor prior to the expiration of five (5) years after the date of the entry of a judgment for money, the Court shall order the judgement renewed and extended for an additional five (5) years.

**Sec. 308. Stay of judgment.**

Except as provided herein, no execution or enforcement shall issue in any judgment in a civil case until the expiration of ten (10) days after its entry. When a petition for review has been filed with the Court of Appeals following the judgment, the trial court may stay its judgment, or may stay or grant an injunction during the pendency of the petition and any ensuing appeal on such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party, as more particularly provided in Section 207(e) of Title 2 (Courts).

**Sec. 309. Costs and attorneys fees.**

In civil actions costs shall be awarded the prevailing party as part of the final judgment unless the Court otherwise orders. No costs shall be awarded against the Tribe, or against any officer of the Tribe or member of the Tribal Council sued in his/her official capacity. Costs shall include filing fees, reasonable and necessary expenses of involuntary witnesses, costs associated with compensation and expenses of the jury, and such other proper and reasonable expenses, exclusive of attorneys' fees to the prevailing party in a civil suit unless the Court determines that the case has been prosecuted or defended solely for harassment and without any reasonable expectation of success.

**Sec. 310. Property exempt from judgments for money.**

There shall be exempt from the satisfaction or payment of all judgments for money, except judgments for the support of a spouse or children, the following property of the judgment debtor or the debtor's spouse:

(a) Provisions and fuel necessary to supply the debtor and his/her immediate family for one (1) year, or their monetary equivalent (including funds in an IIM account up to this amount).

(b) All wearing apparel, clothing and personal effects.

(c) All household furnishings.

(d) One (1) dwelling place whether it be house, cabin, trailer or other structure.

(e) Except for a farmer or rancher, one (1) horse, saddle and bridle, one (1) wagon, two (2) cows and their calves, four (4) hogs and fifty (50) domestic fowls and feed for such animals for three (3) months.

(f) One (1) truck or other motor vehicle of the value of not more than eight thousand dollars (\$8,000.00).

(g) To a farmer or rancher -- livestock, farm equipment, machinery and seed, grain or vegetables not exceeding in value fifteen thousand dollars (\$15,000.00).

(h) To a mechanic or artisan -- tools or implements necessary to carry on his/her trade.

(i) All moneys, benefits, privileges or immunities in any manner growing out of any life insurance on the life of the debtor.

(j) All retirement allowances, benefits and pensions.

(k) All family pictures.

(l) A pew or other sitting in any house of worship.

(m) A lot or lots in any burial ground.

(n) One (1) Bible, all schoolbooks, and all other books not exceeding in value of two hundred fifty dollars (\$250.00).

(o) One (1) rifle or handgun.

(p) Real property held in trust by the United States.

Provided however that such exempt property may be subject to satisfaction and payment of judgments where the judgment debtor has executed a valid and lawful mortgage or security agreement with the judgment creditor, specifically pledging such property as collateral.

### **Sec. 311. Garnishment of wages for satisfaction of judgment.**

(a) The Court may, in a civil action for garnishment filed by a judgment creditor, order garnishment of the unpaid past or future wages of the judgment debtor for satisfaction of the judgment. No garnishment action shall be filed unless the judgment has been unsatisfied for sixty (60) days or more.

(b) The maximum amount of wages in any one workweek subject to garnishment is the lesser of: (1) twenty-five per cent (25%) of the judgment debtor's disposable wages for that work week, or (2) the amount by which the judgment debtor's disposable wages for that week exceed forty (40) times the federal minimum hourly wage time in effect at the earnings are payable.

(c) The garnishment order shall only lapse when the judgment is satisfied. When the judgment debtor changes employment, the judgment debtor has thirty (30) days from the date of reemployment to notify the Court of the name and address of the judgment debtor's new employer.

(d) No employer shall discharge an employee for the reason that a judgment creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment.

(e) For the purposes of this Section: (1) "Wages" means compensation paid or payable for personal services whether denominated as wages, salary, commission, bonus or otherwise. (2) "Disposable wages" means that part of the wages of an individual left after the deduction from those earnings of federal tax withholdings, Social Security withholdings, and any other amounts required by applicable law to be withheld by the employer.

(f) Notwithstanding any other provision of law, effective November 15, 1988, monies (the entitlement to which is based upon remuneration for employment) due from, or payable by, the Tribes (including any agency, subdivision, or instrumentality thereof) to any individual, shall be subject, in like manner and to the same extent as if the Tribes were a private person, to legal process brought for the enforcement against such individual of his/her legal obligations to provide child

support, or make alimony payments, or make rental payments to the Fort Peck Housing Authority. Services of legal process brought for the enforcement of an individual's obligation to provide such payments shall be accomplished by certified or registered mail, return receipt requested, or by personal service upon the Tribal Controller. No Tribal employee shall be subject to any disciplinary action or civil or criminal liability or penalty whatsoever for, or on account of, any order of the Tribal Court pursuant to this Section.

**(AMENDED AS PER RESOLUTION NO. 1651-88-11, DATED 11/15/88. AMENDED AS PER RESOLUTION NO. 608-2008-04; DATED 4/28/2008)**

**Sec. 312. Enforcement of judgment of judicial records of other jurisdictions.**

(a) The Tribal Court may as a matter of comity enforce the judgment of another Tribe, the United States, a state or foreign nation, provided, that such a judgment may be enforced only after hearing or trial, on an action or special proceeding in the Tribal Court, requesting enforcement relief and complying with Title 8, Sections 101- 102 of this Code. An authenticated copy of the judgment of the other jurisdiction shall accompany the complaint seeking enforcement.

(b) A judgment of another jurisdiction against a specific thing is conclusive upon the title to that thing; and a judgment against a person, including a judgment for money, is presumptive evidence of a right between the parties and their successors in interest, provided, that the Tribal Court shall not enforce the judgment of another jurisdiction where evidence establishes:

- (i) A lack of jurisdiction, or
- (ii) A lack of due process, including lack of notice to the defendant, or
- (iii) That the judgment was by default, or
- (iv) That the judgment conflicts with a final judgment of the Tribal Court, or a court of another jurisdiction, or
- (v) That the judgment is contrary to the public policy of the Tribes, or
- (vi) Collusion, fraud or clear mistakes of law or fact.

**(AMENDED AS PER RESOLUTION NO. 2084G-89- 3, DATED 03/13/89.)**

**Sec. 313. Failure to prosecute – dismissal on initiative of Court.**

In a Tribal Court action in which it appears on the face of the record that activity by filing of pleadings, order of Court, or otherwise has not occurred for a period of 2 years and no stay has been issued or approved by the Court, the Court or, if the Court does not act, the clerk of court shall serve notice of lack of prosecution to each party at the party's last-known address. If a pleading, order, or other activity does not occur within the 60-day period following the service of the notice and if a stay is not issued or approved during the 60-day period, the Court shall, on its own motion and without further notice or hearing, dismiss the action without prejudice or close the case.

**(AS PER RESOLUTION NO. 26-737B-2012-05; DATED 05/15/2012.)**

**Chapter 4. Extraordinary Writs and Special Remedies**

**(CHAPTER TITLE AMENDED PURSUANT TO RESOLUTION NO. 2645-97-4 DATED 9/11/2002)**

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**Sec. 401. Restraining order without notice.**

(a) A restraining order without notice to the adverse party shall be granted if it clearly appears from specific facts shown by oral testimony, affidavit, or by the verified complaint that immediate and irreparable injury will result to the applicant

before notice can be served and a hearing had thereon.

No temporary restraining order or other injunction without notice shall be granted where the Tribes are a defendant or a tribal official is a defendant in his/her official capacity.

(b) Upon review of a petition filed pursuant to subsection (a) and a finding that the petitioner is in danger of immediate and irreparable injury or harm if the Court does not act immediately, the Court shall issue a temporary restraining order that grants the petitioner appropriate relief. The temporary restraining order may include any or all of the orders listed in Section 402 of this Chapter.

(c)(1) A hearing must be conducted within 10 business days from the date that the Court issues a temporary restraining order. The hearing date may be continued at the request of either party for good cause or by the Court. If the hearing date is continued, the temporary restraining order must remain in effect until the Court conducts a hearing. At the hearing, the Court shall determine whether good cause exists for the temporary restraining order to be continued, amended or made permanent.

(2) The respondent may request an emergency hearing before the end of the 10 business day period by filing an affidavit that demonstrates that the respondent has an urgent need for the emergency hearing. An emergency hearing must be set within 3 business days of the filing of the affidavit.

(3) The temporary restraining order may not be made mutually effective by the Court. The respondent may obtain a temporary restraining order from the petitioner only by filing an application for a temporary restraining order and following the procedure described in this Chapter.

(d) The Court may order that the temporary restraining order remain in effect for an appropriate period of time or permanently. The order may be terminated upon the petitioner's request that the order be dismissed.

(e) Violation of the temporary restraining order or the permanent restraining order is a Class A misdemeanor.

**(AMENDED AS PER RESOLUTION NO. 2645-97-4, DATED 9/11/2002. AMENDED AS PER RESOLUTION NO. 26-1196-2012-08, DATED 8/13/2012)**

**Sec. 401-A. Order of protection.**

(a) A temporary order of protection shall be granted to a petitioner who files a sworn petition that states that petitioner is in reasonable apprehension of bodily injury or is a victim of one of the following offenses:

- (1) Kidnaping as defined in 7 CCOJ 210;
- (2) Aggravated sexual assault of a child as defined in 7 CCOJ 227;
- (3) Aggravated assault as defined in 7 CCOJ 230;
- (4) Simple assault as defined in 7 CCOJ 231;
- (5) Intimidation as defined in 7 CCOJ 233;
- (6) Criminal endangerment as defined in 7 CCOJ 234;
- (7) Negligent endangerment as defined in 7 CCOJ 235;
- (8) Severe domestic abuse as defined in 7 CCOJ 244;
- (9) Domestic abuse as defined in 7 CCOJ 245;
- (10) Arson as defined in 7 CCOJ 301; and is in danger of harm if the Court does not issue a temporary order of protection immediately.

(b) Upon review of a petition filed pursuant to subsection (a), and a finding that the petitioner is in danger of immediate and irreparable injury or harm if the Court does not act immediately, the Court shall issue a temporary order of protection that grants the petitioner appropriate relief. The temporary order of protection may include any or all of the orders listed in Section 402 of this Chapter.

(d)(1) A hearing must be conducted within 10 business days from the date that the Court issues a temporary order of protection. The hearing date may be continued at the request of either party for good cause or by the Court. If the hearing date is continued, the temporary order of protection must remain in effect until the Court conducts a hearing. At the hearing, the Court shall determine

whether good cause exists for the temporary order of protection to be continued, amended or made permanent.

(2) The respondent may request an emergency hearing before the end of the 10 business day period by filing an affidavit that demonstrates that the respondent has an urgent need for the emergency hearing. An emergency hearing must be set within 3 business days of the filing of the affidavit.

(3) The temporary order of protection may not be made mutually effective by the Court. The respondent may obtain a temporary order of protection from the petitioner only by filing an application for a temporary order of protection and following the procedure described in this Chapter.

(e)(1) The Court may order that the temporary order of protection remain in effect for an appropriate period of time or permanently. The order may be terminated upon the petitioner's request that the order be dismissed.

(2) The order of protection may include restraining the respondent from any other named family member who is a minor. If this restriction is included, the respondent must be restrained from having contact with the minor for an appropriate period of time as directed by the Court or permanently if the Court finds that the minor was a victim of abuse, a witness to abuse or endangered by the environment of abuse.

(f) Violation of the temporary order of protection is a Class A misdemeanor. Violation of a permanent order of protection is a felony.

**(AS PER RESOLUTION NOS. 26-1196-2012-08, DATED 8/13/2012; 27-1633-2015-03, DATED 3/9/2015.)**

#### **Sec. 402. Scope of Regulation for Temporary Restraining Order, Temporary Order of Protection, Order of Protection.**

A Temporary Restraining Order, Temporary Order of Protection or Order of Protection can include but is not limited to:

(a) An order enjoining an abuser from threatening to commit or committing further acts of domestic or family violence;

(b) An order to cease and desist from stalking behaviors;

(c) An order removing an individual from a residence;

(d) An order for a threatening person to stay away from the moving party's and the moving party's dependents' residence(s), school(s), work, place of worship, or any other specified localities.

(e) An order of confiscation of any firearms or other weapons owned by a threatening individual;

(f) An order granting the moving party sole possession of an automobile and/or other essential personal property;

(g) An order allowing a one-time return to retrieve such essential personal property, accompanied by a police officer, and with a social worker if petitioner for this one time exception so desires, to a residence from which the one restrained is otherwise prohibited from being in or near. The sole purpose of such an allowance shall be to collect essential and highly valuable personal items of the petitioner and his/her dependents, such as clothing, jewelry, correspondence, and pictures of high sentimental meaning, legal documents, and prescription medications.

(h) An order granting temporary custody of children to the moving party;

(i) An order denying a threatening person rights of child visitation, or an order specifying arrangements for visitation, including requiring supervised visitation;

(j) An order for a parent or custodian to pay child support;

(k) An order that an individual pay certain costs and fees, such as rent or mortgage payments, medical expenses, expenses for shelter, court costs, and attorney fees.

**(AMENDED AS PER RESOLUTION NOS. 821-2002-8; DATED 8/12/2002; 26-1383-2012-09, DATED 9/11/2012.)**

#### **Sec. 403. Security.**

Except as otherwise provided by law, no temporary restraining order or preliminary injunction shall issue except upon the giving of security by



the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Tribes, or of an officer, or agency, or either.

**Sec. 404. Habeas corpus.**

Relief by habeas corpus proceedings shall be granted whenever it appears to the Court that any person is unjustly imprisoned or otherwise unlawfully deprived of his/her liberty. Upon the filing of the complaint the Court shall issue a writ directed to the defendant commanding him/her to bring the person alleged to be restrained before the Court at a time and place therein specified, at which time the Court shall proceed to hear the matter and render judgment accordingly.

**Sec. 404-A. Civil liabilities for injuries or death involving alcohol beverage consumption.**

Any person, who, or whose property or means of support, is injured by any intoxicated person, shall have a right of action against any vendor of alcoholic beverages who, by unlawfully selling, dispensing, giving, or assisting in procuring alcoholic beverages to or for such intoxicated person, shall have caused or contributed to such intoxication. In any such action the injured person shall have a right to recover actual and exemplary damages. If death ensues, the survivors of the decedent shall succeed to the cause of action.

**(AMENDED AS PER RESOLUTION NO. 2645-97-4 DATED 9/11/2002)**

**Chapter 5. Applicable Laws  
(CHAPTER TITLE AMENDED PURSUANT TO RESOLUTION NO. 2545-97-4 REAFFIRMED, DATED 9/17/2002)**

**Sections:**

Sec. 501. Applicable laws and discretionary guidance.....9

**Sec. 501. Applicable laws and discretionary guidance.**

In determining any case over which it has jurisdiction, the Court shall give binding effect to:

(a) Any applicable constitutional provision, treaty, law, or any valid regulation of the United States;

(b) Any applicable provision of the Tribal Constitution or any law of the Tribes not in conflict with federal law;

(c) Any applicable custom or usage of the Tribes not in conflict with any law of the Tribes or of the United States. Where doubt arises as to such customs and usages, the Court may request the testimony, as witnesses of the Court, of persons familiar with such customs and usages.

(d) Where appropriate, the Court may in its discretion be guided by statutes, common law or rules of decision of the State in which the transaction or occurrence giving rise to the cause of action took place. The Court shall not subject any party to the laws of the State, or direct any party to use the procedures and services of any State or State sanctioned agency.

**(AMENDED AS PER RESOLUTION NO. 2545-97-4; REAFFIRMED DATED 9/17/2002)**

**Chapter 6. Statute of Limitations**

**Sections:**

Sec. 601. Limitation of actions.....9

**Sec. 601. Limitation of actions.**

(a) The Court shall have no jurisdiction over any action brought more than 3 years after the cause of action arose, except that

(1) No statute of limitations shall bar an action commenced by the Tribes; and

(2) A victim of sex trafficking under 7 CCOJ 214 may bring an action against a sex trafficking offender not later than 10 years after the later of the date on which the victim:

- (A) Was freed from sex trafficking; or
- (B) Attained 18 years of age.

(b) The period prescribed for the commencement of an action to collect past-due child support

under an order entered by a court of record or administrative authority is within 5 years of the termination of support obligation or within 5 years from entry of a lump-sum judgement or order for support arrears, whichever is later.

(c) An action to enforce an order of restitution entered by the Court may be commenced at any time within the offender's lifetime during which restitution remains unpaid.

**(AMENDED AS PER RESOLUTION NOS.  
26-1955-2013-02; DATED 2/11/2013;  
28-0465-2016-03; DATED 3/14/2016)**

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 9 – Youth Code**

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## Chapter 1. General Provisions

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#### Sec. 101. Jurisdiction.

(a) The Fort Peck Tribal Court, Youth Division, shall have exclusive jurisdiction over all matters involving Indian youth covered by this Title provided all other elements of jurisdiction are met.

(b) A properly served parent, custodian or guardian of the Indian youth shall be present at any and all hearings initiated under this Title.

(c) Pursuant to 2 CCOJ 106, the Fort Peck Tribal Court, Youth Division, shall have jurisdiction over a non-Indian youth charged with a Special Domestic Violence Criminal Offense under 7 CCOJ 249, 244 or 245.

(d) A properly served parent, custodian or guardian of a non-Indian youth shall be present at any and all hearings initiated pursuant to subsection (c) of this Section.

**(AMENDED AS PER RESOLUTION NOS. 27-538-2014-04; DATED 4/14/2014; 27-1679-2015-03; DATED 3/23/2015)**

#### Sec. 102. Definitions.

(a) Youth. The term Youth shall include a child or minor and shall constitute any Indian person under eighteen (18) years of age.

(b) Abused youth. A youth who has suffered or is likely in the immediate future to suffer serious physical or emotional harm as a result of a parent, guardian or custodian inflicting or failing to make reasonable efforts to prevent the infliction of physical or mental injury upon the youth, including but not limited to excessive corporal punishment or an act of sexual abuse or molestation.

(c) Abandoned youth. A youth whose parent, guardian or custodian is not identifiable, or if known, has made no reasonable efforts to care for or arrange substitute care for the youth for a period of six (6) months or more.

(d) Neglected youth. A youth:

(1) Whose parent, guardian or custodian fails to provide the minimal care which a reasonable

prudent parent would provide in the same or similar circumstances for the subsistence, education, and welfare of the youth; or

(2) Who has special physical or mental conditions for which the youth's parent, guardian or custodian neglects or refuses to provide a reasonable level of special care; or

(3) Whose parent, guardian or custodian is unable to discharge his/her responsibilities to and for the youth because of incarceration, hospitalization, or other physical or mental incapacity. A youth shall not be deemed neglected if the only reason for failing to provide the minimal care for the youth is the indigence of the parent, guardian or custodian.

(e) Dependent youth. A youth who is homeless or destitute or without proper care and support, through no fault of his/her parent, legal guardian or custodian.

(f) Youth in Need of Supervision. A youth:

(1) Who is subject to compulsory school attendance and is habitually truant from school without justification; or

(2) Who has committed an offense committable only by youth; or

(3) Who is habitually disobedient to the reasonable and lawful commands of the parent, guardian or custodian; or

(4) Who habitually runs away from home.

(g) Delinquent Youth. A youth who commits an act which if committed by an adult would be in violation of any provisions of the Fort Peck Tribal Comprehensive Code of Justice (CCOJ), except that traffic offenses shall be deemed delinquent acts only if committed by a youth under sixteen (16) years of age.

(h) Detention. The temporary, secure custody of a youth in a facilities designated by the Court, pending a final disposition of a petition, provided that detention shall not be in a facility where the youth has sight or sound contact with incarcerated adult offenders.

(i) Foster/Shelter Care. The temporary care of a youth in licensed child/youth care facility designated by the Court, pending a final disposition of a petition.

(j) Diversion. A course of remedial action taken in matters arising under this Title, designed to utilize, if available, community based treatment and/or preventative programs to avoid formal Court action and which is agreed to be in the best interest of the youth involved.

(k) Probation. A formal course of action by the Court or an agreement between the youth, parent(s) and a Juvenile officer whereby a youth is permitted to remain in the youth's home under prescribed conditions and under supervision by a designated Probation/Juvenile officer and is subject to return to Court for any violation of the prescribed conditions.

(l) Probable Cause. Such facts and circumstances as would convince a reasonable person.

(m) Clear and Convincing Evidence. The measure or degree of proof which will produce in the mind of the trier of fact more than a mere preponderance, but not to the extent of such certainty as required by beyond a reasonable doubt.

(n) Beyond a Reasonable Doubt. Where facts and circumstances shown by evidence proves every essential element that the act was committed.

(o) Parent. The biological parent of a youth or any person who has lawfully adopted a youth. Parent shall not mean the unwed father of a youth where paternity has not been acknowledge, adjudicated or established by other clear and convincing evidence. Parent shall not mean any person whose parent-child relationship has been lawfully terminated.

(p) Custodian. A person or agency, other than a parent or guardian, to whom the legal custody of a youth has been granted by an order of a court of competent jurisdiction or who is acting in loco parentis but does not include a person who has only physical custody.

(q) Guardian. A person, other than the youth's parent(s), who has the legal duty and responsibility for that youth's person while under the guardianship of that person.

(r) Guardian Ad-Litem. An individual appointed by the Court to represent the best interests of the youth in an advocacy role.

(s) Ft. Peck Tribal Guardian Ad-Litem. An individual either hired or contracted by the Tribe to represent the best interest of the Indian youth on behalf of the Tribes in an advocacy role.

(t) Extended Family Member. Any adult family member other than the youth's parents related by blood, customs or traditions.

(u) Minimal Care. The provision of adequate food, clothing, shelter, medical care, education and day-to-day supervision. In determining whether minimal care has been provided, the Court shall apply the standards prevailing in the community.

(v) Restitution. Financial or other reimbursement by a youth and/or the parent, custodian or guardian of a youth who is adjudged by the Court guilty of an offense which if committed by an adult would be arson (section 301), burglary (section 310), criminal trespass (section 311), theft (section 320), robbery (section 321), criminal mischief (section 322), injury to public property (section 323), issuing bad checks (section 324), or forgery (section 330) under Title 7 - Criminal Offenses, in order to reimburse any injured party for damage or loss caused directly or indirectly by the youth's offense, by means of surrender of property, payment of money damages in an aggregate amount not to exceed \$2,500.00, or the performance of any other act, including appropriate work detail, for the benefit of the injured party.

(w) Probation Officer. A person designated by the Tribal Executive Board to be responsible for performing field work in the supervision and rehabilitation of youth probationers and assigned to assist the Court and the Juvenile Services Department in ensuring that such youth fulfill the Orders of the Court.

(x) Indian Child Welfare Act Transfers. Any state court proceedings for foster care placement, custody or adoption of, or termination of parental rights to, an Indian youth transferred to the Court under the Indian Child Welfare Act, 25 U.S. C. sections 1901 et seq.

## Chapter 2. Youth Offender

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### Sec. 201. Taking a Youth into Custody Prior to a Court Hearing.

(a) Taking a Youth into secured custody/detention. Any law enforcement officer and/or juvenile officer, who has probable cause to believe a youth is a delinquent youth and either

(1) Is likely to commit other delinquent acts, unless detained, or

(2) Poses an immediate threat to his/her own welfare or to the community, may take the youth into secured detention. If such action is taken, the law enforcement officer and/or juvenile officer shall charge the youth, place the youth in a secured facility for delinquent youth and promptly notify the parent(s), legal guardian, or custodian or an extended family member if parent(s), legal guardian or custodian cannot be located, of why the youth has been taken to a detention facility, the charge(s) alleged and where the youth is being detained. After notification and a written promise to bring the youth to Court at the designated time and place, the youth may be released to one of the above listed responsible adults.

(b) Youth in need of supervision. Any law enforcement officer, and/or juvenile officer who has probable cause to believe a youth is a youth in need of supervision may issue a citation to the youth and temporarily place the youth into custody until such time as the parent(s), legal guardian or custodian can be located and the youth placed back into the home. In the event the parent(s), legal guardian or custodian cannot be located within a reasonable time, the law enforcement officer and/or juvenile officer shall notify an extended family member. In no event shall a youth in need of supervision be placed in a facility for delinquent youth without an Order of the Court. The taking of a youth in need of supervision into custody, or the taking into detention of a delinquent youth who is not thereafter charged

with an offense under this section is not an arrest nor does it constitute a police record.

(c) Rights of youth offender. Any youth who is taken into secured custody/detention by a law enforcement and/or juvenile officer shall be afforded the same rights as an adult in the reading of their Tribal rights. A youth's rights shall consist of the following:

(1) The right to remain silent;

(2) The right to the presence of his/her parent, guardian, legal custodian and/or counsel during questioning, and;

(3) A right to an advocate or attorney at his/her own expense or as provided by his/her parent, guardian or custodian. Anything the youth says after the foregoing rights have been read can be used against the youth in Court.

(4) Any youth charged under 7 CCOJ 249, 244 or 245 shall have all the rights set out in 7 CCOJ 249.

(d) Duties of law enforcement officers and/or juvenile officers. If a youth is taken into secured custody/detention and not released to his/her parent(s), legal guardian or custodian, the person taking the youth into secured custody/detention shall immediately attempt to notify the youth's parent(s), legal guardian or custodian. All reasonable efforts shall be made to advise the parent(s), legal guardian or custodian of the reason for taking the youth into secured custody/detention and the place of continued secured custody/detention. Reasonable efforts shall include telephone and personal contacts at the home or place of employment or other location where the person is known to frequent. If notification cannot be provided to the youth's parent(s), legal guardian or custodian, the notice shall be given to an extended family member.

(e) In no event shall a youth be kept in secured custody/detention without a Court order for more than 48 hours, except

(1) As otherwise provided in Section 202, or

(2) If an initial hearing is held pursuant to Section 303.

**(AMENDED AS PER RESOLUTION NO. 27-1679-2015-03; DATED 3/23/2015)**

**Sec. 202. Application to Court.**

(a) Any law enforcement officer, and/or juvenile officer who takes a youth into secured custody/detention without a Court hearing shall

(1) Immediately notify the Juvenile Services Department and make a good faith effort to notify the parent(s), legal guardian or custodian of the youth and

(2) Submit to the Juvenile Services Department a report of the event by the next following work day.

(b) Any law enforcement officer and/or juvenile officer who places a youth in need of supervision into custody with parent(s), legal guardian, custodian, extended family member or a social service agency shall

(1) Immediately notify the Juvenile Services Department and

(2) Submit to the Juvenile Services Department a report of the event by the next following work day.

(c) Within twenty-four (24) hours of the time the youth is placed in secured custody/detention, the Juvenile Services Department shall submit to the Court a petition under Section 301 of this Title. If the youth is taken into secured custody/detention on a weekend or holiday, Juvenile Services Department shall have twenty-four (24) hours from the start of the next work day to file a petition in Court.

(d) Where the youth is not placed in secured custody/detention, the Juvenile Services Department shall submit to the Court a petition within forty-eight (48) hours from the date of the officer's report. If the forty-eight (48) hour time limit to file a petition falls on a weekend and/or holiday, the forty-eight (48) hour time limit continues on to the next work day.

**Chapter 3. Court Procedures**

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**Sec. 301 Petitions.**

Any person may, and under the circumstances set forth in Section 202, the Juvenile Services Department shall, submit to the Court a petition to have any youth subject to the jurisdiction of the Court declared a delinquent youth or a youth in need of supervision. Such petition shall include

(a) The name, address and telephone number of the petitioner, the youth and, if known, the youth's parent(s), legal guardian or custodian;

(b) The reason(s) why the petitioner believes the youth is a delinquent youth or a youth in need of supervision;

(c) Supporting credible evidence, including but not limited to, affidavits, reports or written statements from social workers, law enforcement officers, juvenile officers, other child care professionals, relatives of the youth or members of the community.

**Sec. 302. Screening the petition.**

(a) Upon receiving a petition, the Court shall immediately have the petition screened by a juvenile officer. The screening of the petition by a juvenile officer shall not apply if submitted by the Juvenile Services Department, Tribal prosecutor or the Tribal guardian ad-litem. The juvenile officer shall determine if the petition is sufficient on its face to support a finding of delinquency or a youth in need of supervision. If, based upon examination of the petition, the juvenile officer determines that the petition lacks merit, he/she shall

recommend to the Court that the petition be dismissed without further proceedings. Absent good cause to the contrary, the Court shall promptly dismiss the petition and order the youth released from custody/detention.

(b) Social Study /Report to Court. The Juvenile Services Department agency shall conduct a Social Study/Report to Court with respect to each petition which is not dismissed on initial screening. Such Study /Report shall be undertaken before the initial hearing, if possible, and in all cases before the fact finding hearing. The Study /Report shall, if possible, include interviews of the youth, parent(s), legal guardian or custodian and, if applicable, teachers and law enforcement officers, on investigation of the conditions of the home, and recommendations. The Juvenile Services Department shall submit the Study/Report to the Court.

(c) Diversion program.

(1) Youth in need of supervision. The Juvenile Services Department may recommend counseling, treatment, or such other disposition of a youth in need of supervision which in the Department's opinion is in the best interest of the youth. Such recommendation(s) shall be implemented, without Court action, only upon the consent of the parent, legal guardian or custodian with the knowledge that consent is voluntary. Upon receiving consent, the Juvenile Services Department shall inform the Court that the case is being resolved informally. The diversion program shall not include any disposition which separates the youth from parent(s), legal guardian or custodian, unless consented to in writing by the parent(s), legal guardian or custodian. Upon successful completion by the youth of the recommended program, the Juvenile Services Department shall so notify the Court and the petition shall be dismissed. No diversion program shall exceed six (6) months. In cases where a diversion is not successful and/or completed, the Juvenile Services Department shall have the right to reactivate the petition.

(2) Delinquent youth. In cases where a youth has no previous record of delinquency and the

youth is alleged to have committed a misdemeanor, the juvenile officer may recommend a diversion program, including counseling and/or treatment or any other disposition in the opinion of the juvenile officer is in the best interest of the youth. The diversion program shall not include any disposition which separates the youth from parent(s), legal guardian or custodian or, unless consented to in writing by the parent(s), legal guardian or custodian, or otherwise ordered by the Court. The Court may, in its discretion, approve such recommendation without a hearing. Upon successful completion of the recommended program by the youth, the Juvenile Services Department shall so notify the Court and the petition shall be dismissed. A youth who successfully completes the diversion program shall not be deemed a delinquent for any purpose. No diversion program shall exceed six (6) months. In cases where a diversion program is not successful and/or completed, the Juvenile Services Department shall have the right to reactivate the petition.

### **Sec. 303. Initial hearing.**

(a) After receiving a petition, the Court shall promptly schedule an initial hearing, to be held immediately, if possible, and in all cases within forty-eight (48) hours after the filing of the petition if a youth has been placed in secured custody/detention and within ten (10) days if the youth is not in secured custody/detention. The Court shall make all reasonable attempts to notify, by telephone or other means, the youth and the youth's parents, legal guardian or custodian of the time and place of the initial hearing, and of the right of the parent, legal guardian custodian and youth: (1) to obtain counsel at his/her own expense, (2) to be present at the hearing, and (3) to testify, present documentary evidence, call witnesses, and ask questions of all witnesses. The initial hearing shall be conducted informally and shall be closed to the public. The youth shall be present for all Court hearings if over the age of ten (10) years unless the Court determines that the youth will likely suffer severe emotional harm as a result of such presence. If the Court determines that there is probable cause to believe that the



youth should be declared delinquent or a youth in need of supervision, the Court may temporarily order such disposition as is appropriate under Section 306(d) of this Title, pending a fact-finding hearing. Otherwise the case shall be dismissed.

(b) In the event the youth admits the allegation(s) of the petition and the Court accepts that admission, the Court shall proceed to a dispositional hearing as provided by Section 306, and if the Court deems necessary, the Court shall require a pre-dispositional report from the Juvenile Services Department, or the Tribal probation officer or other appropriate agency or person concerning the youth, the family of the youth, the environment of the youth and any other matter relevant to the need for treatment or to appropriate disposition of the case.

#### **Sec. 303-A. Guardian Ad-Litem.**

(a) Appointment of guardian ad-litem. The Court in its discretion may appoint a guardian ad litem or request the Fort Peck Tribal guardian ad-litem to represent a youth in any proceedings under this Title or any criminal proceedings under Title 7 where the youth may be a witness or, the parent(s), legal guardian or custodian cannot be located. The guardian ad-litem shall be at least twenty-one (21) years of age, be of high moral character and integrity, and shall not be a close relative of the youth or have any other special interest in the case that would prevent the guardian ad-litem from representing the best interests of the youth in an objective way. The Court may appoint the guardian ad-litem or request the services of the Fort Peck Tribal guardian ad-litem at the initial hearing, or at any other appropriate point during the proceedings, including before a petition is filed.

(b) Duties of the guardian ad-litem. The Court appointed guardian ad-litem shall meet and become acquainted with the youth as soon as feasible after appointment. The guardian ad-litem shall, except where the best interests of the youth indicate otherwise, attend all Court proceedings in the case, be present at interviews between the

youth and law enforcement officials, social workers, and other personnel who need to speak with the youth in connection with the case, and when possible, visit the youth in any foster home or other Court-ordered placement for the purpose of determining whether the placement is in the best interests of the youth, and determine the views of the youth with respect to placement and communicate those views to the Court. The guardian ad-litem shall perform such other duties as the Court shall order in the best interests of the youth.

(c) Term and compensation. The guardian ad-litem shall continue to serve until discharged by the Court and shall be compensated as determined by the Tribal Executive Board.

(d) Notice of Court proceedings. The Court appointed guardian ad-litem shall be notified of any Court proceeding at which his/her attendance is required. Notice shall be furnished as provided in Section 305(b) of this Title.

#### **Sec. 304. Transfer of juvenile proceedings.**

Upon motion of the petitioner or on its own motion, the Court may waive juvenile proceedings so that the youth may be tried as an adult in the Fort Peck Tribal Court where (a) the youth is sixteen (16) years of age or more; and/or (b) the youth has previously been found to be a delinquent. In determining whether the youth should be tried as an adult, the Court shall consider the seriousness of the crime alleged to have been committed; the extent of the youth's prior delinquency record; the possibility of rehabilitation of the youth; and the effects of prior attempts to rehabilitate the youth. The Court shall provide the youth and the youth's authorized representative with prior notice of a hearing on this issue, as provided in Section 305(b), and shall hold a hearing as provided in Section 305(a) of this Title.

#### **Sec. 305. Fact-finding hearing.**

(a) When a fact-finding hearing shall be held. The fact-finding hearing shall be held as soon as possible after the petition is filed and following receipt of a Social Study/Report to the Court or such other evidence sufficient to enable the Court to make a determination. In all cases, the fact-

finding hearing shall be held within thirty (30) days after the initial hearing, unless, with good cause shown, the Tribes, the youth or the youth's authorized representative requests a postponement.

(b) Notice. The Court shall serve prior written notice of the date, time, and place of the hearing upon the youth, any person authorized to represent the youth and the parent(s), legal custodian or guardian. Notice shall be served in person or by certified mail, return receipt requested, or by publication in the local newspaper for a period of three (3) consecutive weeks, if the whereabouts of the parent(s), legal custodian or guardian are unknown. The youth's full name shall not be published when notice is required by publication in any newspaper. Notice shall also specify that the youth (and any other party served with notice) has a right to retain counsel at his/her own expense, be present, testify, present documentary evidence, call witnesses, and ask questions of all witnesses.

(c) Procedures. The youth and his/her parent(s), legal guardian or custodian or legal representative, shall be physically present at the fact-finding hearing. The hearing shall be closed to the general public. The petitioner, the Juvenile Services Department or the Tribal prosecutor shall have the burden of proving the allegations of the petition by competent evidence and testimony. The Court may require the testimony of a physician or child care expert based on an examination of the youth. The youth or his/her authorized representative and the parent(s), legal custodian or guardian may summon or produce such witnesses and relevant evidence as he/she may desire, and may be represented by counsel at his/her own expense. The Court may call such witnesses as it deems necessary.

(d) Order.

(1) If the Court shall find, after the fact-finding hearing that (I) there is clear and convincing evidence that the youth is a youth in need of supervision, or (ii) that there is evidence beyond a reasonable doubt that the youth is a delinquent, the Court shall determine the proper disposition

of the youth under Section 306(d) of this Title. Otherwise, the petition shall be dismissed.

(2) If the Court deems necessary, the Court shall request a pre-dispositional report as defined in Section 303 to be provided by the Juvenile Services Department, or the probation officer or any appropriate agency or person as the Court deems necessary. The pre-dispositional report shall be submitted at the time of the dispositional hearing. Otherwise the petition shall be dismissed.

(3) If the Court determines that the youth should be tried as an adult, as provided in Section 304, it shall enter an Order to that effect.

### **Sec. 306. Dispositional hearing of a delinquent youth or a youth in need of supervision.**

(a) When a dispositional hearing shall be held. A dispositional hearing shall be conducted as soon as practicable after the conclusion of the fact-finding hearing or the initial hearing if the youth admits the allegations of the petition and the Court accepts such admission at the initial hearing. Adequate time between hearings, not to exceed fifteen (15) working days, shall be allowed to permit the Court to consider the dispositional alternatives that are in the best interests of the youth.

(b) Rights of the parties to the dispositional hearing. All those rights provided at the initial hearing and/or the fact-finding hearing shall be provided at the dispositional hearing. The notice requirements of this Chapter shall apply, except that notice by publication need not be made if that notice previously has been given. The youth shall be physically present at the dispositional hearing if over ten (10) years of age unless the Court determines that the youth would likely suffer severe emotional harm as a result of such presence. Otherwise the presence of the youth shall be in the discretion of the Court. The Court in its discretion may confer with the youth with only the guardian ad-litem present in order to determine the youth's desires concerning disposition.

(c) Evidence. At the dispositional hearing the Court shall hear evidence and the parties shall have the right to introduce evidence on the matter of proper disposition. The Court shall consider all

relevant reports submitted at the hearing in making a disposition, including any reports prepared by the youth and his/her representative.

(d) Disposition.

(1) Best interest of the youth. The Court shall make such disposition as is in the best interest of the youth.

(2) Delinquent youth. The Court may order one of the following dispositions:

(i) To the supervision of the parent(s), legal guardian or custodian with such conditions as the Court deems necessary; or

(ii) To the supervision of an extended family member with such conditions as the Court deems necessary; or

(iii) To an approved facility for delinquents on the Reservation; or

(iv) To an approved facility for delinquents off the Reservation; or

(v) To a Tribal work program as approved and recognized by the Tribal Executive Board to fulfill any obligation that the Court deems necessary; or

(vi) To a community service program as recommended through the Juvenile Services Department.

(vii) In addition to ordering one of the above stated dispositions, the Court may require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a sexual offense, as defined in 7 CCOJ 220, 221, 222, 226, 227, 228, if committed by an adult, to register as a sexual offender pursuant to 7 CCOJ 229. The Youth Court shall retain jurisdiction under this subsection.

**(AMENDED PER RESOLUTION NO. 1770-2007-06; DATED 6/22/2007)**

(3) Youth in need of supervision. The Court may order one or more of the following dispositions:

(i) To the supervision of the parent(s), legal guardian or custodian with such conditions as the Court deems necessary; or

(ii) To the supervision of an adult member of the youth's extended family with such conditions as the Court deems necessary; or

(iii) To an approved treatment and/or rehabilitation facility on the Reservation; or (iv) to an approved treatment and/or rehabilitation facility off the Reservation provided that a youth in need of supervision shall not be committed to an off-Reservation facility unless he/she has been found by the Court to be a youth in need of supervision on at least four (4) separate occasions. Off-Reservation placement shall be used only as a last resort, where no reasonable on-Reservation placement is available. Whenever a youth is placed temporarily off the Reservation, the Court shall require the party receiving the child to sign an agreement that the child will be returned to the Reservation upon written Order of the Court.

**Sec. 306-A. Transfer of supervisory responsibility to adult court after juvenile disposition.**

(a) After adjudication by the Juvenile Court, the Court may, on the youth's motion or the motion of the prosecutor, transfer jurisdiction to the Adult Court and order the transfer of supervisory responsibility from the juvenile probation services to adult probation services. A transfer under this section may be made to ensure continued compliance with the Court's disposition under 9 CCOJ 306 and may be made at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age.

(b) Before the transfer, the Court shall hold a hearing on whether the transfer should be made. The hearing must be held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing must be conducted by the Court without a jury. The Court shall give the youth, the youth's counsel, and the youth's parents, guardian, or custodian notice in writing of the time, place, and purpose of the hearing at least 10 days before the hearing. At the hearing, the youth is entitled to receive:

(1) Written notice of the motion to transfer;

(2) An opportunity to be heard in person and to present witnesses and evidence;

(3) A written statement by the Court of the evidence relied on and reasons for the transfer;

(4) The right to cross-examine witnesses, unless the Court finds good cause for not allowing confrontation; and

(5) The right to counsel at their own expense.

(c) After the hearing, if the Court finds by a preponderance of the evidence that transfer of continuing supervisory responsibility to the adult court is appropriate, the Court shall order the transfer.

(d) If a youth case has been transferred to Adult Court under this section violates a disposition previously imposed under 9 CCOJ 306, the Adult Court may, after hearing, impose conditions as provided under 6 CCOJ 601- 602.

(e) The Adult Court's jurisdiction over a case transferred under this section terminates when the youth reaches 25 years of age.

**(AS PER RESOLUTION NO. 26-737C-2012-05; DATED 05/15/2012.)**

### **Sec. 307. Right of Appeal.**

Following the disposition under Section 306(d), the Court shall inform the youth and his/her parent(s), legal guardian or custodian, or legal representative that the youth has the right to appeal. This right of appeal shall not apply if the youth admitted the allegations of the petition. If the youth or his/her representative requests, the clerk of the Court shall prepare and file a notice of appeal on behalf of the youth. The youth, or his/her representative or the clerk of the Court filing on his/her behalf, must file the notice of appeal within fifteen (15) working days of the disposition.

### **Sec. 308. Periodic review for delinquent youth and youth in need of supervision in approved facilities.**

The Court shall hold periodic hearings, at least once every six (6) months, at the request of Juvenile Services Department, probation officer, other agencies, the youth or his/her parent(s), legal guardian, custodian or legal representative to determine if the youth should remain in the approved facility to which he/she has been committed. If the Court finds that the youth is not likely to commit additional delinquent acts or is no

longer in need of supervision, the Court may release the youth, subject to such terms or probation as the Court deems necessary.

### **Sec. 309. Confidentiality.**

In all proceedings held pursuant to this Title,

(a) The hearings shall be conducted in closed and private chambers;

(b) The names of any youth involved shall not be published; and

(c) A record of all proceedings shall be made and preserved with the Court. All Court records concerning youth under this Title, including social, medical and psychological reports, shall be kept confidential and shall be open for inspection only upon Court order and then only to the following persons or agencies:

(1) The youth;

(2) The youth's representative;

(3) The youth's parent(s), legal guardian or custodian and their representatives;

(4) The juvenile officer; and

(5) Any other person having a legitimate interest in the case in the performance of their official duties, as determined by the Court.

### **Sec. 310. Records.**

The Juvenile clerk of Court shall be responsible for any and all filings, record keeping, Court schedules and other appropriate activities in all Court matters pertaining to youth under this Title.

### **Sec. 311. Expungement of records.**

Records of youth involved in proceedings under this Title shall be physically sealed when the youth reaches the age of twenty-one (21) years. Upon reaching the age of twenty-one (21) years, any person who was a party to proceedings under this Chapter, or the party's legal representative, may petition the Court to have such Court records destroyed. In any case, the Court may order such records, except those dealing with the termination of a parent-youth relationship, to be destroyed five (5) years after the youth reaches the age of twenty-one (21) years.

## **Chapter 4. Abused, Neglected, Abandoned or Dependent Youth.**

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### **Sec. 401. Taking a youth into protective custody.**

(a) Any licensed medical professional, law enforcement officer, social worker or Tribal juvenile officer who has probable cause to believe a youth is abused, neglected, abandoned or dependent and will suffer physical or emotional harm if not immediately removed from the home may place or refer the youth to protective custody. Such youth may be placed in a private home of an appropriate extended family member or temporary foster home or an appropriate facility, but not in a facility where the youth has sight or sound contact with alleged delinquents. Any medical professional, law enforcement officer or tribal juvenile officer taking a youth into protective custody shall make a good faith effort to immediately notify an appropriate social service agency of placement of the youth.

(b) Any youth who is placed into protective custody and has been subjected to severe abuse, neglect, abandonment or dependency, shall promptly be examined by a licensed physician. In no event shall a youth be kept in protective custody without a court order for more than seventy-two (72) hours.

### **Sec. 402. Taking a youth into non-protective custody.**

Any law enforcement officer, social worker or Tribal juvenile officer who has probable cause to believe a youth is abused, neglected, abandoned or dependent but is not in immediate danger of physical or emotional harm unless removed from the home may allow the youth to remain in the home with notification to the parent, legal guardian or custodian that the youth is placed in the

home in a nonprotective custody status. Any law enforcement officer or Tribal juvenile officer shall make a good faith effort to immediately notify an appropriate social service agency of placement of the youth.

### **Sec. 403. Notification and application to Court.**

Any law enforcement officer, licensed physician, Tribal juvenile officer or social worker who takes a child into custody without a Court hearing shall (a) immediately notify an appropriate social service agency for further investigation and make a good faith effort to notify the parent(s), legal guardian or custodian of the youth and (b) within forty-eight (48) hours submit to the Court and the Fort Peck Tribal guardian ad-litem or his/her successor a civil petition/report under Section 501 of this Title. If the youth is taken into custody on a weekend or holiday, the individual and/or agency taking the youth into custody shall have forty-eight (48) hours from the start of the next scheduled work day to submit a petition/report to the Fort Peck Tribal guardian ad-litem or his/her successor and the Court.

## **Chapter 5. Court Procedures**

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### **Sec. 501. Petitions.**

Any person who has taken a youth into custody pursuant to Sections 401 and 402 shall, submit to the Tribal Court a petition to have any youth subject to the jurisdiction of the Court declared an abused, neglected, abandoned or dependent youth. Such petition shall include (a) the name, address and telephone number of the petitioner, the youth and, if known, the youth's parent(s), legal guardian or custodian; (b) the reason(s) why the petitioner believes the youth is abused, neglected, abandoned or dependent; (c) supporting credible evidence, including but not limited to; affidavits, reports or written statements from social workers, law enforcement officers, juvenile officers, other child care professionals, other relatives of the youth or members of the community.

### **Sec. 502. Screening the petition**

Upon receiving a petition, the Court shall immediately have the petition screened by a juvenile officer, unless the petition was submitted by the Juvenile Services Department, Tribal prosecutor or the Tribal guardian ad-litem. The juvenile officer shall determine if the petition is sufficient on its face to support a finding of abuse, neglect, abandonment or dependency. If, based upon examination of the petition, the juvenile officer determines that the petition lacks merit, he/she shall recommend to the Court that the petition be dismissed without further proceedings. Absent good cause to the contrary, the Court shall promptly dismiss the petition and, if applicable, order the youth released from custody.

(a) Social Study/Report to Court. The appropriate social service agency shall conduct a Social Study/Report to Court with respect to each petition which is not dismissed on initial screening. Such Study/Report shall be submitted to the Court at the initial hearing, the fact finding hearing and all review hearings. The Study/Report shall, if possible, include interviews of the youth, parent(s), legal guardian or custodian and investigation of the conditions of the home, and recommendations. The social service agency shall submit the Study/Report to the Fort Peck Tribal

guardian ad-litem or his/her successor and the Court.

#### **(b) Diversion.**

(1) The social service agency may recommend counseling, treatment, or such other disposition of an abused, neglected, abandoned or dependent youth which in the social service agency's opinion is in the best interest of the youth. Such recommendation shall be implemented, without Court action, only upon the consent of the parent, legal guardian or custodian with the knowledge that consent is voluntary. Upon receiving consent, the social service agency shall inform the Court that the case is being resolved informally.

(2) A diversion shall not include any disposition which separates the youth from the parent(s), legal guardian or custodian, unless consented to in writing by the parent(s), guardian or custodian or otherwise ordered by the Court. Upon successful completion of the recommended program, the petition shall be dismissed. No diversion program shall exceed six (6) months. In cases where a diversion is not successful and/or completed, the social service agency shall have the right to reactivate the petition.

### **Sec. 503. Initial hearing.**

(a) After receiving a petition, the Court shall promptly schedule an initial hearing, to be held immediately, if possible, and in all cases within seventy two (72) hours of the time a youth is placed in protective custody and within ten (10) days if the youth is in non-protective custody. The Court shall make all reasonable attempts to notify, by telephone or other means, the youth and the youth's parent(s) or legal guardian or custodian of the time and place of the initial hearing, and of the right of the youth and the parent(s), legal guardian or custodian to:

(1) Obtain legal counsel at his/her own expense,

(2) Be present at the hearing, and

(3) Testify, present documentary evidence, call witnesses, and ask questions of all witnesses. The initial hearing shall be conducted informally

and shall be closed to the public. If the Court determines that there is probable cause to believe that the youth has been abused, neglected, abandoned or dependent, the Court may temporarily order such disposition as is appropriate under Section 506 of this Title, pending a fact-finding hearing. Otherwise, the case shall be dismissed.

(b) Where there is probable cause to believe that a youth has been sexually abused, severely physically abused, neglected, abandoned or dependent and the Court determines that a criminal investigation has commenced or will commence in the near future, the Court shall not allow the youth to reside or be placed in the residence with the person(s) allegedly responsible for said act. Such placement shall remain in force until the fact-finding hearing, at which time placement shall be determined according to Section 506 without regard to the provisions of this subsection. The Court shall have the discretion to implement this subsection according to the best interest of the youth.

#### **Sec. 504. Guardian Ad-Litem.**

(a) Court appointment of guardian ad-litem. The Court in its discretion may appoint a guardian ad-litem or request the Fort Peck Tribal guardian ad-litem to represent the best interest of a youth in any proceedings under this Title or any criminal proceeding where a youth may be a witness or where the parent(s), legal guardian or custodian cannot be located. The guardian ad-litem shall be at least twenty-one (21) years of age, be of high moral character and integrity, and shall not be a close relative of the youth or have any other special interest in the case that would prevent the guardian ad-litem from representing the best interests of the youth in an objective way. The Court may appoint the guardian ad-litem or request the Fort Peck Tribal guardian ad-litem at the initial hearing, under Section 503 of this Title, or at any other appropriate point during the proceedings, including before a petition is filed.

(b) Duties of the Court appointed guardian ad-litem. The guardian ad-litem shall meet and become acquainted with the youth as soon as feasible after appointment. The guardian ad-litem

shall, except where the best interest of the youth indicates otherwise, attend all Court proceedings in the case, be present at interviews between the child and law enforcement officials, social workers, and/or other personnel who need to speak with the youth in connection with the case, visit the youth in any foster home or other Court-ordered placement for the purpose of determining whether the placement is in the best interests of the youth, and determine the views of the youth with respect to placement and communicate those views to the Court. The guardian ad-litem shall perform such other duties as the Court shall order in the best interests of the youth.

(c) Term and compensation. The Court appointed guardian ad-litem shall continue to serve until discharged by the Court and shall be compensated as determined by the Tribal Executive Board.

(d) Notice of Court proceedings. The Court appointed guardian ad-litem and the Fort Peck Tribal guardian ad-litem shall be notified of any Court proceeding in which their attendance is required. Notice shall be furnished as provided in Section 505(b) of this Title.

#### **Sec. 505. Fact Finding Hearing.**

(a) When a fact-finding hearing shall be held. The fact-finding hearing shall be held as soon after the petition is filed as possible, and immediately following receipt of a Social Study/Report to Court or such other evidence sufficient to enable the Court to make its determination. In all cases the fact finding hearing shall be held within thirty (30) days after the initial hearing, absent good cause or if the youth's authorized representative or the parent(s), legal guardian or custodian, or the Tribes requests a postponement.

(b) Notice. The Court shall serve prior written notice of the date, time, and place of the hearing upon the youth, any person authorized to represent the youth and the parent(s), legal guardian or custodian. Notice shall be served in person or by certified mail, return receipt requested, or by publication in the local newspaper for a period of three (3) consecutive weeks, if the whereabouts of the parent(s), legal guardian or custodian are

unknown. The youth's full name shall not be published when notice is required by publication in any newspaper. Notice shall also specify that any party served with notice has a right to retain counsel at his/her own expense, be present, testify, present documentary evidence, call witnesses, and ask questions of all witnesses.

(c) Procedures. The youth may be physically present at the fact-finding hearing in the Court's discretion. The fact finding hearing shall be closed to the general public. The petitioner or his/her surrogate shall have the burden of proving the allegations of the petition. The Court may require the testimony of a physician or child care expert based on an examination of the youth. The youth's parent(s), legal guardian or custodian may summon or produce such witnesses and relevant evidence as they may desire, and may be represented by counsel at his/her own expense. The Court may call such witnesses as it deems necessary.

(d) Order. If the Court shall find, at the conclusion of the fact-finding hearing, that there is clear and convincing evidence that the youth is abused, neglected, abandoned or dependent, the Court at that time shall determine the proper disposition of the youth under Section 506 of this Title. If clear and convincing evidence does not exist, the petition shall be dismissed and the youth shall be returned to the custody of the parent(s), legal guardian or custodian.

### **Sec. 506. Dispositional hearing.**

(a) A disposition shall be determined by the Court as soon as practicable after the conclusion of the fact finding hearing to permit the Court to consider the dispositional alternatives that are in the best interests of the youth.

(b) The presence of the youth shall be in the discretion of the Court. The Court in its discretion may confer with the youth with only the Court appointed guardian ad-litem or the Fort Peck Tribal guardian ad-litem present in order to determine the youth's desires concerning disposition.

(c) Disposition

(1) Best interest of youth. The Court shall make such disposition as is in the best interest of the youth.

(2) The Court shall order one of the following dispositions:

(i) To the custody of the parent(s), legal guardian or custodian subject to such counseling, treatment, or other services as are deemed necessary to keep the youth in the home; or

(ii) To the custody of the non-custodial parent; or

(iii) To the custody of an extended family member on the Reservation with such conditions as the Court shall require; or

(iv) To the care and supervision of an appropriate social service agency which shall be responsible for appropriate placement; or

(v) To the custody of an extended family member off the Reservation with such conditions as the Court shall require; or

(vi) To the custody of a Tribal group home, if available; or

(vii) To recommend permanency planning placement proceedings for the youth; or

(viii) To recommend termination of parental rights proceedings.

(3) Determining and changing placements. In determining which of several relatives shall have placement of the youth under subsection (2), the Court shall consider their ability to provide adequate food, shelter, medical care, love emotional support and day-to-day supervision. The Court shall also take into account the desires of the youth. After a period of 6 months from the date of the dispositional order, and absent a substantial change in circumstances, in its discretion, the Court may hold a hearing to consider a change in placement. In deciding whether to hold a hearing or to change placement, the Court shall consider the best interests of the child.

**(AMENDED AS PER RESOLUTION NO. 25-2169-2011-05; DATED 05/23/2011.)**

### **Sec. 506-A. Permanency planning.**

Concurrent with temporary protective care, Social Services shall conduct planning for a permanent living arrangement for the child in need of



care. Such permanent living arrangement can be reunification with parents, long term custody, guardianship with a fit and willing extended family member, and/or adoption.

(a) A child is considered to have entered foster care the earlier of:

(1) The date of the first judicial finding that the child has been abused or neglected; or

(2) 60 days after the date from when the child was removed from the family home.

(b) In the event temporary protective care is not terminated within 11 months from the date that a child is considered to have entered foster care, Social Services shall submit a Report to Court to the Social Services advocate or Tribal attorney which sets forth a permanency plan for permanent placement of the child.

(c) The Report to Court prepared by the Social Services worker shall contain the following information:

(1) Social Services worker's active efforts to effectuate the permanency plan for the child;

(2) Options for the child's permanent placement;

(3) Statement of the reasons for excluding higher priority placement options; and

(4) Statement of the proposed permanency plan, including specific time lines for achieving the plan.

**(AS PER RESOLUTION NO. 25-2168-2011-05; DATED 05/23/2011.)**

#### **Sec. 506-B. Permanency hearing.**

(a) The Court shall hold a permanency hearing as follows:

(1) The Court shall hold a permanency hearing no later than 12 months after the initial Court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(2) Within 12 months of a hearing under subsection (a)(1) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the Court shall conduct a hearing and issue a finding as to

whether Social Services has made active and reasonable efforts to finalize the permanency plan for the child.

(3) A permanency hearing is not required if the proceeding has been dismissed, the child was not removed from the home, the child has been returned to the child's parent or guardian, or the child has been legally adopted or appointed a legal guardian.

(4) The permanency hearing may be combined with a hearing that is required in other sections of this part if held within applicable time limits. If a permanency hearing is combined with another hearing or a review, the requirements of the Court related to the disposition of the other hearing or review must be met in addition to the requirements of this section.

(b) At least 5 working days prior to the permanency hearing, Social Services shall submit a report regarding the child to the Court. The report must address Social Services active efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority placement options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(c) At least 5 working days prior to the permanency hearing, the guardian ad litem or an attorney or advocate for a parent or guardian may submit an informational report to the Court for review.

(d) Before or at the permanency hearing, the Court shall consult with the child, in an age appropriate manner, regarding the proposed permanency or transition plan for the child.

(e) The Court's order must be issued within 20 days after the permanency hearing. If a member of the child's extended family has requested that custody be awarded to that family member, or that a prior grant of temporary custody with that family member be made permanent, Social Services shall investigate and determine if awarding custody to that family member is in the best interests of the child. Social Services shall provide the reasons for any denial to the Court. If the Court

accepts Social Services custody recommendation, the Court shall inform any denied family member of the reasons for denial in the Court order if the family member who is denied requests it to be included.

(f) The Court shall approve a specific permanency plan for the child and make written findings on:

(1) Whether the permanency plan is in the best interests of the child;

(2) Whether Social Services has made active and reasonable efforts to finalize the plan;

(3) Other necessary steps that Social Services is required to take to effectuate the terms of the plan; and

(4) Whether termination of parental rights is in the best interests of the child.

(g) In its discretion, the Court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection (h).

(h) Permanency options include:

(1) Reunification of the child with the child's parent or guardian.

(2) Adoption;

(3) Appointment of a guardian pursuant to Chapter 9 of this Title.

(4) Long-term custody if the child is in a planned permanent living arrangement and if it is established by a preponderance of the evidence, which is reflected in specific findings by the Court that:

(i) The child is being cared for by a fit and willing relative;

(ii) The child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) The child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) The child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests

of the child to terminate parental rights of that parent; or

(v) The child meets the following criteria;

(A) The child has been adjudicated a child in need of care;

(B) Social Services has made active and reasonable efforts to reunite the parent and child, further efforts by Social Services would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) There is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the best interests of the child;

(D) The child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(i) The Court may terminate a planned permanent living arrangement upon petition of the birth parents or Social Services if the Court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served.

**(AS PER RESOLUTION NO. 25-2168-2011-05; DATED 05/23/2011.)**

#### **Sec. 507. Confidentiality.**

All hearings held pursuant to this Title shall be

(a) Conducted in closed and private chambers;

(b) The names of all youth involved shall not be published; and

(c) A record of all proceedings shall be made and preserved with the Court. All Court records concerning youth under this Title, including social, medical and psychological reports, shall be kept confidential and shall be open for inspection only upon Court order and then only to the following persons or agencies:

(1) The youth;

(2) The youth's representative;

(3) The youth's parent(s), legal guardian or custodian and their representatives;

(4) The juvenile officer; and

(5) Any other person having legitimate interest in the case in the performance of their official duties, as determined by the Court.

**Sec. 508. Petition for return of abused, neglected, abandoned or dependent youth removed from the parent(s), legal custodian or guardian.**

The youth's authorized representative or the parent(s), legal guardian or custodian may petition the Court for return of an abused, neglected, abandoned or dependent youth to the parent(s), legal guardian or custodian. Such a petition shall not be filed until three (3) months after the disposition and only at six (6) month intervals thereafter. The petition shall be in writing, but need not be in any particular form. Grounds for return include a showing that the youth would not be in danger of being abused, neglected, abandoned or dependent upon return to the parent(s), legal guardian or custodian. Upon receipt of a petition for return of a youth, the Court shall order the appropriate social agency or Juvenile Services Department to undertake a social study. If after consideration of the petition and social study, the Court finds substantial evidence that the youth may safely be returned to the home of the parent(s), legal guardian or custodian, the Court shall order and hold a hearing on the matter, following the procedures set forth in Section 505.

**Sec. 509. Periodic review for abused, neglected, abandoned or dependent youth removed from parent(s), legal custodian or guardian.**

(a) The foster care review process, through the foster care review committee, shall monitor services, placement, and/or the permanency plan and shall make recommendations to the Court, as deemed appropriate to the best interest of the child. The foster care review committee shall review any child who has been placed by any agency under order of the Court, in substitute care for a period of six (6) months or longer, or may review any substitute care placement as directed by the Court. Subsequent follow-up must take place within six (6) months of the initial review

and within every six (6) months thereafter for as long as the child remains in care. The foster care review committee shall adhere to policy and procedure of the foster care review committee as established by the Fort Peck Tribal Executive Board.

(b) Whether or not the foster care review process is used or a petition for return is filed, the Court shall hold a hearing, following the procedures under Section 505 of this Title, to determine if the basis for the original disposition is still in existence. The first hearing after the Order of disposition shall be held ninety (90) days after that Order. Subsequent hearings shall be held every six (6) months; or

For youth who have been in the same placement for three (3) years or more, the Court, in its discretion, may extend the review period to one (1) year. If the Court finds that there is no longer clear and convincing evidence that grounds for out of home placement exist, the Court shall order the return of the youth to the parent(s), legal guardian or custodian.

**(AMENDED AS PER RESOLUTION NO. 1574-2001-2, DATED 02/26/2000)**

**Sec. 510. Expungement of records.**

Records of youth involved in proceedings under this Title shall be physically sealed when the youth reaches the age of twenty-one (21) years. Upon reaching the age of twenty-one (21) years, any youth involved in proceedings under this Title may petition the Court to have such Court records destroyed. In any case, the Court may order such records, except those dealing with the termination of a parent-youth relationship, to be destroyed five (5) years after the youth reaches the age of twenty-one (21) years.

**Chapter 6. Report of Youth Abuse, Neglect, Dependency and Abandonment Sections:**

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**Sec. 601. Obligation to report youth abuse, neglect, dependency and abandonment.**

Any physician, registered nurse, licensed practical nurse, community health representative, mental health professional, staff of a residential care facility or group home, school principal, teacher or teacher's aide, social worker, foster care worker, law enforcement officer, juvenile officer or any person with control of minor youth having reasonable cause to believe that a child is being or has recently been abused, neglected, abandoned or dependent as defined in Section 102 of this Title, shall immediately report such condition to a social service agency, police officer, tribal juvenile officer, or the Fort Peck Tribal guardian ad-litem. Reports from persons not obligated to report are encouraged.

**Sec. 602. Contents of reports.**

The report may be made orally or in writing and shall contain as much of the following information as is known to the person making the report: the name, address, and age of the youth, the name and address of the alleged perpetrator of the abuse, the nature and extent of the abuse and any other pertinent information.

**Sec. 603. Immunity for good faith reports; penalties for reports made in bad faith.**

Any person who in good faith makes a report pursuant to this Chapter or who testifies in any judicial proceeding arising from such report shall be immune from any civil or criminal liability because of such report or testimony. Any person who makes a report pursuant to this Chapter in bad faith for the purpose of harassing those identified in the report, without reasonable cause to believe the report is true, is guilty of a Class B misdemeanor.

**Sec. 604. Investigation of reports.**

The person to whom the report is made shall inform the tribal prosecutor. The prosecutor shall assign the case for investigation to a tribal juvenile officer, an appropriate social service agency, a court investigator, and/or a police officer, as appropriate. If the investigation reveals probable cause that abuse, neglect, abandonment or dependency has occurred, the procedures outlined in Chapters 4 and 5 of this Title shall be initiated.

**Sec. 605. Record keeping.**

The Tribal juvenile officers, Fort Peck Tribal guardian ad-litem or an appropriate social service agency shall keep a separate file for each report received under this Chapter. The file shall include a complete record of the report, the results of all investigations, a summary of any court proceedings, and any other pertinent information.

**Sec. 606. Confidentiality.**

The records described in Section 605 shall be confidential, except that the Tribal Court shall have access to the case file as needed for any criminal proceedings against the offender or for any proceedings under this Title.

**Chapter 7. Indian Child Welfare Act Transfers**

**Sections:**

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**Sec. 701. Purpose of the Indian Child Welfare Act Transfer.**

Congress, in enacting the Indian Child Welfare Act, 25 U. S. C. Sections 1901 et seq., intended to protect the best interests of Indian children and to promote the stability and security of Indian Tribes and Indian families by the establishment of minimum federal standards for the placement and adoption of Indian children through State

proceedings. Congress further provided in the Act for Indian Child Welfare Act transfers.

**Sec. 702. Procedures of transferring a youth to the jurisdiction of the Fort Peck Tribal Court.**

(a) Upon written notification to the Tribes from a State court or social service agency, of a possible Indian Child Welfare Act transfer, the Indian Child Welfare Act (ICWA) attorney or his/her successor shall notify the Indian Child Welfare Act Program or its successor of the notification.

(b) Upon notification, the Indian Child Welfare Act Program shall determine through the enrollment clerk of the Tribes whether the youth is enrolled or eligible for enrollment and shall forward a written verification to the ICWA attorney in a timely manner.

(c) If the youth is enrolled or eligible for enrollment with the Tribes, and if the ICWA Program determines, upon preliminary investigation, that transfer appears to be in the best interest of the youth, the ICWA attorney shall intervene in the State court proceeding.

(d) If transfer is in the best interest of the youth, the ICWA Program, or its successor, shall initiate all necessary documentation and recommendations in the following areas to assist the appropriate social service agency in case planning and finding proper relative placement for the youth:

- (1) The family relationships of the youth on and off the Reservation for potential placement;
- (2) The social histories of the extended family members;
- (3) The health and special needs of the youth; and
- (4) Developing a service program for the youth.

(e) The necessary documentation and recommendations shall be forwarded to the appropriate social service agency by the ICWA Program, whereby the social service agency shall assume the case management and, subject to the orders of the Court, shall be responsible for the placement of the youth in the event of transfer.

(f) The ICWA Program shall notify the Fort Peck Tribal receiving home, when available, of

the potential transfer of the youth to the Reservation and the need for placement in said home.

(g) When the Court receives an order of a State court for an Indian Child Welfare Act transfer, the Fort Peck Tribal guardian ad-litem or his/her successor shall file a Motion to Accept the Transfer of Jurisdiction and shall request a hearing on the Motion in a timely manner.

(h) The Court shall determine whether the transfer to the Tribes' jurisdiction would be detrimental to the best interest of the youth in a transfer hearing initiated by the guardian ad-litem. In making such a determination, the Court may consider:

- (1) Whether the youth or the youth's family or extended family will be in need of any specialized services which the Tribes and their resources are unable adequately to provide; and
- (2) The emotional, cultural and social ties of the youth and the youth's family; and
- (3) Any other matters which may adversely affect the Tribes ability to provide the necessary services for the youth and the youth's family or extended family.

(i) When transfer is either accepted or declined by the Court, the Court shall forward a certified copy of the Tribal Court Order to the appropriate State court.

(j) Upon entering an order accepting an Indian Child Welfare Act transfer as provided in this Chapter, the Court shall proceed with the case as if the petition had been originally filed or the adjudication had been originally made in this Court, once the State court documents are properly filed with this Court.

(k) The youth shall be transported back to the Reservation by the ICWA Program and/or the appropriate social service agency and the initial temporary placement shall be the responsibility of the appropriate social service agency.

**Chapter 8. Termination of Parent-Youth Relationship**

**Sections:**

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**Sec. 801. Purpose of termination of the parent-youth relationship.**

The purpose of this Chapter is to provide termination of the parent-youth relationship by court order, to enable the youth to be adopted by other adults. This Chapter shall be used only in conjunction with an adoption proceeding. A petition for termination of parental rights may be filed, but may not be granted, unless and until a petition for adoption has been filed with the Court.

**Sec. 802. Who may file a petition.**

(a) A parent, with the exception of a minor parent, may voluntarily file a petition for the termination of the parent-youth relationship.

(b) One (1) parent may file a petition for the termination of the parent-youth relationship between the other parent and the youth.

(c) A guardian, any other person having a family relationship or other legitimate interest in the youth, including a prospective adoptive parent, or the Tribes, may file a petition for the termination of the parent-youth relationship with respect to either or both parents.

**Sec. 803. Contents of the petition.**

The petition for termination of the parent-youth relationship shall include:

(a) The name and place of residence of the petitioner;

(b) The name, sex, date and place of birth and residence of the youth;

(c) The relationship of the petitioner to the youth, if any;

(d) The names, addresses, dates of birth of the parents, if known;

(e) Where the youth's parent is a minor, the name and address of the youth's grandparents, if known;

(f) The names and addresses of the person having legal custody or guardianship of the youth, or acting in the place of the parent of the youth;

(g) The grounds on which termination of the parent-youth relationship are sought.

**Sec. 804. Service of petition.**

Service of the petition shall be made personally upon each parent or, if he or she cannot be located, by sending a copy of the petition to his/her last known address by registered or certified mail, return receipt requested. In the event the petition cannot be served personally or by mail delivery, service may be accomplished by publishing a summons, or an order of the Court directing the person to respond by a day certain, either in three (3) consecutive editions of a Tribal or Reservation newspaper of general circulation or for at least once in each week for three (3) consecutive weeks in a newspaper of general circulation published off the Reservation, in the county in which such person was last known to reside. Service by publication requires the filing of an affidavit

(a) Stating the reason for service by publication is that personal service cannot be made;

(b) That service by mail cannot be effected;

(c) Setting out the person's place of residence, if known, and if not known to the affiant, stating that fact. The affidavit shall be accompanied by the return by the Court process server or a member of the Reservation police department certifying that after diligent inquiry for the purpose of serving the petition, he/she is unable to make personal service on the person.

Proof of service of the summons or Court order, or of other notice of action by publication, must be by filing an affidavit of the publisher or printer of the newspaper, or his/her foreman, clerk, bookkeeper, to which is annexed a copy of the summons or order of the Court, specifying the paper in which the times when the publication was

made, and a certificate by the clerk that a copy of the summons and petition was mailed to the person's last known address not less than ten (10) days before the date of the first publication. In the case of a voluntary petition of the parent, the parent may waive, in writing, notice and appearance in Court, provided the Court is assured that the parent understands the meaning and consequences of the termination action. Where the parent is a minor, a waiver shall not be effective.

**Sec. 805. Social study prior to hearing.**

When the Court receives a petition, the Court shall request a social study to be submitted in writing prior to the hearing from a juvenile officer, social worker, or similar employee of the Bureau of Indian Affairs, or the Tribe, or other appropriate social service agency. Such report shall be submitted to the Court prior to a hearing.

**Sec. 806. Notice.**

After a petition has been filed and the social study made, the Court shall set the time, date and place for a hearing. The Court shall cause notice to be given by summoning the petitioner, the youth, the parents, guardian, and such other persons as the Court determines are necessary for the proper adjudication of the matter. Notice shall provide the date, time and place of the hearing. Notice to the youth and parents shall specify that each shall have the right

- (1) To retain counsel at his/her own expense;
- (2) Be present; and
- (3) To testify, present documentary evidence, call witnesses, and ask questions of all witnesses.

Where possible, notice shall be served as provided under Title 8, Section 102(b) (1) of the Fort Peck Tribal Code of Civil Procedure. Notice need not be given by publication where a parent has been served with a copy of the petition in accordance with Section 804 and has failed to respond to the petition or otherwise appear before the Court.

**Sec. 807. Hearing.**

The youth may be physically present at the hearing, in the Court's discretion. The hearing

shall be closed to the public. The Court may require the testimony of a physician or youth care expert based on examination of the youth. The youth, the youth's authorized representative, and the parent may summon or produce such witnesses or evidence as they may desire. The Court may call such witnesses as it deems necessary.

**Sec. 808. Order.**

If the Court shall find after the hearing that there is clear and convincing evidence

(a) That the youth has continuously or repeatedly been abused, neglected, abandoned or dependent for a period of one (1) year or more, and

(b) The services available cannot adequately reduce the likelihood of further abuse, neglect, abandonment or dependency or there is no other way to protect the youth from the risk of serious physical injury, or

(c) The parent whose rights are to be terminated consents to the termination and has not withdrawn that consent for over one (1) year, the Court shall order a termination of parental rights.

**Sec. 808-A. Criteria for termination of parental rights.**

(a) The Court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence that any of the following circumstances exist:

- (1) The parents have relinquished the child;
- (2) The child has been abandoned by the parents;
- (3) The parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;
- (4) The parent has:

(A) Subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(B) Committed, aided, abetted, attempted, conspired, or solicited deliberate homicide of a child;

(C) Committed aggravated assault against a child;

(D) Committed neglect of a child that resulted in serious bodily injury or death; or

(E) Had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(5) The Court makes a finding that the putative father has failed to do any of the following:

(A) Contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(B) Establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) Visiting the child at least monthly when physically and financially able to do so; or

(ii) Having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) Manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(6) The child is an adjudicated youth in need of care and both of the following exist:

(A) An appropriate treatment plan that has been approved by the Court has not been complied with by the parents or has not been successful; and

(B) The conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(b) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the Court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the Court shall consider but is not limited to the following:

(1) Emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(2) A history of violent behavior by the parent;

(3) Excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and

(4) Present judicially ordered long-term confinement of the parent.

(c) In considering any of the factors in subsection (b) in terminating the parent-child relationship, the Court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

**(AS PER RESOLUTION NO. 26-907-2012-5; DATED 05/25/2012.)**

**Sec. 809. Disposition.**

A youth who has had the parent-youth relationship terminated under this Title shall be placed with an adoptive parent under Title 10, Chapter 1 of this Code.

**Sec. 810. Effects of termination order.**

All rights, duties, and obligations between the parent(s) and the youth, including the rights of inheritance, are terminated by a termination order. A termination order shall have no effect upon the youth's Tribal membership or quantum of Indian blood.

**(THIS TITLE AMENDED IN ENTIRETY PER RESOLUTION NO. 3302-97-9, DATED SEPTEMBER 9, 1997.)**

**Chapter 9. Guardians of Minors**

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**Sec. 901. Status of guardian of minor – how acquired generally – letters to indicate means of appointment.**

(a) A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court.

(b) Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

(c) The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

**Sec. 902. Consent to jurisdiction by acceptance of appointment.**

(a) By accepting a testamentary or court appointment as guardian, a guardian submits per-

sonally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.

**Sec. 903. Testamentary appointment of a guardian of minor – when effective – priorities– notice of appointment.**

(a) The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of a minor under Section 105, a testamentary appointment becomes effective upon filing the guardian’s acceptance in the court in which the will is probated if, before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority.

(b) Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care or to his nearest adult relations.

**Sec. 904. Recognition of appointment of guardian by foreign will.**

The Fort Peck Tribes recognize a testamentary appointment effected by filing the guardian’s acceptance under a will probated in another state which is the testator’s domicile.

**Sec. 905. Objection by minor twelve or older to testamentary appointment.**

A minor of 12 or more years may prevent an appointment of his testamentary guardian from becoming effective or may cause a previously accepted appointment to terminate by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person.

**Sec. 906. Court appointment of guardian of minor – when allowed – priority of testamentary appointment.**

(a) The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or if parental rights have been suspended or limited by circumstances or prior court order.

(b) A guardian appointed by will whose appointment has not been prevented or nullified under Section 105 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept testamentary appointment within 30 days after notice of the guardianship proceeding.

**Sec. 907. Guardian of a minor by court appointment – qualifications – nominee of minor preferred.**

The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor if the minor is 12 years of age or older unless the court finds the appointment contrary to the best interests of the minor.

**Sec. 908. Temporary guardian of minor.**

If necessary, the court may appoint a temporary guardian with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than 6 months.

**Sec. 909. Procedure for court appointment of guardian of minor – notice – hearing – representation by attorney, lay advocate.**

(a) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by 9 CCOJ 305(b) to:

- (1) The minor, if he is 12 or more years of age;
- (2) The person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and
- (3) Any living parent of the minor.

(b) Upon hearing, if the court finds that a qualified person seeks appointment, the required notices have been given, the requirements of Sec. 106 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interest of the minor.

(c) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney or lay advocate to represent the minor, giving consideration to the preference of the minor if the minor is 12 years of age or older.

**Sec. 910. Powers and duties of guardian of minor.**

Unless otherwise limited by the court, a guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of the parent's minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular and without qualifying the foregoing, a guardian has the following powers and duties:

(1) The guardian shall take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(2) The guardian may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship. Any sums received must be applied to the ward's current needs for support, care, and education. The guardian shall exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case the excess must be paid at least annually to the conservator. Sums received by the guardian may not be used for

compensation for the guardian's services except as approved by an order of the court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(3) The guardian is empowered to facilitate the ward's education, social or other activities and to authorize medical or other professional care, treatment or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage but not adoption of the ward.

(4) A guardian shall report the condition of the ward and of the ward's estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the minor's welfare or as required by court rule.

**Sec. 911. Termination of appointment – how effected – certain liabilities and obligations not affected.**

A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts or his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

**Sec. 912. Procedure for resignation or removal – petition, notice, and hearing – representation by attorney.**

(a) Any person interested in the welfare of a ward or the ward, if 12 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to

resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(b) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(c) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may appoint an attorney or lay advocate to represent the minor, giving consideration to the preference of the minor if the minor is 12 or more years of age.

**Sec. 913. Abuse and neglect proceedings – appointment of guardian – financial subsidies.**

(a) The court may, upon the petition of a department of social services (department) or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department. The guardianship may be subsidized by the department under subsection (i) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(b) The court may appoint a guardian for a child pursuant to this section if the following facts are found by the court:

(1) The department has given its written consent to the appointment of a guardian, whether the guardianship is to be subsidized or not;

(2) If the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection (i);

(3) The child has been adjudicated an abused, neglected, abandoned or dependent youth;

(4) The department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

(5) The child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

(6) It is in the best interests of the child to remain or be placed with the potential guardian; and

(7) Either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests.

(c) In the case of an abandoned child, the court may give priority to a member of the abandoned child's extended family, including adult siblings, grandparents, great-grandparents, aunts and uncles, if placement with the extended family member is in the best interests of the child. If more than one extended family member has requested to be appointed as guardian, the court may determine which extended family member to appoint considering which family member best meets the child's needs.

(d) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except for the department's provision of a financial subsidy, if any, pursuant to subsection (i).

(e) A guardian appointed under this section may exercise the powers and has the duties provided in Section 110.

(f) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any court-appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.

(g) A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

(h) After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department.

(i) The department may provide financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of subsidy must be determined by the department.

**(THIS CHAPTER ADOPTED IN ENTIRETY PER RESOLUTION NO. 80-2003-11, DATED 11/25/03.)**

## **Chapter 10. Emancipation**

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### **Sec. 1001. Requirements for emancipation.**

(a) When permitted - Tribal court may declare a minor emancipated either pursuant to a petition for emancipation, or as a dispositional alternative if the minor:

(1) Wishes to be free from parental control and protection and no longer needs that control and protection; or

(2) Is a youth in need of supervision as defined by this Code, and the minor meets all of the requirements set forth in subsection (b) of this section.

(b) Minor's Eligibility- Minor is not eligible for emancipation unless he or she:

(1) Is 16 years of age;

(2) Is self-supporting;

(3) Understands the consequences and responsibilities that result from being free from parental control and protection; and

(4) Demonstrates the requirements of subsection (b) above by presenting the Court with an acceptable plan for independent living.

**Sec. 1002. Petition.**

- (a) The petition for emancipation shall state:
  - (1) The name, age and address of the minor;
  - (2) The name and address of each living parent;
  - (3) The name and address of the minor's guardian or custodian, if any;
  - (4) The reasons why emancipation would be in the best interests of the minor;
  - (5) The purpose for which emancipation is sought.

**Sec. 1003. Consent of Parent(s), guardian, or custodian.**

The minor must obtain the consent of each living parent, guardian or custodian having control of the person or property of the youth. If the person who is to consent to the petition is unavailable, or his or her whereabouts are unknown, or if a parent, guardian or custodian unreasonably withholds consent, the Court, acting in the best interests of the minor, may waive this requirement as to the parent, guardian or custodian.

**Sec. 1004. Guardian ad litem.**

The Court may appoint a representative or a guardian ad litem to represent the interests of the minor at the hearing.

**Sec. 1005. Effects of emancipation.**

(a) Any order of guardianship or custody shall be vacated before the Court may issue an order of emancipation. Other orders of any division may be vacated, modified, or continued in this proceeding if such action is necessary to effectuate the order of emancipation. Child support orders relating to the support of the minor shall be vacated except for the duty to make past-due payments for child support, which, under all circumstances, shall remain enforceable.

(b) The Court may require an emancipated minor to report periodically to the Court or to another person or agency specified by the Court, regarding the minor's compliance with the provisions the emancipation order. Failure to report as required may result in emancipation order being vacated upon notice to the parties.

(c) An order of emancipation shall be conclusive evidence that the minor is emancipated.

(d) The order of emancipation shall recognize the minor as an adult for all purposes that result from reaching the age of majority, including:

- (1) Entering into a binding contract;
- (2) Litigation and settlement of controversies including the ability to sue and be sued;
- (3) Buying or selling real property;
- (4) Establishing a residence;
- (5) Being prosecuted as an adult under the criminal laws of the Tribes;

(A) At no time during the criminal process shall the emancipated minor be housed in an adult detention facility.

(6) Terminating parental support and control of the minor and their rights to the minor's income;

(7) Terminating parental tort liability for the minor;

(e) The order of emancipation shall not affect the status of the minor in the applicability of any provision of law which requires specific age requirements under the Tribal or federal constitution, the Indian Civil Rights Act or any Tribal or federal law including laws that prohibit the sale, purchase or consumption of intoxicating liquor to or by a person under 21 years of age.

(f) A minor who is emancipated by the lawful procedure of another tribal government or a state shall retain that status on this Reservation and shall enjoy the benefits of this chapter while on the Reservation.

**(AS PER RESOLUTION NO. 27-737D-2012-05; DATED 05/16/2012.)**

**Sec. 1006. Permanency of the emancipation.**

Emancipation is usually permanent. However, if statements in the petition are found to be untrue, or if the youth becomes unable to support themselves, the Court may set aside the Declaration of Emancipation.

**(AS PER RESOLUTION NO. 25-2170-2011-05; DATED 05/23/2011.)**

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 10 – Family Code**

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## Chapter 1. Adoption

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### Sec. 101. Purpose of adoption.

The purpose of this Part is to protect the rights and promote the welfare of Indian children, natural parents and adoptive parents.

### Sec. 102. Definitions (for Sections 101-112).

(a) Adult -- A person eighteen (18) years of age or older.

(b) Minor -- A person less than eighteen (18) years of age.

(c) Parent --

(1) A child's mother;

(2) A father as to whom a child is legitimate;

(3) A person adjudicated to be a child's father;

(4) A natural father of an illegitimate child who shows reasonable interest, concern, and responsibility for the child during the first thirty (30) days of the child's life or prior to the mother's consent to have the child adopted.

### Sec. 103. Who may file adoption petition.

Any adult may file a petition to adopt an Indian minor residing within the Reservation, or a minor tribal member not residing on the Reservation. The Court may also hear petitions transferred from state courts pursuant to 25 U.S.C. 1911(b). In the case of married persons maintaining a

home together, the petition shall be the joint petition of husband and wife except that if one of the spouses is the natural parent of the child to be adopted, the natural parent shall not be required to join in the petition. In any case where all persons petitioning to adopt a child are not Indians, the petition shall not be granted unless:

(a) No Indian is available who is willing to adopt the child;

(b) The petitioners agree in writing that the Fort Peck Tribal Court shall retain exclusive jurisdiction over custody of the child, wherever domiciled or resident.

### Sec. 104. Petition for adoption.

A petition for adoption shall be filed with the Court, on a form prescribed by the Court. It shall be verified under oath by the adoptive parent or parents, and shall contain

(1) The full name, the residence, and the sex of the child, and documentary proof of the date and place of the birth of the child to be adopted;

(2) The full name, the residence, date and place of birth, and occupation of the adoptive parent or parents and documentary proof of their marital status;

(3) Proof of all consents required under Section 105 of this Title, and any court order terminating the parent-child relationship between the natural parent and the child to be adopted;

(4) An agreement by the adopting parents that it is their desire that the relationship of parent and child be established between them and the child; and

(5) A full description and statement of value of all property owned or possessed by the child.

### Sec. 104-A. Petition for traditional adoption.

(a) Traditional adoption means a traditional tribal practice recognized by the community and Tribes which gives a child a permanent parent-child relationship with someone other than the child's birth parent.

(b) A traditional adoption, conducted in a manner that is a long-established, continued, reasonable process and considered by the people of the Assiniboine and Sioux Tribes to be binding and

authentic, based upon the testimony of an expert witness, may be certified by the Court as having the same effect as an adoption order issued by this Court so long as it is in the best interests of the child and the child's tribe.

(c) A petition for traditional adoption shall be brought pursuant to 10 CCOJ 101 et seq.

**(AS PER RESOLUTION NO. 25-2171-2011-05; DATED 05/23/2011.)**

#### **Sec. 105. Required consents.**

Consents to adoption shall be acknowledged before an officer duly authorized to take acknowledgments and witnessed by a representative of the Court. Consents to adoption shall be required from:

(a) The child's parents, provided that no consent shall be required as to any parent whose parent-child rights have been terminated by court order with respect to the child to be adopted. A minor parent may consent to an adoption provided the parents of the minor concur. The Court may waive consent by the minor's parents if it finds that their withholding of such consent is unreasonable;

(b) Any legal guardian of the child appointed under this Title;

(c) The child, if twelve (12) years of age or older, provided that the Court may waive this requirement, if it deems it necessary for the best interests of the child.

#### **Sec. 106. Withdrawal of consents.**

No consent to adoption shall be withdrawn unless authorized by order of the Court, after notice and opportunity to be heard is given to the petitioner in the adoption proceedings, and to the person seeking to withdraw consent. The Court shall not grant permission to withdraw consent unless it finds that the best interests of the child will be served by such withdrawal. The entry of an order of adoption renders any consent irrevocable.

#### **Sec. 107. Investigation report.**

Within five (5) days after the filing of a petition for adoption, the Court shall request a juvenile officer, social worker, or similar employee of the

Bureau of Indian Affairs or the Tribes to inquire into, investigate, and report in writing to the Court as to the suitability of the child for adoption, the financial ability, fitness and general background of the adoptive home and of the adoptive parent or parents, and to make recommendations on the proposed adoption.

#### **Sec. 108. Hearing on adoption.**

Within five (5) days after the written report required by Section 107 is filed, the Court shall fix a time for hearing on the petition for adoption. Notice of the hearing shall be provided to the adoptive parent or parents, any person whose consent is required, and, where possible, all interested persons whose consent is not required under Section 105. The adoptive parent or parents shall appear personally at the hearing. All other persons whose consents are necessary to the adoption shall appear personally, unless represented by a person having a power of attorney authorizing such person to represent them for the purpose of the adoption or unless such person cannot be found. The judge shall separately examine all persons appearing and if satisfied as to the suitability of the child for adoption, the validity of the consents to adoption, the financial ability, fitness, and responsibility of the adoptive parents, and that the best interests of the child will be promoted by the adoption, may enter a final decree of adoption. In the case of a child who has been in the custody of the petitioners and provided for by them for more than one (1) year, the decree shall be final. Where the child has not been in the custody of the petitioners for one (1) year, the Court shall enter an interim decree, and place the child in the legal custody of the petitioners for a period of not less than one (1) year prior to entering a final decree of adoption.

#### **Sec. 109. Report and final decree of adoption.**

Where an interim decree is entered, the Court, after the child has been in the custody of the petitioners for one (1) year, shall request a supplementary written report under the same procedures as in Section 107, as to the welfare of the child, and current conditions of the adoptive home and



the adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final decree of adoption may be entered. No final order shall be entered by the Court until the child to be adopted has lived and resided for a period of at least one (1) year in the home of the adoptive parents. In any case where the Court finds that the best interests of the child will not be served by the adoption, a guardian shall be appointed and suitable arrangements for the care of the child shall be made and the Court may request the Bureau of Indian Affairs to provide such services to assist in the placement and the care of the child.

**Sec. 110. Adoption records.**

All records, reports, proceedings, and orders in adoption cases are confidential records of the Court and shall not be available for release to or inspection by the public. Such records, reports, proceedings and orders shall be made available to the Superintendent of the Fort Peck Agency for use in fulfilling authorized functions. For good cause shown, information contained in such records shall be released to the adopted persons after reaching legal majority, upon petition to the Court.

**Sec. 111. Contents of adoption order.**

The final order of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings. A true and correct copy of each adoption order shall be filed with the Secretary of the Tribal Executive Board and with the clerk of the Court.

**Sec. 112. Name and legal status of adopted minor.**

Minors adopted by order of the Court shall assume the surname of the persons by whom they are adopted, unless the Court orders otherwise, and shall be entitled to the same rights of persons

and as to property as natural children or heirs of the persons adopting them.

**Sec. 113. Confidentiality.**

All hearings held pursuant to this Title that involve children shall be

(a) Conducted in closed and private chambers;

(b) The names of all youth involved shall not be published; and

(c) A record of all proceedings shall be made and preserved with the Court. All Court records concerning youth under this Title, including social, medical and psychological reports, shall be kept confidential and shall be open for inspection only upon Court order and then only to the following persons or agencies:

(1) The youth;

(2) The youth’s representative;

(3) The youth’s parent(s), legal guardian or custodian and their representatives;

(4) The juvenile officer; and

(5) Any other person having a legitimate interest in the case in the performance of their official duties, as determined by the Court.

**(AS PER RESOLUTION NO. 25-2172-2011-05; DATED 05/23/2011.)**

**Chapter 2. Marriage**

**Sections:**

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**Sec. 201. Policy of the Tribes.**

It is the policy of the Tribes to promote legal marriage as described in Sections 205 through 207 because legal marriages contribute to stable

family relationships and a positive moral climate on the Reservation.

**Sec. 202. Requirements.**

For a man and a woman to be married under this Chapter, each must:

- (a) Be at least sixteen (16) years of age;
- (b) Freely consent to the marriage; and
- (c) If under eighteen (18) years of age, obtain the consent of their custodial parents or legal guardian, if any.

**Sec. 203. Prohibited marriages.**

Two (2) persons shall not be married under this chapter who are related by blood to each other in any of the following degrees:

- (a) Parent and child;
- (b) Grandparent and grandchild;
- (c) Brother and sister, or half-brother and half-sister;
- (d) Aunt and nephew, or uncle and niece, whether the relationship is by half or whole blood;
- (e) Cousins in the first degree.

Any attempted marriage between persons so related shall be null and void from the time of the marriage forward.

**Sec. 204. Marriage of person having existing spouse.**

A person having an existing spouse shall not be married to another under this Title. A person having an existing spouse is one who has been married under this Title, or under the laws of another Tribe, state, or foreign nation, and whose marriage has not been terminated by:

- (1) A divorce or annulment recognized as valid by the Tribe, state, or foreign nation which granted it, and which complies with due process of law;
- (2) The death of the spouse; or
- (3) The absence and believed death of the spouse for five (5) years or more.

**Sec. 205. Blood test.**

Persons wishing to be married must each undergo a blood test. The test shall be administered

by a duly licensed physician and shall be a standard serological test or such other examination as may be necessary for the discovery of syphilis. The test shall be given not more than thirty (30) days before the application for a marriage license.

**Sec. 206. Marriage license.**

Persons wishing to be married must obtain a marriage license from the Fort Peck Tribal Court. To obtain a license, the persons must attest before the judge of the Tribal Court, or in an affidavit

- (1) That they are at least sixteen (16) years of age,
- (2) That they freely consent to the marriage,
- (3) If they are under eighteen (18) years of age, that their custodial parents or guardians, if any, consent to the marriage (the written consent of the parents or legal guardians, if any, of any person under eighteen (18) years of age shall also be presented to the judge),
- (4) That they are not related to each other in a manner prohibited by Section 203 of this Title and
- (5) That they have no existing spouse as defined in Section 204 of this Title. Where necessary, the judge may require the testimony or affidavit or any person necessary to substantiate such information. Each applicant must also file with the Court a certificate signed by a duly licensed physician stating that the applicant has been given a blood test as provided in Section 205 of this Title, and that in the opinion of a physician the applicant is not infected with syphilis in communicable form. If a judge is satisfied that the above requirements are met, the judge shall issue a marriage license to the applicants. The marriage license shall be valid for thirty (30) days and shall be in substantially the following form:

Fort Peck Marriage License  
To any person authorized to perform the marriage ceremony:  
You are hereby authorized to join in marriage  
\_\_\_\_\_  
of \_\_\_\_\_,

\_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_, within thirty (30) days of the date specified below. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
Fort Peck Tribal Court Judge  
The Court shall give one (1) copy of the marriage license to the applicants and shall retain one (1) copy for its records.

**Sec. 207. Marriage ceremony.**

A marriage ceremony may be performed by a judge of the Fort Peck Tribal Court, or by an ordained or recognized minister, priest, or other leader of any religious faith, who shall issue a marriage certificate in substantially the following form:

Fort Peck Marriage Certificate  
I hereby certify that \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_, having obtained a valid marriage license, appeared before me on the \_\_\_\_\_ day of \_\_\_\_\_, and were joined in marriage.

Signed:

\_\_\_\_\_  
Witnesses:  
\_\_\_\_\_  
\_\_\_\_\_

The marriage certificate shall be signed by two (2) witnesses other than the persons being married and the person performing the marriage ceremony. Marriage certificates shall be returned to the Fort Peck Tribal Court which shall retain the original and deliver a copy to the persons married.

**Sec. 208. Jurisdiction.**

Under this Title, marriage licenses may be issued and marriage ceremonies performed where

at least one (1) party is an Indian, and at least one party has been a bona fide resident within the boundaries of the Fort Peck Reservation for a period of six (6) months immediately preceding the application for a license.

**Sec. 209. Indian custom marriage.**

Indian custom marriage and divorce among Indians on the Fort Peck Indian Reservation remains abolished.

**Sec. 210. Recognition of foreign marriages.**

A marriage duly licensed and performed under the laws of the United States, any Tribe, state, or foreign nation shall be recognized as valid by the Fort Peck Tribal Court for all purposes.

**Chapter 3. Annulment and Divorce**

**Sections:**

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**Sec. 301. Annulment, legal separation and divorce.**

The Court shall have jurisdiction over annulment, legal separation, divorce and any paternity, child custody, division of property, child support or alimony decree pursuant to such annulment, legal separation or divorce, where at least 1 party to the marriage is an Indian, and at least 1 party has been a bona fide resident within the boundaries of

the Fort Peck Reservation for a period of 90 days immediately preceding the filing of the action.

Parties may petition for legal separation as predicate to divorce and the Court may enter appropriate relief regarding child custody and support and alimony/maintenance. Upon the petition the parties will be summoned in accordance with 10 CCOJ 303(c).

**(AMENDED AS PER RESOLUTION NO. 26-1197-2012-08, DATED 8/13/2012.)**

### **Sec. 302. Annulment.**

(a) Petition. For any marriage performed under this Chapter, one (1) or both of the parties may, within one (1) year of the date of marriage, submit a petition of annulment to the Court, stating as grounds that:

(1) One (1) or both parties was under sixteen (16) years of age at the time of the marriage;

(2) One (1) or both parties did not freely consent to the marriage;

(3) The parties were related to each other in a manner prohibited by Section 203 of this Title; or

(4) One (1) or both parties had an existing spouse at the time of the marriage. The petition shall be sworn before a notary public or other official designated to verify signatures.

(b) Service of process. Each defendant in an annulment proceeding shall be served with a copy of the complaint as provided under Title 8, Section 102 of this Code.

(c) Response. If the non-petitioning spouse does not agree with the petition's allegations as to grounds for annulment or the division of property or custody of children proposed by the petition, the non-petitioning spouse may file with the Court a response within twenty (20) days of receiving the petition. The response shall be sworn before a notary public or other official designated to verify signatures, and shall contain an explanation of why there are no valid grounds for annulment or why the division of property or custody of children proposed in the petition is not appropriate. A copy of the response shall be served on the petitioning spouse.

(d) Hearings and decree. Where such a response is received, the Court shall hold a hearing on the matter. If

(1) No response is received from the defendant after twenty (20) days, or

(2) The Court determines that there are valid grounds for annulment, the Court shall enter a decree of annulment. The decree shall state the grounds for annulment, and shall be signed by the presiding judge. A copy of the decree shall be delivered to each of the parties, and the original retained for the records of the Court. In extraordinary circumstances and for good cause shown, an annulment granted where the non-petitioning spouse did not respond may be set aside by order of the Court. Annulment voids a marriage from the time of the marriage forward.

### **Sec. 303. Divorce.**

(a) Grounds. A divorce shall be granted where the Court finds that

(1) Irreconcilable differences have caused the irreparable breakdown of the marriage or

(2) The parties have mutually and voluntarily lived separate and apart without cohabitation for a period of at least six (6) months immediately preceding the filing of the petition. Divorces shall be granted without regard to the fault of the parties.

(b) Petition. One (1) or both parties may file a petition with the Court, sworn before a notary public or other official designated to verify signatures. The petition shall state the grounds for divorce and the facts and circumstances substantiating those grounds.

(c) Summons. When the clerk of the court issues a summons pursuant to this section, the clerk shall issue and include with the summons a temporary restraining order:

(1) Restraining both parties from transferring, encumbering, concealing or in any way disposing of any property, real or personal, whether jointly or separately held, without either the consent of the other party or an order of the Court, except in the usual course of business or for the necessities of life. The restraining order must require each party to notify the other party of any

proposed extraordinary expenditures at least 5 business days before incurring the expenditures and to account to the Court for all extraordinary expenditures made after service of the summons. However, the restraining order may not preclude either party from using any property to pay reasonable attorney fees in order to retain counsel in the proceeding.

(2) Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered. However, nothing in this subsection adversely affects the rights, title, or interest of a purchaser, encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual knowledge of the restraining order.

(d) Service of process. The respondent in a divorce proceeding shall be served with a copy of petition as provided under 8 CCOJ 102.

(e) Response. The non-petitioning spouse may file a response to the petition within twenty (20) days of receipt of the petition. Such response may state the back ground facts and circumstances which show that there are no valid grounds for divorce, or may seek a division of property or custody of children different from any proposed by the petition.

(f) Hearing.

(1) In all divorce cases, the Court shall order and hold a hearing, unless the parties have stipulated to all matters and issues pending in which case the Court shall have the discretion to enter a decree without a hearing if the Court is convinced the stipulation is fair and equitable. If the matter is decided without a hearing, the Court shall have one party testify on the record as to the terms of the divorce. The hearing shall be held within six (6) months after the date the petition is filed. Where the custody of children is at issue in the case, the Court may order a home study by an appropriate social worker or other professional, to be completed and submitted to the Court prior to the hearing. The purpose of the home study shall

be to assist the Court in determining the custody issue.

(2) At the hearing, both spouses shall have an opportunity to testify, cross-examine the other spouse and any witnesses, call and question other witnesses, and present documentary evidence. Each spouse may retain counsel or otherwise be represented in the proceeding. The hearing shall be closed to the public unless both spouses agree otherwise.

(g) Filing fees. A fee of seventy-five dollars (\$75.00) shall be paid at the time any action for divorce under this Code is filed, provided, that upon a showing satisfactory to the Court that the petitioner is indigent, the Court shall waive all or so much of the filing fee as may be appropriate in the circumstances, keeping in mind that no person shall be barred from the Court because of lack of funds for filing.

**(AMENDED PER RESOLUTION NOL 609-2008-04; DATED 4/28/2008)**

#### **Sec. 304. Child custody.**

(a) In any action for annulment, legal separation, or divorce concerning the custody of a child born to the parties out of wedlock, the Court shall have authority to determine the custody of any child of the marriage, or any other child in the custody of either party under 18 years of age. The Court may grant custody to 1 parent, or may grant joint custody, specifying the periods during which each parent shall have custody. In each case, the Court shall determine the visitation rights, if any, of the non-custodial parent.

**(AMENDED AS PER RESOLUTION NO. 26-1197-2012-08, DATED 8/13/2012.)**

#### **Sec. 304-A. Child custody actions outside divorce, legal separation and annulment proceedings.**

The Court shall have authority to determine custody of children as between parents, grandparents, and legal guardians, or as between parents, grandparents, or legal guardians and anyone with actual physical custody of the child, either pursuant to a court order or otherwise, where there is

no divorce, legal separation, or annulment proceeding pending. Such a custody proceeding shall commence with the filing of a written petition by the parent, grandparent, legal guardian or the person with actual physical custody.

The Court shall have jurisdiction over this action if a least 1 party to the action is an Indian and at least 1 party has been a bona fide resident within the boundaries of the Fort Peck Reservation for a period of 90 days immediately preceding the filing of the action.

In ruling on a custody petition, the Court shall employ the standards set forth in Section 304 of this Title, and may order periodic support payments as set forth in that section. After the Court rules on the petition, neither party may file another custody petition for 6 months absent a substantial change in circumstances. Any such change shall be described in the petition. Where abuse, neglect, or abandonment of the child is suspected, a petition may be filed under 9 CCOJ 501 at any time.

**(AMENDED AS PER RESOLUTIONS NOS. 1287-86-7, DATED 07/28/86; 1901-2001-6, DATED 06/12/01; 26-1197-2012-08, DATED 8/13/2012.)**

#### **Sec. 304-B. Enforcement of child support orders.**

(a) When the Court has ordered periodic support payments under Sections 304, 304-A, or 308 of this Title, and the parent does not pay as ordered, the Court shall use the same procedures to collect these payments as it would use to enforce any money judgment in a civil action. These procedures are set forth in Sections 304, 305, and 311 of Title 8. In the case of execution proceedings under Section 304 and garnishment proceedings under Section 311, the Court may initiate the proceedings on its own motion.

(b) If the parent willfully refuses to make periodic support payments as ordered by the Court, and the procedures set forth in subsection (a) do not result in full payment, the Court may initiate criminal contempt proceedings under Section 426(b) of Title 7 and in the event of conviction shall have available the full range of sanctions for

Class A misdemeanors. No such proceedings shall be instituted if the parent fails to pay by reason of indigence.

**(AMENDED AS PER RESOLUTION NOS. 1287-86-7, DATED 07/28/86; 26-1197-2012-08, DATED 8/13/2012.)**

#### **Sec. 305. Division of property.**

When an annulment, legal separation, or divorce is granted, the Court shall make such equitable distribution of all real and personal property as it deems just and proper. With respect to trust property, the Court shall have authority to make appropriate orders to distribute such property, but shall have no authority to order that any property or interest in property be removed from trust status, or to make any order that would result in such removal.

**(AMENDED AS PER RESOLUTION NO. 26-1197-2012-08, DATED 8/13/2012.)**

#### **Sec. 306. Alimony.**

When an annulment, legal separation, or divorce is granted, the Court may order either party to make periodic alimony payments as necessary for the support of the other party. Such orders may be modified at any time, on motion of either party, to reflect changes in either party's economic circumstances. Upon motion, the Court shall terminate alimony to any spouse who has remarried.

**(AMENDED AS PER RESOLUTION NO. 26-1197-2012-08, DATED 8/13/2012.)**

#### **Sec. 307. Paternity.**

(a) Jurisdiction. The Court Shall have the jurisdiction to adjudicate the paternity of a child in a divorce and annulment proceedings, upon the petition of a person of illegitimate birth who is a Group 4 applicant for enrollment under 4 CCOJ 202 or upon petition to the Court, and to compel payments for support in any paternity action or in divorce and annulment proceedings.

**(AMENDED AS PER RESOLUTION #26-644-2012-4; DATED 4/10/2012)**

(b) Petitions. Petitions for declaration of paternity may be filed with the Court by a complaining

parent, by the minor acting through a custodian or guardian if the complainant dies or is disabled or by the Tribes. The petition shall be sworn before a notary public or other official designated to verify signatures.

A petition to establish paternity may be brought in Tribal Court at any time before the child is eighteen (18) years and may be started before the birth of the child, but, unless the alleged father consents, trial will not be held until at least fifteen (15) days after the birth of the child.

(c) Service of process. The defendant in a paternity proceeding shall be served with a copy of the petition as provided under Title 8, Section 102 of this Code.

(d) Response. The defendant in the paternity suit may contest the allegations in the petition by filing a response within sixty (60) days of receiving the petition. The response shall be sworn before a notary public or other official designated to verify signatures.

(e) Hearing. Where such a response is received, the Court shall hold a hearing on the matter. At the hearing the Court shall receive testimony from any witnesses called by the parties. The Court shall have the authority to order the defendant to submit to a blood test. The Court may receive the results of a blood test as evidence only if testimony interpreting the results is presented by the physician under whose supervision the test was given.

(f) Decree. If

(1) No response is received from the defendant after sixty (60) days, or

(2) The Court determines based on the evidence presented at the hearing that the defendant is the father of the child, the Court shall enter a decree of paternity. A copy of the decree shall be delivered to each of the parties, and the original retained for the records of the Court. In extraordinary circumstances and for good cause shown, a decree of paternity granted where the defendant did not respond may be set aside by order of the Court.

**(AMENDED AS PER RESOLUTION NO. 1729-2007-06, DATED 06/11/07.)**

### **Sec. 308. Temporary alimony and custody awards.**

The Court may issue temporary orders during the pendency of an annulment, legal separation, or divorce proceeding as to child custody, alimony, and the possession of real and personal property, not held in trust for any individual. Such orders may be granted upon motion of either party, or on the Court's own motion.

A person may file a petition for temporary emergency custody without notice to the adverse party if it clearly appears from specific facts shown by affidavit that immediate and irreparable injury will result to the applicant and/or his/her children before notice can be served and a hearing held thereon.

A hearing, for which 10 days advance notice shall be provided to the parties, shall be held prior to the issuance of such temporary orders, unless the Court determines that an emergency exists, or a party cannot be found, in which case such order may be issued ex parte. Emergency shall be interpreted to include, but not limited to; a danger of physical abuse to the spouse or the parties' children, a severe emotional abuse, a lack of means for interim subsistence, or the danger the child will be removed from this jurisdiction. An order may be issued within 24 hours of the filing of the affidavit.

If the initial order is issued ex parte, a full hearing on the temporary order shall be held within 10 business days. At the hearing upon 10 days, an interim order shall be issued pending a final hearing.

**(AMENDED AS PER RESOLUTIONS NOS. 1835-89-1; 2084E-89-3, DATED 03/13/89; 26-1197-2012-08, DATED 8/13/2012.)**

### **Sec. 309. Recognition of foreign divorces and annulments.**

A divorce or annulment duly granted under the laws of the United States, any Tribe, state, or foreign nation shall be recognized as valid by the Fort Peck Tribal Court for all purposes.

## Chapter 4. Change of Name

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### **Sec. 401. Petition for change of name of natural person.**

All applications for change of names must be made by petition signed by the person and, if the person is under 18 years of age, by one of the person's parents, if living, or if both are dead, then by the person's guardian, and if there is no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of the person, the person's present name, the name proposed, and the reason for the change of name and must, if neither parent of the person is living, name, as far as known to the petitioner, the near relatives of the person and their place of residence.

### **Sec. 402. Order setting hearing date - notice - safety.**

(a) When a petition setting out the matters contained in Sec. 401 is filed, the Court or judge may appoint a time for hearing the petition. Except as provided in subsections (b) and (c) notice of the time and place of hearing the petition must be published for 4 weeks successive in any local newspaper of general circulation on the Reservation.

(b) Publication is not required for a change of name of a minor under Sec. 401 if both parents and all legal guardians consent in writing.

(c) The Court may allow a petition to proceed on a sealed-record basis when probable cause is shown that the safety of the petitioner is at risk and the judge is satisfied that the petitioner is not attempting to avoid debt or to hide a criminal record. The request to proceed on a sealed-record basis must be set forth in the petition. All papers and records pertaining to the sealed-record petition

must be kept as a permanent record of the Court and withheld from inspection unless the judge denies the request to proceed on a sealed-record basis. A person, other than the petitioner, may not have access to the records except for good cause shown and on the order of the judge.

### **Sec. 403. Filing objections to change.**

At any time before such hearing, objections may be filed by any person who can, in such objections, show to the Court or judge good reasons against such change of name.

### **Sec. 404. Conduct of hearing.**

On the day set for the hearing on the petition or at any time to which the hearing is continued or postponed, due proof of the publication being made, such application must be heard. On the hearing the judge may examine on oath any of the petitioners, those who object or other persons concerned with the application.

### **Sec. 405. Court order.**

The judge may make an order changing the name or dismissing the applications, as to the judge may seem right and proper.

**(AS PER RESOLUTION NO. 26-737G-2012-05; DATED 05/15/2012.)**



**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 11 – Involuntary Commitment**

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**Sec. 101. Purpose.**

The purpose of this Chapter is to provide procedures for the treatment of persons with mental health problems, while protecting the rights of all persons to due process of law.

**Sec. 102. Construction.**

This Chapter shall be construed to provide the least restrictive treatment or detention available which will serve the needs of mentally-ill persons for recovery and rehabilitation while protecting the safety of the persons to be treated and members of the community.

**Sec. 103. Definitions.**

As used in this Chapter, the terms listed below shall mean as follows:

(a) Applicant. A person who makes an application for the admission of another into a treatment center;

(b) Administrator. The chief officer of a treatment facility;

(c) Treatment facility. Any center for the treatment of mentally ill, drug or chemically dependent, and/or alcoholic persons, including a detoxification center, whether on or off the Reservation;

(d) Detoxification center. Any center exclusively for the treatment of alcoholic persons, whether on or off the Reservation;

(e) Mentally ill person. A person with a mental or emotional disease or disorder which impairs

the capacity to use self-control, judgment or discretion in caring for fundamental personal needs or conducting social relations;

(f) Alcoholic person. A person who has a history of chronic, excessive drinking of alcoholic beverages and as a result of such drinking regularly and for significant periods of time loses powers of self-control, judgment or discretion in caring for fundamental personal needs or conducting social relations;

(g) Drug or chemically dependent person. A person who has a history of chronic, excessive use of drugs or chemicals, and as a result of such drug or chemical use regularly and for significant periods of time loses powers of self-control, judgment or discretion in caring for fundamental personal needs or conducting social relations;

(h) Respondent. A person who has been recommended by formal application under this Chapter for treatment;

(i) Detainee. Any person who is under observation, care of treatment in a treatment facility;

(j) Dangerous. A person who if remaining undetained presents a likelihood of imminent and serious bodily harm to self or others, as evidenced by recent overt acts or threats.

**Sec. 104. Application for involuntary commitment.**

Any person, including the administrator of any treatment facility, may submit to the Fort Peck Tribal Court an application to have any person subject to the jurisdiction of the Court involuntarily committed to a treatment facility for the mentally ill. Such application shall include (1) the name, address and telephone number of the applicant, the respondent, and, if known, the next of kin of the respondent; (2) the reason(s) why the applicant believes the respondent is mentally ill and dangerous to self and others; (3) any available supporting evidence, including affidavits or written statements from physicians, psychologists, other mental health professionals or members of the community concerning the mental health of the respondent and the danger respondent poses to self or others.

**Sec. 105. Preliminary hearing.**

After receiving an application, the Court shall immediately schedule a preliminary hearing, to be held immediately if possible and in all cases

(a) Within forty eight (48) hours of the time of detention if the respondent is being held in emergency detention and

(b) Within seventy two (72) hours if the respondent is not being detained.

The Court shall make all reasonable attempts to notify, by telephone or other means, the respondent and the respondent's next of kin of the time and place of the preliminary hearing, and the respondent's rights

(a) To retain counsel at respondent's expense, and to have counsel provided by the Tribes if the respondent is unable to afford counsel and if he/she is unable to otherwise obtain counsel without cost;

(b) To be present and

(c) To testify, present documentary evidence, call witnesses and ask questions of all witnesses.

Prior to the preliminary hearing, the Court shall order the examination of respondent by a psychiatrist, physician, psychologist or other mental health care professional. The preliminary hearing shall be conducted informally and shall be closed to the public unless the respondent or his/her authorized representative requests otherwise and the Court so orders. If the Court determines, based on the evidence at the preliminary hearing, that there is probable cause to believe the respondent is mentally ill and dangerous, such that respondent is likely to cause bodily harm to self or others before a final hearing could be held, the Court may commit the respondent to an appropriate treatment center pending a final hearing. Such final hearing shall be held within ten (10) calendar days of the preliminary hearing unless the detainee or the detainee's authorized representative requests a postponement.

**Sec. 106. Emergency detention.**

(a) Any person who has reason to believe another person is mentally ill and as a result poses an extraordinary danger to his/her own safety or the safety of others may report such person to a

law enforcement officer indicating why it is believed that the person is mentally ill or dangerous. A law enforcement officer receiving such a report shall promptly investigate the person alleged to be mentally ill and dangerous.

(b) Whether or not there is a report, a law enforcement officer or Medical Care Provider (physician, nurse practitioner, physician assistant, mental health professional or clinical psychologist) may take into emergency detention any person subject to the jurisdiction of the Court who the officer or Medical Care Provider, following investigation, has probable cause to believe is mentally ill and extraordinarily dangerous to self or others. A law enforcement officer or Medical Care Provider, who takes a person into emergency detention shall immediately make all reasonable efforts to notify the detainee's next of kin. Where possible, such person shall be taken to a health care or treatment facility on the Reservation. Where no on-Reservation treatment facility or health care facility can provide the emergency treatment or protection needed by the detainee to protect him/her from imminent harm, a law enforcement officer or Medical Care Provider may place such person in an appropriate treatment facility off the Reservation. Upon taking a person into emergency detention, the law enforcement officer or Medical Care Provider shall immediately submit an application to the Tribal Court under section 104 of this Chapter. Upon receiving such an application, the Court shall order the prompt examination of the detainee by a psychiatrist, physician, psychologist or other mental health care professional. After receiving an application, the Court shall schedule a hearing to be held immediately if possible and in all cases (a) within 48 hours of the time of detention if the person is being detained on the Reservation and (b) within 10 days if the person is being detained off the Reservation.

**(AMENDED AS PER RESOLUTION NO. 26-2810-2013-08; DATED 9/26/2013.)**

(c) A person brought to a health care or treatment facility shall immediately be examined by a physician. If the physician determines that in

his/her professional opinion such person is mentally ill and dangerous, such person shall be admitted to the facility. Otherwise, such person shall be released and transported home. The administrator shall as soon as practicable notify the Court of the admission or release of any respondent, and submit a report to the Court giving his/her reasons, to the extent possible, as to why he/she believes the detainee is or is not a mentally ill person and dangerous.

#### **Sec. 107. Final hearings.**

(a) When a final hearing shall be held. The Tribal Court shall hold a final hearing as soon after the application is filed as possible, and immediately following receipt of detailed observations by a physician sufficient to enable the Court to make a determination as to whether the detainee is mentally ill and dangerous. Where such detailed observations are available within forty eight (48) hours of the filing of the application, the preliminary and final hearings shall be consolidated unless the detainee or the detainee's authorized representative objects.

(b) Notice. The Court shall serve prior written notice of the date, time and place of the final hearing upon the detainee, any person designated by the detainee, and the spouse and parents and/or guardians of the detainee. Notice shall be served in person or by certified mail, return receipt requested. The notice shall also specify that the detainee (or any other party served with notice) has a right to retain counsel at his/her own expense, and that if he/she cannot afford counsel and cannot otherwise obtain counsel, the Tribes will provide counsel, that he/she has a right to be present and to testify, present documentary evidence, call witnesses and ask questions of all witnesses.

(c) Procedures. The detainee must be physically present at the final hearing. The detainee is entitled to be represented by counsel. If the detainee cannot afford counsel, and cannot otherwise obtain counsel without cost, the Tribes shall provide counsel. Hearings shall be closed to the general public, unless a public hearing is requested by the detainee or his/her authorized representative and the Court orders the hearings to

be open. Where necessary, the hearing shall be held at the treatment facility. The Court shall require the testimony of a mental health professional and at least one (1) physician based on an examination of the detainee, presenting the facts and circumstances concerning the detainee's mental health and dangerousness. For the purposes of the preceding sentence, a mental health professional shall mean a person who meets the Indian Health Service requirements for the position of Mental Health Specialist GS-001-01, or who holds a master's degree in social work or related field, or a more advanced psychiatric degree. The detainee, or his/her authorized representative, may summon or produce such witnesses and evidence as they may desire. The Court shall have the power to issue subpoenas to compel the testimony of witnesses or the production of books, records, documents or any other physical evidence related to the determination of the case and not an undue burden on the person possessing the evidence. Subpoenas shall be issued as provided in Title 8 (Civil Procedures) of this Code. In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena proceeding issued and served may be cited and held in contempt.

(d) Order of continued detention. If the Court shall find, after final hearing, that there is clear and convincing evidence that the detainee is mentally ill and dangerous, it shall enter an order directing the continued detention and treatment of such person. Otherwise, the detainee shall be ordered immediately released.

#### **Sec. 108. Continued jurisdiction of the Courts: reports required.**

The Court shall retain jurisdiction until such time as the detainee is discharged from the treatment center. For detention to continue, the detainee must receive regular care and treatment appropriate for the detainee's illness. The administrator of the treatment center shall furnish signed monthly reports in writing to the Court. Such reports shall outline the treatment being adminis-

tered to the detainee, the detainee's progress toward recovery and the administrator's recommendation as to the need for continued detention.

**Sec. 109. Petition for release.**

The detainee, or the detainee's authorized representative, may at any time petition the Court for release from the treatment facility. The petition shall be in writing, but need not be in any particular form. Grounds for release include the improved mental health of the detainee such that the detainee is no longer mentally ill or dangerous. Upon receipt of a petition for release, the Court shall review the petition, and serve a copy upon the petitioner, detainee and administrator. The administrator shall respond to the petition within seven (7) calendar days. If, after consideration of the petition and administrator's response, the Court finds substantial evidence that the detainee may no longer be mentally ill or dangerous, the Court shall order and hold a hearing on the matter, following the procedures set forth in Section 107.

**Sec. 110. Annual review.**

Whether or not the detainee has filed a petition for release, the Court shall hold a hearing not less than once each year, following the procedures under Section 107 of this Chapter, to determine if the basis for the original detention still exists. If the Court finds that there is no longer clear and convincing evidence that the detainee is mentally ill and dangerous, the Court shall order the detainee immediately released.

**Chapter 2. Involuntary Commitment of Alcoholic and Drug or Chemically Dependent Persons**

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**Sec. 201. Purpose.**

The purpose of this Chapter is to provide procedures for the treatment of persons with drug or chemical dependence, and/or alcoholism problems, while protecting the rights of all persons to due process of law.

**Sec. 202. Construction.**

This Chapter shall be construed to provide the least restrictive treatment or detention available which will serve the needs of drug or chemically dependent or alcoholic persons for recovery and rehabilitation while protecting the safety of the persons to be treated and members of the community.

**Sec. 203. Definitions.**

The definitions of Section 103 of this Title shall be applicable to this Chapter.

**Sec. 204. Application for involuntary commitment.**

Any person, including the administrator of any detoxification center, may submit to the Fort Peck Tribal Court an application to have any alcoholic or drug or chemically dependent person subject to the jurisdiction of the Court involuntarily committed to a detoxification center or other appropriate treatment facility. Such application shall include

(1) The name, address and telephone number of the applicant, the respondent and, if known, the next of kin of the respondent;

(2) The reason(s) why the applicant believes the respondent is alcoholic and dangerous to self or others, or drug or chemically dependent and dangerous to self or others;

(3) Any available supporting evidence, including affidavits or written statements from physicians or members of the community concerning the respondent's alcoholism, or drug or chemical dependence, and dangerousness.

**Sec. 205. Hearing.**

After receiving an application, the Court shall schedule a hearing to be held immediately if possible and in all cases

(a) Within 48 hours of the time of detention if the respondent is being detained at a detention center or treatment facility on the Reservation, and

(b) Within 10 days if the respondent is not being detained or is being detained off the Reservation.

The Court shall make reasonable attempts to notify, by telephone or other means, the respondent and the respondent's next of kin of the time and place of the hearing, and the right of the respondent

(a) To retain counsel at respondent's expense;

(b) To be present and

(c) Testify, present documentary evidence, call witnesses and ask questions of all witnesses.

Prior to the hearing, the Court shall order the examination of respondent by a physician or other health care professional. The hearing shall be held informally, and shall be closed to the public unless the respondent or his/her authorized representative requests otherwise and the Court so orders.

**(AMENDED AS PER RESOLUTION NO. 26-1200-2012-08, DATED 8/13/2012.)**

**Sec. 206. Disposition.**

If the Court determines that there is clear and convincing evidence that the respondent is an alcoholic or drug or chemically dependent person and dangerous it shall order detention

(a) Up to a maximum of thirty one (31) days total for an alcoholic person committed to a detoxification center, and

(b) For such period as is required for treatment of a drug or chemically dependent person in a treatment facility, up to a maximum of six (6) months.

If the Court determines that the evidence available as to whether the respondent is an alcoholic or drug or chemically dependent person and dan-

gerous is inconclusive, the Court may order additional medical examination of the respondent, and an additional hearing, to be held within five (5) days of the first hearing, unless further time is requested by the respondent or his/her authorized representative. The Court may order the continued detention of a respondent pending an additional hearing if based on the evidence available at the first hearing the Court finds probable cause to believe that the respondent is an alcoholic or drug or chemically dependent person and dangerous. Otherwise, the Court shall order that the respondent be immediately released and transported home.

**Sec. 207. Emergency detention.**

(a) Any person who has reason to believe that another person subject to the jurisdiction of the Court is an alcoholic or drug or chemically dependent person and extraordinarily dangerous may report to a law enforcement officer the name, address and telephone number of such person and the facts and circumstances which show that the respondent is an alcoholic or drug or chemically dependent person and extraordinarily dangerous. A law enforcement officer receiving such a report shall promptly investigate the person alleged to be an alcoholic or drug or chemically dependent person and extraordinarily dangerous.

(b) Whether or not there is such a report, a law enforcement officer or licensed physician may take into custody any person subject to the jurisdiction of the Court who the officer or licensed physician, following investigation, has probable cause to believe is an alcoholic or drug or chemically dependent person and extraordinarily dangerous. Such person shall be taken and admitted (a) to a detoxification center on the Reservation if alcoholic or (b) to an appropriate treatment facility or health care facility on the Reservation pending a hearing on the matter. Where no on-Reservation treatment facility or health care facility can provide the emergency treatment or protection needed by the detainee to protect him/her from imminent harm, the law enforcement officer or licensed physician may place the detainee in an appropriate treatment facility off the Reservation.

Upon taking a person to a detoxification center, treatment facility or health care facility, the law enforcement officer or licensed physician shall immediately submit an application to the Fort Peck Tribal Court under Section 104. A licensed physician or law enforcement officer who takes a person into emergency detention shall immediately make all reasonable efforts to notify the detainee's next of kin.

(c) A person brought to a detoxification center or treatment facility shall immediately be examined by a physician, or health care professional or, if none is available, by the person then in charge of the center. If the physician, administrator or person then in charge determines that in their professional opinion such person is an alcoholic or drug or chemically dependent person and dangerous, such person shall be admitted to the detoxification center or treatment facility. Otherwise, such person shall be released. The administrator shall immediately notify the Court of the release of any respondent. The administrator shall within eight (8) hours of admitting such person to the detoxification center or treatment facility submit a report to the Court documenting, to the extent possible, whether the detainee is an alcoholic or drug or chemically dependent person and dangerous.

**Fort Peck Tribal Court**  
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**Title 12 – Probate and Guardianship**

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## Chapter 1. Probate

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### Sec. 101. Jurisdiction.

Except as to trust or restricted land subject to the jurisdiction of the United States, the Tribal Court shall have jurisdiction to determine heirs, to determine the validity of wills and to probate the estates and wills of any Indian with respect to property located on the Reservation.

### Sec. 102. Determination of heirs.

When any Indian dies leaving property subject to the jurisdiction of the Court, any person claiming to be an heir of the decedent, or the Tribe, may file a petition in the Court for a determination of the heirs of the decedent and for the distribution of such property.

### Sec. 103. Public notice of hearing.

Promptly after the petition is filed, the clerk of Court shall give notice of the time and place of

hearing to determine the heirs of the deceased Indian, and call on all persons interested to attend the hearing, by posting a copy of the notice for at least twenty (20) days prior to the date of hearing in three (3) or more conspicuous places in the vicinity of the place of hearing. Notice shall also be published in a newspaper of general circulation on the Reservation at least once per week for three (3) successive weeks prior to the hearing.

### Sec. 104. Service of notice on interested parties.

A copy of the notice of hearing shall be served at least ten (10) days before the date of hearing, either personally, by first class mail, by certified mail, or by registered mail, on each claimant, each possible heir who is known to the Court, the Superintendent, and the Tribes. Service on the Tribes shall be made by delivering a copy of the notice to the Chairman and a copy to the Secretary of the Tribal Executive Board.

### Sec. 105. Proof of service of notice of hearing.

Proof of service of the notice of hearing required in Section 104 shall be filed in each case. Proof of service shall consist of one of the following: (a) acknowledgment of receipt of service by the endorsement of the person served on a copy of the notice of hearing; (b) a certificate that service was made in person or by first class mail, signed by an adult person making service; or (c) the return receipt where service was made by certified mail or registered mail.

### Sec. 106. Descent of property where there is no valid will.

(a) When an Indian dies without a valid will, the Indian's property which is subject to the Court's jurisdiction shall descend to the following persons:

(1) One-half (½) of the interest shall descend to the surviving spouse and the other one-half (½) shall descend in equal shares to the children of the decedent and to the issue (children, grandchildren and so on) of any deceased child of the decedent by right of representation;

(2) If there is no surviving spouse, the interest shall descend in equal shares to the children of the decedent and to the issue of any deceased child of the decedent by right of representation;

(3) If there are no surviving children or issue of any child, the interest shall descend to the surviving spouse;

(4) If there is no surviving spouse and no surviving children or issue of any child, the interest shall descend to the surviving parents or parent of the decedent;

(5) If there is no surviving spouse, and no surviving children or issue of any child, and no surviving parent, the interest shall descend equally to the brothers and sisters of the decedent;

(6) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent and no surviving brothers and sisters, the interest shall descend equally to surviving grandparents;

(7) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers and sisters and no surviving grandparents, the interest shall descend equally to surviving aunts and uncles;

(8) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers or sisters, no surviving grandparents, no surviving aunts and uncles, the interest shall descend equally to surviving nieces and nephews;

(9) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers or sisters, no surviving grandparents, no surviving aunts and uncles, and no surviving nieces and nephews, the interest shall descend equally to surviving cousins of the first degree;

(10) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers and sisters, no surviving grandparents, no surviving aunts and uncles, no surviving nieces and nephews, and no surviving cousins of the first degree, the interest shall descend equally to surviving cousins of the second degree;

(11) If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers or sisters, no surviving grandparents, no surviving aunts and uncles, no surviving nieces and nephews, no surviving cousins of the first degree, and no surviving cousins of the second degree, the interest shall descend equally to surviving cousins of the third degree;

(12) If there is no surviving heir as described in this section, the property shall escheat to the Tribes.

(b) As used in this section, the words "children" and "issue" include adopted children and children of unwed parents where the Secretary of the Interior or the Tribal Court determines that paternity has been acknowledged or established, except that

(1) A child may not inherit by intestate succession from or through a parent whose parental rights with respect to said child have been terminated pursuant to lawful authority and

(2) A parent may not inherit by intestate succession from or through a child with respect to which such parent's parental rights have been so terminated.

#### **Sec. 107. Definition of surviving spouse.**

For purposes of this chapter, a surviving spouse is the person who, at the time of decedent's death, was legally married to the decedent as provided in Title 10, Chapter 2 of this Code. A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless by virtue of a subsequent marriage he/she is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this Section.

#### **Sec. 108. Afterborn heirs.**

Relatives of the decedent conceived before his/her death and born thereafter but before the estate is distributed inherit as if they had been born during the lifetime of the decedent.

**Sec. 109. Relatives of half-blood.**

Relative of the half (1/2) blood (for example, a half (1/2) sister) inherit the same share they would inherit as if they were of the whole blood.

**Sec. 110. Protection of the estate.**

The Court is empowered:

(a) To appoint a temporary custodian or administrator to supervise and protect the assets of the estate;

(b) To take all action, including the sale of the property at appraised value, necessary and appropriate to protect or conserve the property or to satisfy claims, before distribution to the heirs; and

(c) To require bond from the custodian or administrator for the fulfillment of his/her duties.

**Sec. 111. Claims.**

The Court shall have jurisdiction to adjudicate claims against the estate of the decedent, including claims by the Tribes. Those having claims against the decedent's estate shall present a brief written statement of their claims to the Court within a reasonable time after the notice pursuant to Section 103 of this Title. Valid claims against the estate shall be satisfied before the estate is distributed to the heirs. However, the same property that is exempt from the satisfaction of money judgments under Title 8, Section 310 of this Code shall be exempt from satisfaction of claims against the estate.

**Sec. 112. Distribution.**

The Court shall distribute all property of the decedent, over which the Court has jurisdiction. Before distributing the property the Court shall give notice as provided in Section 103.

**Sec. 113. Wills.**

When any Indian dies, leaving a will disposing of property subject to the jurisdiction of the Court, the Court, at the request of any person named in the will or any other interested party, shall determine the validity of the will after giving notice as provided by Section 104 hereof. A will shall be deemed valid if it was made in writing and signed by the decedent in the presence of

two (2) witnesses who then and there signed the will as witnesses, and if, at the time the decedent made the will, the decedent was of sound and sane mind, understood what he/she was doing and was not subject to undue influence or duress of any kind from another person. If the will is determined to be invalid, the Court shall determine the heirs as if the decedent had died without a will, and shall distribute the property accordingly; provided that the determination that a will is invalid shall be a final order which may immediately be appealed as provided in Title 2, Chapter 2, Section 205 of this Code.

**Sec. 114. Surviving spouse's elective share.**

When a married Indian dies and leaves a valid will in which the spouse is to receive less than one-third (1/3) of the net estate, the surviving spouse has a right to take an elective share of one-third (1/3) of the net estate. The net estate is the estate less valid claims under Section 111, with the same exemptions as provided in that Section. If, after the elective share is distributed to the surviving spouse, the remaining estate is insufficient to satisfy the bequests in the will, each bequest shall be proportionally reduced.

**Sec. 115. Revocation of the will by writing or act.**

A will or any part thereof is revoked:

(1) By a subsequent will which expressly revokes the prior will or part of the will; or

(2) By being burned, torn, obliterated or destroyed with the intent and purpose of revoking the will.

**Sec. 116. Revocation by divorce or annulment.**

(1) If after executing a will the testator is divorced or his/her marriage annulled, the divorce or annulment revokes any bequest of property made by the will to the former spouse and any designation of the former spouse as executor or guardian, unless the will expressly provides that a bequest shall survive divorce or annulment.

(2) Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent.

(3) Provisions of a will that are revoked solely by this section are revived by the testator's remarriage to the former spouse.

**Sec. 117. Where a beneficiary of a will fails to survive the decedent.**

If a beneficiary under a will who is a grandparent, parent or lineal descendant of the decedent fails to survive the decedent, the issue of the deceased beneficiary inherit his/her share by right of representation, and otherwise the bequest shall lapse.

**Sec. 118. Fees.**

(a) The Court shall fix probate fees in a sum not less than ten dollars (\$10.00) and not more than one thousand dollars (\$1,000.00) or a sum equal to five percent (5%) of the appraised value of the estate, whichever is less.

(b) Within the limits of subsection (a), the Court shall fix the probate fees at a level which will pay for the expenses of probating the estate including fees and expenses of any custodian or administrator appointed under Section 110, and the cost of any appraisals or sales of assets of the estate.

(c) The probate fee shall be paid from the assets of the estate prior to distribution of those assets to the heirs.

(d) In the event the entire probate fee collected is not used for expenses of probating the estate the excess shall be deposited to the general fund of the Tribes, to be expended as the Executive Board sees fit.

**Chapter 2. Guardianship and Powers of Attorney**

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**Sec. 201. Definition of a guardian.**

A guardian is any competent person appointed to take care of the person or property of another. The guardian must exercise the highest standard of care for the ward, and is subject to regulation by the Tribal Court.

**(AMENDED AS PER RESOLUTION NO. 25-2173-2011-05; DATED 05/23/2011.)**

**Sec. 202. Persons to whom guardians may be appointed.**

(a) Minors. A guardian may be appointed for any Indian subject to the jurisdiction of the Court who is under 18 years of age pursuant to Title 9, Chapter 9.

(b) Mentally incompetent and/or incapacitated persons. A guardian may be appointed for any Indian subject to the jurisdiction of the Court who is mentally incompetent and/or incapacitated and lacks the capacity to manage his own person and/or property.

(c) Incapacitated person means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or which cause has so impaired the person's judgment that he is incapable of realizing and making a rational decision with respect for his need for protection, care or treatment.

(d) Guardian means a person to whom the Court has given the legal authority and duty to care for another person or property.

**(AMENDED AS PER RESOLUTION #26-1951-2013-02; DATED 02/11/2013)**

**Sec. 203. How guardians are appointed.**

(a) By will. The last surviving parent or spouse of a minor or mental incompetent may designate

in a will the guardian for the minor or mental incompetent. Upon determination by the Court that the will is valid, that the individual for whom a guardian has been designated is in fact a minor or mental incompetent, and that the person designated is willing to accept the responsibilities of guardianship, the Court shall appoint the person designated; provided that for good cause shown, the Court may decline to appoint the person designated.

(b) By Court appointment. Where a minor or mental incompetent is in need of a guardian, and no guardian is appointed pursuant to a valid will, the Court may appoint a guardian to promote the best interests of the minor or mental incompetent. The Court may appoint a guardian on its own motion or at the petition of an interested party. In appointing guardians the Court shall give preference to relatives of the individual for whom a guardian is to be appointed, except that the Court shall not be bound by such preference if it finds that such relatives would not act in the best interests of the ward.

(c) Hearing. In each case where a guardian is to be appointed, either by will, or by Court appointment, a hearing shall be held following notice to all interested parties as provided in Section 104 of this Title. A copy of the notice of the hearing shall be served at least ten (10) days before the date of the hearing, either personally, by first class mail, by certified mail, or by registered mail on the individual for whom a guardian may be appointed. The issues to be determined at the hearing are whether the individual is in need of a guardian as set forth in Section 202 and if so, who is to be appointed guardian.

#### **Sec. 204. Duties of a guardian.**

A guardian of the person shall be responsible for the care and custody of the minor or mental incompetent. A guardian of the property shall, subject to conditions imposed by the Court, administer the assets of the minor or mental incompetent for their best interests and shall use such assets, and any proceeds from those assets, only for the needs of the minor or mental incompetent. Any other use of the assets of the minor or mental

incompetent shall be grounds for immediate termination of the guardianship. The Court, in appointing a guardian, shall specify if the guardian is to serve as a guardian of the person, guardian of the property, or both.

#### **Sec. 205. Accounting by the guardian.**

The Court shall require that the guardian account for his/her handling of the ward's assets no less than once per year. The guardian must keep a written record of expenditures, investments, and any other transactions involving the assets of his/her ward, and to the extent possible must keep receipts and other papers as evidence of these transactions. The guardian's written record and other papers shall be presented to the Court at the time of the accounting.

#### **Sec. 206. Termination of guardianship.**

(a) Upon motion of any person, or the Tribe, the Court may provide notice under Section 104 of this Title and hold a hearing on whether to terminate a guardianship. Grounds for termination shall include, but not be limited to, personal use by the guardian of the assets of the ward, failure to provide a reasonable level of care for the ward, and the marriage of a minor ward.

(b) Guardianship, including for guardians of the property, the control over the ward's assets, shall terminate automatically upon a minor reaching age eighteen (18), or upon a mental incompetent being adjudged by the Court to have regained legal capacity.

#### **Sec. 207. Powers of attorney.**

Any competent individual may execute a power of attorney which grants to another individual the right to take any action with respect to the first individual's person or property. The power of attorney must be in writing, must describe the powers being granted, and must be signed by the individual granting the power of attorney in front of two (2) witnesses who must also sign the document. The power of attorney may be revoked by the grantor in writing at any time. A competent individual for purposes of this section is an individual who understands the powers he/she is

granting and is not under undue influence or duress from any other person.

**Fort Peck Tribal Court**  
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**Title 13 – Indian Employment and Contracting Preferences**

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## Chapter 1. Definitions

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### Sec. 101. Definitions.

For the purposes of this Chapter:

(a) "Near the Reservation" means within reasonable daily commuting distance of any Indian community on the Reservation;

(b) "TERO" shall mean the Tribal Employment Rights Office established by Section 201;

(c) "Director" shall mean the director of TERO appointed under Section 202

(d) "Review Board" shall mean the Tribal Employment Rights Review Board created by Section 301;

(e) "Covered entity" shall mean any individual, corporation, association, partnership, or other entity doing business on trust land on the Reservation other than the Tribes or any entity administered, owned, or operated by the Tribes.

(f) "Business on trust lands" includes doing business that requires regular access to, or use of, trust land within the exterior boundaries of the Reservation.

(g) "Contract and subcontract" shall mean all contracts, including but not limited to, contracts for supplies, services, and equipment, regardless of tier.

(h) "Indian" shall mean a member of a federally recognized Indian tribe.

(i) "Qualified" shall mean meeting the minimum qualifications for a job.

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### Sec. 201. Establishment.

There is hereby created the Fort Peck Tribal Employment Rights Office (TERO) as an independent office of the Tribes, reporting directly to the Tribal Executive Board in such manner as the Tribal Executive Board directs.

### Sec. 202. Director.

The director of TERO shall be appointed by the Tribal Executive Board. The director shall have the authority, subject to the approval of the Tribal Executive Board, to hire staff, expend funds appropriated by the Tribal Executive Board, and to obtain and expend funds from federal, state or other sources to carry out the purposes of TERO. **(AMENDED AS PER RESOLUTION #26-475-2012-03; DATED 3/12/2012)**

### Sec. 203. Functions.

TERO shall:

(a) Implement and enforce all provisions of this Title;

(b) Provide training, counseling and support to Indian workers on the Reservation in conjunction with tribal employment and training programs and other appropriate tribal and federal offices;

(c) Cooperate with federal agencies to enforce federal anti-discrimination statutes, eliminate discrimination against Indians, and to enforce all Indian preference requirements in federal law or contracts with the federal government.

### Sec. 204. Implementation of programs.

(a) In implementing this Title, TERO shall develop and phase in programs at a gradual pace in order to ensure a stable and effective program and avoid unnecessary disruption of the business environment on the Reservation;

(b) TERO may implement programs or components of programs on a Reservation-wide basis or it may implement programs covering particular types of covered entities

(c) No significant new program or component of a program shall be introduced, or extended to new types of covered entities, without prior approval of the Tribal Executive Board.



**Sec. 205. Processing discrimination complaints.**

TERO shall assist the Equal Employment Opportunity Commission (EEOC) and other federal agencies in ensuring protection of the rights of Indians under Title 7 of the Equal Employment Opportunity Act of 1972 or other federal laws, by:

(a) Disseminating information informing Indians and others that Indians are protected by federal law against employment discrimination, and of the procedures for making employment discrimination complaints. Such dissemination may include meetings, conferences, distribution of written materials, and other publicity;

(b) Meeting with appropriate offices of the EEOC and other federal agencies as necessary to arrange mutually satisfactory methods of promoting and enforcing the employment rights and preferences of Indians;

(c) Assisting Indians and employers in obtaining informal resolution of discrimination complaints by meeting with both parties and mediating a mutually agreeable solution;

(d) Where informal resolution fails, and the Indian involved desires to press a formal discrimination complaint, assisting the Indian in filing and processing charges of unlawful discrimination with the EEOC, the Office of Federal Contract Compliance, or other appropriate federal agencies, in accordance with the regulations and procedures of those agencies.

**Sec. 206. Annual reports.**

The TERO Director shall present to the Tribal Executive Board such reports as the Tribal Executive Board may require, including at least annual reports on TERO’s activities. The annual reports shall include:

(a) A description of the activities and programs TERO has conducted in the preceding year;

(b) A description of the activities and programs TERO plans to carry out in the upcoming year;

(c) A plan for financing TERO for the upcoming year. The director should consider new

funds or reallocation of existing funds from such sources as CETA, ONAP, EEOC, BIA employment assistance, HUD and EDA;

(d) Such other information as the Tribal Executive Board may require.

**Sec. 207. Duties of other employment programs.**

Tribal employment and training programs and BIA employment assistance programs on the Reservation shall, to the extent consistent with the laws and regulations governing them:

(a) Devote such part of their resources as is necessary to prepare Indians for job opportunities opened up by programs under this Title;

(b) Coordinate with TERO in the development of their training programs; (c) Co-operate with TERO in carrying out Section 203(b) of this Chapter.

**Chapter 3. Tribal Employment Rights Review Board**

**Sections:**

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**Sec. 301. Establishment.**

(a) There is hereby created the Fort Peck Tribal Employment Rights Review Board;

(b) The Review Board shall consist of three (3) members and two (2) alternates appointed by the Tribal Executive Board, who serve at the pleasure of the Tribal Executive Board;

(c) A quorum shall consist of two (2) or more members or one member and one alternate. When, at the time scheduled for a meeting to begin, a member is present but not a quorum, the

member may call in either alternate in order to make a quorum.

**Sec. 302. Qualifications.**

To be eligible to serve on the Review Board, a person must have a high school diploma, be at least twenty five (25) years of age, not have been convicted of a felony, not have been dishonorably discharged from the Armed Forces, not be affiliated with or employed by a business certified or seeking certification under Chapter 5, be physically capable of carrying out the duties of the office, and in the opinion of the Tribal Executive Board, be of sound judgment, good character and possess a reputation for honesty, fairness and impartiality.

**Sec. 303. Compensation.**

The compensation of members of the Board shall be fixed from time to time by the Tribal Executive Board.

**Sec. 304. Jurisdiction.**

The Review Board shall:

- (a) Conduct hearings and impose sanctions for violations of the Indian employment preference in accordance with Section 409 of this Title;
- (b) Conduct hearings and impose sanctions for violation of the Indian contracting and sub-contracting preference in accordance with Section 508 of this Title;
- (c) Make certification decisions with respect to Indian firms in accordance with Sections 511 through 515 of this Title;
- (d) Review actions of TERO at the instance of aggrieved parties, in accordance with Section 607 of this Title.
- (e) Promulgate regulations to govern the implementation of this Title.

**(AMENDED AS PER RESOLUTION NO. 2315-87-02, DATED 02/25/87.)**

**Sec. 305. Sanctions.**

The Review Board, after a hearing may impose upon any covered entity which fails to comply with any applicable provision of this Title any of the following sanctions:

(a) Denial or suspension of the right to do business on trust land within the Reservation, provided that the employer shall be given a reasonable time to remove equipment or other property it may have on the Reservation and to arrange with another party For assumption of any contractual obligations it has on the Reservation "Reasonable time", shall mean a maximum of thirty ( 30) days unless an extension of time for removal is requested from and granted by the TERO Review Board, upon a showing of legitimate reason(s).

**(AMENDED AS PER RESOLUTION NO. 2464-89-5, DATED 05/23/89.)**

(b) Denial or suspension of the right to commence new business on trust land within the Reservation;

(c) Payment of back pay or other monetary relief to correct harm done to Indians or other entities by the non-compliance;

(d) Civil fines, not to exceed five hundred dollars (\$500.00) per violation. Each day a covered entity is found to be out of compliance may be considered as a separate violation.

**Sec. 306. Hearing procedures.**

At all hearings before the Review Board, all participants shall have the following rights:

- (a) To be represented by counsel at their own expense;
- (b) To be present at the hearing;
- (c) To present relevant sworn testimony and documentary evidence, to call witnesses, and to ask questions of witnesses of other participants. All hearings before the Review Board shall be conducted in an orderly manner, but formal rules of evidence need not be observed.

**Sec. 307. Decisions after hearing.**

After the hearing, the Review Board shall issue its written decision. All decisions shall state the grounds therefor. A copy of the decision shall be sent to all participants by registered mail.

**Sec. 308. Appeals.**

A party shall have the right to appeal any decision of the Review Board to the Tribal Court. An

appeal shall be filed within thirty (30) days after receipt of notice of the Review Board’s decision. The TERO director shall represent the interests of the Tribes on the appeal. The Court shall reverse the decision of the Review Board only where it finds that decision to be arbitrary and capricious, or unsupported by substantial evidence.

**Sec. 309. Contracts Providing for Termination Unaffected.**

Contractors who contract with the Tribes, or an agency or instrumentality of the Tribes, as the owner of a project may be subject to termination under the terms of their contract with the Tribe or the agency or instrumentality of the Tribes without regard to any procedures set forth in this Chapter.

**Chapter 4. Business Licensing, Registration; Employment Preference; and Work Permits**

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**Sec. 401. Indian employment preference.**

Every covered entity is required to give preference to qualified Indians resident on or near the Reservation in hiring, promotion and training of employees on trust land within the Reservation. The provisions of this Chapter apply to all such hiring, promotion and training.

**Sec. 402. Index of Indian applicants.**

TERO shall maintain an index of Indians seeking employment, and their qualifications. The index shall be maintained and cross-referenced so that TERO can easily and efficiently determine whether any Indians in the index meet the qualifications for a particular job and can develop a list of those who do.

**Sec. 403. Business License; Registration; Hiring Requirements; Work Permits.**

(a) Every covered entity seeking to conduct business on trust lands within the Reservation with any number of employees or any number of contractors or subcontractors shall register with, and obtain a Business License from, TERO. TERO shall set a schedule of fees, to be approved by the Executive Board, for Business Licenses for the following categories: Temporary (up to 30 days), Six Months, and One Year, provided that for any project for which the entity will receive \$100,000 or more, the Business License fee shall be 3% of the total value of the project.

(b) Upon registering with TERO under subsection (a), the covered entity shall describe its form of business association and provide such other documentation as TERO may require.

(c) TERO shall not issue a Business License to a covered entity unless the covered entity, as part of the registration process certifies that it has;

(1) Read and understands this Title 13 of this Code;

(2) Identified a Liaison Officer, if required pursuant to Chapter 7 of this Title;

(3) Read and understands Title 22 of this Code (Protection of the Environment);

(4) Notified the Office of Environmental Protection of its intent to conduct business on trust lands within the Reservation and complied with such registration process as that Office may require; and

(5) Notified the Cultural Resources Department of its intent to conduct business on trust lands within the Reservation and complied with such registration process as that Office may require.

(d) Upon registering with TERO under subsection (a), the covered entity shall receive a list of those Indians in the TERO index who meet the qualifications for employment specified by the covered entity, or TERO shall refer a specified number of such Indians to the entity.

(e) A covered entity commencing business on trust lands within the Reservation without a preexisting work crew may recruit and hire employees or trainees from whatever source and by whatever process it chooses, provided that (1) it may not hire a non-Indian until TERO certifies that no Indians meeting the qualifications set by the covered entity are listed on its index and (2) it complies with the registration and Work Permit requirements for non-Indian employees under subsection (f)(2) and for non-members of the Fort Peck Tribes under subsection (g).

(f) Any covered entity commencing business on trust lands within the Reservation with a preexisting work crew may maintain a workforce made up of 20% or more of non-Indians only if such a covered entity shall, prior to commencing work on any project,

(1) Obtain certification from TERO that either

(i) No less than 80% of the covered entity's workforce is made up of Indians or

(ii) No Indians meeting the qualification for the covered entity's positions are listed on the TERO index to enable the covered entity to employ a workforce that is made up of at least 80% Indians,

(2) Register with TERO the names of all non-Indian employees of the covered entity and any such other information TERO may require, and

(3) Purchase Work Permits from TERO for every employee who is not an Indian.

(g) In addition to the Work Permit requirements set forth in subsection (f), any covered entity who employs an individual who is an Indian but not a member of the Fort Peck Tribes shall;

(1) Register with TERO the names of all such Indian employees of the covered entity and any such other information TERO may require and

(2) Purchase Work Permits from TERO for every Indian employee who is not a member of the Fort Peck Tribes.

(h) Every employee for whom a covered entity registers and pays for a Work Permit in accordance with subsections (f) and (g) shall;

(1) Separately register with TERO, and provide TERO with any such additional information it may request so that TERO may maintain an up-to-date registry of the names, addresses, and other information with respect to all employees working for covered entities who are not members of the Fort Peck Tribes and

(2) Maintain on his or her person at all times a TERO certified Work Permit. The TERO Director shall have authority to revoke any Work Permit issued under this section with or without cause.

(i) Every covered entity shall be responsible for ensuring that their employees holding Work Permits under this section, who are not United States citizens, possess valid Department of Homeland Security documentation, which allows them to work in the United States under the Immigration Reform & Control Act. Should TERO become aware of the presence of any unauthorized foreign worker within the exterior boundaries of the Reservation, it shall inform the Department of Homeland Security of such presence and coordinate with that agency to request appropriate authorities to remove the unauthorized foreign worker from the Reservation.

(j) An employee or covered entity who fails to comply with the requirements of this section or who makes any misrepresentation in the registration requirements set forth herein shall be subject to sanctions in accordance with the provisions and procedures set forth in Chapter 3, and sanctions against employees may include the same civil fines that may be imposed upon a covered entity or exclusion from the Reservation.

(k) Job qualifications set by any covered entity may not include non-job-related qualifications which have a discriminatory impact on Indian applicants.

(l) The fees for Work Permits required by this section, and their duration, shall be established by TERO with the approval of the Executive Board.

(m) The requirements of this section shall apply, upon enactment, to any covered entity currently doing business on trust lands.

**(AMENDED AS PER RESOLUTION NO. 788-88-5, DATED 05/11/88. AMENDED AS PER RESOLUTION NO. 261-2008-01, DATED 01/14/2008.)**

**Sec. 404. Layoffs.**

In all layoffs and reductions in force, no Indian shall be terminated if a non-Indian worker in the same craft or job remains employed. If a covered entity lays off by crews, qualified Indians shall be transferred to crews that will be retained so long as there are non-Indians in the same craft or job employed.

**Sec. 405. Promotion.**

Every covered entity shall give preference to Indians in consideration for promotion and shall encourage Indians to seek promotion opportunities. For all promotions to supervisory positions filled by non-Indians, the employer shall file a report with TERO stating what Indians applied for the job, the reasons why they were not given the job, and the efforts made to inform Indians of the opportunity.

**Sec. 406. Summer students.**

Indians shall be given preference in the hiring of summer student help. The employer shall make every effort to promote after-school, summer, and vacation employment for Indian youth.

**Sec. 407. Effect of collective bargaining agreements.**

In no event shall a collective bargaining agreement with any union constitute an excuse for failure to comply with the Indian preference policy of this Chapter. Covered entities with collective bargaining agreements shall obtain any necessary agreement from any union with which it has a col-

lective bargaining agreement or give other satisfactory assurance that the covered entity and union will:

(a) Comply with this Chapter;

(b) Give absolute preference to qualified Indians in referral, regardless of which union referral list they are on

(c) Establish mechanisms, such as phone or mail registration, or a union sub-office near the Reservation, so that Indians do not have to travel great distances to retain their place on union lists;

(d) Establish necessary journeyman upgrade and advance apprenticeship programs for Indian workers

(e) "Blanket in" to the union all Indians who qualify and who wish to join the union; and

(f) Grant work permits to Indians who do not wish to join the union. TERO's participation in a written agreement with a union shall not constitute official tribal recognition of any union or tribal endorsement of any recruiting activities conducted by any union.

**Sec. 408. Individual complaints.**

Any person or entity which believes that any covered entity has failed to comply with the requirements of this Chapter may file a complaint with TERO whether or not the complaining party can demonstrate it is personally harmed by the alleged non-compliance.

**Sec. 409. Compliance and hearing procedures.**

If TERO has reason to believe, either as a result of a complaint filed pursuant to Section 408 or through its own investigations, that a covered entity has failed to comply with any of the requirements of this Chapter, TERO shall so notify the entity in writing specifying the alleged violations(s). If the party being so notified is a contractor or subcontractor, notice shall also be provided to the entity holding the permit or authorization under which the contractor or subcontractor is operating, and such entity may be a party to all further negotiations, hearings and appeals. The entity cited and TERO shall have twenty (20) days to pursue a voluntary, informal resolution of the

problem. If no such resolution can be reached at the end of twenty (20) days, TERO shall notify the Review Board and request that it set up a formal hearing on the problem within twenty (20) days of such notice. The procedures at such hearings shall be as provided in Chapter 3. TERO shall pursue on behalf of the Tribes complaints it determines to have merit. If the Review Board decides that an entity has failed to comply with the ordinance, it may impose one or more of the sanctions provided for in Section 305.

**Sec. 410. Retaliation forbidden.**

Any covered entity and any union or person subject to tribal jurisdiction which retaliates against any employee, employer, union, or other entity because of its exercise of rights under this Chapter, or compliance with provisions of this Chapter, shall be subject to the sanctions set forth in Section 305. In additions, if the Review Board determines a complaint has merit, TERO may petition the Tribal Court to order reinstatement or other temporary or permanent injunctive relief to prevent harm or further harm caused by such retaliatory actions.

**Chapter 5. Contracting and Subcontracting Preference; Registration; Contracting Plan**

**(CHAPTER AMENDED AS PER RESOLUTION NO. 231 5-87-2, DATED 02/25/87.)**

**Sections:**

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 Sec. 501.1. Scope of preference. ....7  
 Sec. 502. Responsibility for evaluation of technical qualification and reasonable price. .8  
 Sec. 503. Submission of a contracting and subcontracting plan. ....8  
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**Sec. 501. Indian references for contracting and subcontracting.**

Every covered entity engaged in any business on trust land within the Reservation, shall give preference to firms certified by the Tribes under this Chapter in all contracts and subcontracts to be performed on the Reservation.

**(AMENDED AS PER RESOLUTION NO. 423-94-1, DATED 01/11/94).**

**Sec. 501.1. Scope of preference.**

An entity engaged in activity subject to this Chapter may not enter into a contract or subcontract with

a firm not certified under this Chapter unless it has contacted every certified firm in the relevant field and has determined that there is no certified firm that is technically qualified to perform the work required and willing to do so at a reasonable price. So long as a certified firm meets minimum threshold qualifications, no other firm may be selected for any contract or subcontract. If the entity determines that a certified firm lacks the qualifications to perform all of the work required under a contract or subcontract, the entity shall make a good faith effort to divide the work required into

smaller portions so that the certified firm can qualify for a portion of the work. An entity engaged in activity subject to this Chapter shall be responsible for the compliance of all its contractors and subcontractors with this Chapter. No entity shall circumvent the requirements of this Section by hiring non-Indians and designating them as employees rather than contractors or subcontractors.

(a) "Near the Reservation" means within reasonable daily commuting distance of any Indian community on the Reservation;

(b) "TERO" shall mean the Tribal Employment Rights Office established by Section 201;

(c) "Director" shall mean the director of TERO appointed under Section 202

(d) "Review Board" shall mean the Tribal Employment Rights Review Board created by Section 301;

(e) "Covered entity" shall mean any individual, corporation, association, partnership, or other entity doing business on trust land on the Reservation other than the Tribes or any entity administered, owned, or operated by the Tribes.

(f) "Business on trust lands" includes doing business that requires regular access to, or use of, trust land within the exterior boundaries of the Reservation.

(g) "Contract and subcontract" shall mean all contracts, including but not limited to, contracts for supplies, services, and equipment, regardless of tier.

(h) "Indian" shall mean a member of a federally recognized Indian tribe.

(i) "Qualified" shall mean meeting the minimum qualifications for a job.

#### **Sec. 502. Responsibility for evaluation of technical qualification and reasonable price.**

(a) Technical qualifications. A covered entity engaged in activity subject to this Chapter shall determine the technical qualifications required for a particular contract or subcontract. However, if the entity determines that all certified firms are not qualified, the entity must first;

(1) Interview the principals in all available certified firms to determine their knowledge and expertise in the area and

(2) Provide to each certified firm it rejects a description, in writing, of areas where it believes the firm is weak and steps it could take to upgrade its qualifications. The entity shall evaluate a certified firm that does not yet have an established record on the basis of the individual qualifications of the principals in the firm, their equipment, and any other relevant factors which provide guidance on the firm's ability to perform the work.

(b) Reasonable price. A covered entity engaged in activity subject to this Chapter may use any process it chooses for determining a reasonable price including, but not limited to, competitive bidding (open or closed) or private negotiations. However, before an entity can reject a certified firm on the basis that it is not willing to do the work at a reasonable price, it must offer the certified firm an opportunity to negotiate price. If there is only one technically qualified certified firm, an entity must enter into negotiations on price with such firm and contract with that firm if a reasonable price can be negotiated. No covered entity may reject a certified firm on the grounds that the price is not reasonable, and subsequently contract with a non-certified firm at the same or a higher price.

#### **Sec. 503. Submission of a contracting and subcontracting plan.**

(a) Every covered entity seeking to conduct business on trust lands within the Reservation with any number of employees or any number of contractors or subcontractors shall register with, and obtain a Business License from, TERO in full compliance with section 403 of this Title.

(b) Every such covered entity seeking to conduct business on trust lands within the Reservation with any number of contractors or subcontractors shall, before commencing any work, submit a contracting and subcontracting plan to TERO for approval. The plan shall indicate contracts and subcontracts that will be entered into in such activity and projected dollar amounts

thereof. If the entity has already selected a firm to perform any contract or subcontract work, it shall list the name of that firm and indicate whether or not it is a certified firm. If the firm selected is not a certified firm, the covered entity shall further indicate why each certified firm registered with TERO in the relevant area of endeavor was not selected, and the name of a contact person at each certified firm with which the covered entity dealt. No authorization shall be granted to any firm which submits a plan indicating that less than one hundred percent (100%) of the value of all subcontracts will be paid to certified firms unless the entity can demonstrate that it was unable to employ Indian firms for sub-contract categories because there was an insufficient number of Indian firms qualified or available. To make such a demonstration the entity must show, at a minimum, that it interviewed all Indian firms listed on the TERO register in that area of endeavor and that:

(1) A sufficient number was not available to enable it to meet the goal; or

(2) The ones that were available and would have enabled the entity to reach the goal were rejected because they lacked the necessary technical qualifications; or

(3) That no certified firm was willing to do the work at a reasonable price after negotiation as required by Section 502;

(c) No entity authorized to engage in activity subject to this Chapter shall deviate from its plan in a manner that diminishes the percentage of Indian subcontracting, without prior written notification to TERO, and obtaining prior written approval of TERO;

**(AMENDED AS PER RESOLUTION NO. 2465-89-5, DATED 05/23/89.)**

(d) TERO shall have the right to inspect the records of any entity to ensure that a plan is complied with.

#### **Sec. 504. Operation of the contract or subcontract.**

Once an entity enters into a contract with a certified firm, the Tribes will not intervene in any way in the relationship between the parties unless

a certified firm demonstrates that action taken against it is intended primarily to circumvent the requirements of this Title.

#### **Sec. 505. Replacement of non-Indian firms by certified firms after a project is underway.**

(a) When an entity hires a non-certified firm because no certified firm exists at the time the non-certified firm was hired and a certified firm subsequently comes into existence, TERO shall promptly notify the entity of the existence of the certified firm;

(b) The entity shall replace the non-certified firm with a certified firm if:

(1) The contract or relationship between the entity and the non-Indian firm is expected to extend more than one year beyond the date of notification by TERO;

(2) The certified firm is technically qualified to do the work, and

(3) The certified firm is prepared to undertake the work on the same terms, including price, as the non-certified firm performing the contract.

(c) If the relationship between the entity and the non-certified firm is through a year-to-year contract, the non-certified firm shall be replaced only when the contract expires; provided that, if the contract expires within one hundred twenty (120) days following notification that a certified firm is available, the entity shall have the right to extend the contract with the non-certified firm to a date not to exceed thirty (30) days from that notice,

(d) If there is no written contract or if the contract is not a year-to-year contract, the entity will have thirty (30) days after notification by TERO to replace the non-Indian firm with the certified firm;

**(AMENDED AS PER RESOLUTION NO. 2466-89- 5, DATED 05/23/89.)**

(e) The requirements of this Section may be waived or the transition period extended by TERO in individual cases upon a showing of hardship upon the covered entity.



**Sec. 506. Reports and monitoring.**

(a) All entities engaged in any activity subject to this Chapter shall submit such reports to TERO as it requests. An entity may refuse to submit any information which it can demonstrate must remain confidential for valid business purposes;

(b) Employees of TERO shall have the right to make on-site inspections during regular business hours in order to monitor compliance with this Chapter and shall have the right to talk to any employee on-site so long as it does not interfere with the operations of the business.

**Sec. 507. Individual complaints.**

Any certified firm, group of certified firms, or other person or entity which believes that any entity engaged in activity subject to this Chapter has failed to comply with the requirements of this Chapter may file a complaint with TERO whether or not the complaining party can demonstrate it is personally harmed by the alleged non-compliance.

**Sec. 508. Compliance and hearing procedures.**

If TERO has reason to believe, either as a result of a complaint filed pursuant to Section 507 or through its own investigations, that an entity engaged in activity subject to this Chapter on trust land has failed to comply with any of the requirements of this Chapter, TERO shall so notify the entity in writing specifying the alleged violation(s). If the party being so notified is a contractor or subcontractor, notice shall also be provided to the entity holding the permit or authorization under which the contractor or subcontractor is operating, and such entity may be a party to all further negotiations, hearings and appeals. The entity cited and TERO shall have twenty (20) days to pursue a voluntary, informal resolution of the problem. If no such resolution can be reached at the end of twenty (20) days, TERO shall notify the Review Board and request that it set up a formal hearing on the problem within twenty (20) days of such notice. The procedures at such hearings shall be as provided in Chapter 3. TERO shall pursue on

behalf of the Tribes complaints it determines to have merit. If the Review Board decides that an entity has failed to comply with this Chapter, it may impose one or more of the sanctions provided for in Section 305, and may order the party to take such corrective actions as are necessary to remedy any harm done to the Tribes or to certified firms by the non-compliance.

**Sec. 509. Criteria for Indian contract preference certification.**

To receive certification as a firm eligible for Indian preference an applicant must satisfy all of the following criteria:

(a) Ownership. The entity must be sixty percent (60%) or more Indian owned. The applicant must demonstrate the following:

(1) Formal ownership. That an Indian or Indians own(s) sixty percent (60%) or more of the partnership, corporation, joint venture, or other arrangement for which the application is being submitted. Such ownership must be embodied in the firm's organic documents, such as its stock ownership or partnership agreement. Ownership includes:

(i) Financial ownership and

(ii) Control The Indian(s)' ownership must provide him or her with a majority of voting rights or other decisional mechanisms regarding all decisions of the firm and the Indian(s) must receive at least a majority of the firm's assets upon dissolution;

(2) Value. The Indian owner(s) must provide real value for his/her majority ownership by providing capital, equipment, real property, or similar assets commensurate with the value of his/her ownership share. It will not be considered real value if the Indian(s) purchased his/her ownership share, directly or indirectly, through a promissory note, the ultimate creditor of which is the non-Indian owner of the firm or an immediate relation thereof, or any similar arrangement, unless a convincing showing can be made that the Indian owner(s) brought such special skills marketing connections, or similar benefits to the firm that there is good reason to believe the arrangement would have been entered into even if there

were not an Indian preference program in existence;

(3) Profits. The Indian owner(s) must receive at least sixty percent (60%) of all profits. If there is any provision that gives non-Indian owner(s) a greater share of the profits, in whatever form and under whatever name, such as through management fees, equipment rental fees, bonus tied to profits, or other vehicles, certification will be denied. Salary scales will be reviewed to ensure that the relative salaries being paid Indian and non-Indian owners are consistent with the skills of the parties and are not being used to circumvent the requirement that Indian owners receive at least sixty percent (60%) of the profits.

(b) Management control. The firm must be under significant Indian management control. The firm must be able to demonstrate that:

(1) Unitary firms (non-joint ventures). One or more of the Indian owners is substantially involved as a senior level official in the day-to-day management of the firm. The Indian owner does not have to be the Chief Executive Officer: However he or she must, through prior experience or training, have substantial occupational ties to the area of business in which the firm is engaged such that he or she:

(i) Is qualified to serve in the senior level position; and

(ii) Is sufficiently knowledgeable about the firm's activities to be accountable to the Tribes on the firm's activities.

This provision shall be waived when:

(i) The firm is one hundred percent (100%) Indian-owned and the Chief Executive Officer is the spouse and/or parent of the owner(s), the family lives on or near the Reservation, and the majority of employees are Indian; or

(ii) The firm is owned by ten (10) or more persons, is at least seventy percent (70%) Indian-owned, the Chief Executive Officer and the highest-salaried employee in the firm are Indian, and a majority of the employees are Indian; **(AMENDED AS PER RESOLUTION NO. 2467-89-5, DATED 05/23/89.)**

(2) Joint ventures. A joint venture will be required to demonstrate that the Indian firm, in

addition to meeting the requirements on management control set out in subsection (b)(1) above, is, in fact, the controlling partner in the joint venture. The venture will be required to demonstrate that the Indian partner has the experience and expertise to manage the entire operation and that the non-Indian partner is providing specialized or limited resources or expertise to the venture and is not the manager in fact.

(c) Integrity of structure. The firm must not have been established solely or primarily to take advantage of the Indian preference program. In evaluating an applicant under this criterion TERO will consider the factors set out below. TERO shall exercise broad discretion in applying these criteria in order to preserve the integrity of the Indian preference program and in questionable cases shall deny certification:

(1) History of the firm. Whether the history of the firm provides reason to believe it was established primarily to take advantage of the Indian preference program, particularly whether the firm, a portion of the firm, or key actors in the firm originally associated with a non-Indian-owned business that gained little of business value in terms of capital, expertise, equipment, etc. by adding Indian ownership or by merging with an Indian firm.

(2) Employees.

(i) Whether key non-Indian employees of the applicant are former employees of a non-Indian firm with which the Indian firm is or has been affiliated, through a joint venture or other arrangement, such that there is reason to believe the non-Indian firm is controlling the applicant;

(ii) Whether Indians are employed in all or most of the positions for which qualified Indians are available. A high percentage of non-Indian employees in such positions will provide reason to believe the firm was established primarily to benefit non-Indians.

(3) Relative experience and resources. Whether the experience, expertise, resources, etc., of the non-Indian partner(s) is so much greater than that of the Indian (s) that there is little sound business reason for the non-Indian to accept a junior role in the firm or venture other than

to be able to take advantage of the Indian preference program.

(d) Residence. The entity must have its principal place of business on or near the Fort Peck Reservation. This provision may be waived when the firm has met the criteria above and TERO and the Review Board are satisfied that the firm is bona fide and is not attempting to circumvent the requirements of this chapter.

**(AMENDED AS PER RESOLUTION NO. 25-2149-2011-05, DATED 05/23/2011.)**

**Sec. 510. Applications for certification.**

An individual or entity seeking certification as eligible for Indian preference shall submit a completed application, accompanied by an application processing fee of twenty-five dollars (\$25.00), to TERO on forms provided by TERO office. TERO staff will be available to assist an applicant in filling out and filing the application. The application shall contain, at a minimum, the following information:

(a) The applicant's name, residence, business name and address, the period of time the applicant has resided or done business on the Reservation, and if the applicant is an individual, satisfactory proof that the applicant is an Indian. If the applicant is other than an individual, the name, address and period of residence

at that address of each partner, officer and other person owning a financial interest in the net earnings of the applicant's on-Reservation business, The percentage ownership interest of each partner, officer, and other person in the applicant's net earnings from on-Reservation activities whether such partner, officer and other person is Indian or non-Indian, and if Indian, satisfactory proof that the individual is an Indian;

(b) Information sufficient to demonstrate that the criteria of Section 509(a) and (b) are met;

(c) Information concerning the origins and history of the applicant, and its employees sufficient to allow evaluation of the firm under Section 509 (c);

(d) Satisfactory proof that the applicant is qualified to conduct and operate the business for which certification is sought;

(e) A statement of the applicant's policy with respect to the employment of Indians resident on the Reservation and a history, if any, of past employment of Indians resident on the Reservation;

(f) A statement reading as follows: The undersigned each hereby certify on behalf of the applicant and each for himself or herself that the foregoing statements are true and correct and that if any material is false, any license granted pursuant to this application shall be void and of no force or effect.

**Sec. 511. Certification determinations; Temporary Certification; Licensing and Registration.**

Within twenty-one (21) business days after receipt of a completed application, TERO shall review the application, request such additional information as it believes appropriate (the twenty-one (21) day period shall be stayed during the time any request for additional information is outstanding), conduct such investigations as it deems appropriate, and submit an analysis and recommended disposition to the Review Board. Copies of the analysis and recommended disposition shall be kept confidential and shall not be made available to the applicant or any other party. When it is so required, TERO may extend the processing period by an additional twenty-one (21) days, by sending notification of the extension to the applicant by registered mail. Within thirty (30) days of receipt of TERO's analysis and recommended disposition, the Review Board shall hold a hearing on the application, posting notice of the hearing time at the Tribal Office, and Agency, and the TERO office at least five (5) days prior to the hearing. In addition, any other party wishing to present information to the Review Board shall be entitled to do so, by requesting, no less than one (1) day prior to the hearing, an opportunity to participate and may be represented by counsel. Hearings and any appeals shall be conducted as provided in Chapter 3 of this Title.

The TERO Director shall have discretion to issue temporary certification for up to thirty (30)

days to any applicant for Indian ownership certification when the Director is confident that the criteria for such certification under this Chapter are, more likely than not, to be met. Such a temporary certification may, at the discretion of the TERO Director, be extended for one additional 30 day period if the Review Board has not yet reached decision on certification. Any entity granted temporary certification shall comply with the licensing, registration, and other requirements of this Title.

**Sec. 512. Probationary certification.**

An applicant granted certification shall be issued a six (6) month probationary certificate, upon payment to TERO of a fifty dollars (\$50.00) certification fee. During that period, TERO shall monitor the firm's activities to ensure that the firm is operating in the manner described in its application. During the probationary period, TERO shall have the right to request and receive such information and documents as they deem appropriate. All entities granted probationary certification shall comply with the licensing, registration and other requirements of this Title.

**Sec. 513. Final certification; Registration and Licensing.**

At the end of the probationary period the Review Board, after receiving recommendations from TERO, shall either grant full certification or deny certification. All entities granted final certification shall comply with the licensing, registration and other requirements of this Title.

**Sec. 514. Withdrawal of certification.**

From information provided in the change notices or Annual Reports required by Section 516, on the basis of a written grievance filed by any other firm or person, or on its own initiative, TERO may initiate proceedings to withdraw or suspend certification for any firm. TERO shall prepare an analysis and recommended disposition for the Review Board and shall send the firm notice, by registered mail, that its certification is being examined, along with the grounds thereof.

The Review Board shall then set a date for a hearing, which shall be held within twenty one (21) days after it receives the analysis and recommended disposition from TERO. At the hearing, TERO staff shall present the case for suspension or withdrawal and the hearing shall be conducted as in Chapter 3 of this Title.

After the hearing, the Board may:

- (1) Withdraw certification;
- (2) Suspend certification for up to one (1) year;
- (3) Put the firm on probation; and/or (4) order that corrective action be taken within a fixed period. A firm that has had its certification withdrawn may not reapply for a period of one (1) year.

**Sec. 515. Firms certified prior to the adoption of these criteria.**

Each firm holding Indian preference certification from the Tribes prior to the effective date of this Chapter shall remain certified without submitting a new application under Section 510. However, if any such firm does not meet the criteria of Section 509, certification may be withdrawn in accordance with Section 514.

**Sec. 516. Annual and other reports.**

Each certified firm shall report to TERO, in writing, any changes in its ownership or control status within sixty (60) days after such changes have occurred. Each certified firm, on the anniversary of its receipt of permanent certification, shall update the information provided in its initial application on an Annual report form provided by TERO. Failure to provide information pursuant to these requirements shall constitute grounds for withdrawal of certification.

**Sec. 517. List of certified entities.**

TERO shall maintain a current list of all entities certified pursuant to this Chapter. Copies of this list shall be posted in a conspicuous place in the TERO office, shall be made available to the interested public, for a reasonable copying fee, and shall be brought to the attention of those persons,

associations, partnerships and corporations seeking to contract subcontractors for activity subject to this Chapter. No preference as between certified entities shall be indicated on the list.

**Sec. 518. Retaliation forbidden.**

Any covered entity and any union or person subject to tribal jurisdiction which retaliates against any employee, employer, union, or other person because of the person’s exercise of rights under this Chapter, or compliance with provisions of this Chapter, shall be subject to the sanctions set forth in Section 305. In addition, if the Review Board determines a complaint has merit, TERO may petition the Tribal Court to order reinstatement or other temporary or permanent injunctive relief to prevent harm or further harm caused by such retaliatory actions.

**(SECTIONS 519-522 ARE REPEALED AS PER RESOLUTION NO. 2315-87-2, DATED 02/25/87.)**

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**Sec. 601. Voluntary Indian preference policy.**

(a) It is the policy of the Tribes that all employers on or near the Reservation, which are not covered entities subject to Chapter 4 of this Title, should give preference to Indians resident on or near the Reservation in hiring and promotion of all employees;

(b) It is the policy of the Tribes that all entities engaged in activities on or near the Reservation, which would be subject to Chapter 5 of this Title if they were conducted on trust land, should give

preference to firms certified under Chapter 5 in contracting and subcontracting.

**(AMENDED AS PER RESOLUTION NO. 2315-87-2, DATED 02/25/87.)**

**Sec. 602. Employment.**

(a) Prior to opening a new business or beginning a new project requiring the hiring of employees on or near the Reservation, but not within trust lands, the Tribes request that an employer notify TERO of its intentions. TERO shall ascertain how many employees the employer expects to hire and the relevant qualifications for each job category. Based on the availability of qualified Indians, TERO shall determine how many Indians should be hired, and when, for each employer to honor the voluntary Indian employment preference policy of Section 601(a);

(b) TERO shall monitor all such employers on or near the Reservation to determine whether the policy of Section 601(a) is being honored. Following appropriate consultation and investigation, TERO shall issue certificates of compliance to employers honoring the employment preference policy, and certificates of non-compliance to employers not honoring the policy. Employers without good cause refusing TERO access to information necessary to make such a determination shall be issued a certificate of non-compliance;

(c) Upon request, TERO shall provide any employer on or near the Reservation with a list of those Indians in its index who meet the qualifications specified by the employer, or will refer a specified number of such Indians to the employer.

**Sec. 603. Oil and gas subcontracting.**

(a) Prior to beginning a new project on or near the Reservation, but not on trust lands, the Tribes request that an entity engaged in activity subject to 601(b) notify TERO of its intentions. TERO shall consult with all such entities to assist in carrying out the contracting and subcontracting preference policy of Section 601(b). For each such entity TERO shall ascertain what contracts and subcontracts the entity expects to let. Based on

the availability of certified firms, TERO shall determine how many certified firms should be utilized for the entity to honor the voluntary policy;

(b) TERO shall monitor all entities engaged in activity subject to 601(b) to determine whether the policy of Section 601(b) is being honored. Following appropriate consultation and investigation, TERO shall issue certificates of compliance to entities honoring the policy and certification of non-compliance to entities not honoring the policy. Entities without good cause refusing TERO access to information necessary to make such determination shall be issued a certificate of non-compliance;

(c) Upon request, TERO shall provide any entity engaged in activity subject to 601(b) with copies of the list of certified entities maintained pursuant to Section 517.

**(AMENDED AS PER RESOLUTION NO. 2315-87-2, DATED 02/25/87.)**

**Sec. 604. Reporting.**

The first week of each month, TERO shall report the names of employers and entities it has found honoring and not honoring the policy of this Chapter to the Executive Board.

**Sec. 605. Preference for contracts with the Tribes and tribal corporations.**

The Tribes, and all tribally owned corporations, shall give a preference to employers and entities which comply with the policy set forth in this Chapter in the awarding of contracts and in all other business transactions.

**Sec. 606. Publicity.**

(a) With the approval of the Executive Board, TERO may publicize in newspapers or otherwise, the names of employers or entities in compliance with, and the names of employers or entities not in compliance with, the Tribes' Indian preference policy;

(b) A least ten (10) days prior to the publication of the name of any employer or entity that employer or entity shall be notified that it will be

named, and in which category. If an entity believes a mistake has been made, it may so advise TERO and seek a change.

**Sec. 607. Review of TERO's actions.**

Any person aggrieved by an action of TERO, its Director or employees under this Chapter shall have a right to appeal the action to the Review Board in accordance with Chapter 3. The challenged action shall be upheld unless the person aggrieved can show that the action was arbitrary, capricious, beyond the authority of TERO as set forth in this Chapter, or in violation of federal or tribal law. The Executive Board and its Chairman, TERO and its Director and employees shall not be liable for monetary damages for actions taken in good faith under this Chapter by TERO, its Director or employees.

**Chapter 7. Liaison Officers**

**(CHAPTER AMENDED AS PER RESOLUTION NO. 231 5-87-2, DATED 02/25/87.)**

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**Sec. 701. Requirement for liaison officers assigned by TERO.**

(a) Any covered entity engaged in:

- (1) Geophysical exploration on trust land;
- (2) Drilling for oil and gas on trust land; or
- (3) Geophysical exploration or drilling for oil

and gas on fee land where a right-of-way has been granted across trust land to facilitate the activity on fee land, shall be appointed a Liaison Officer by TERO.

(b) Any covered entity constructing a road, power line, telephone line, water line, sewer line, or oil or gas transportation line or other public utility:

- (1) Across trust land; or

(2) Across fee land if a right-of-way has been granted across trust land to facilitate the construction, shall be appointed a Liaison Officer by TERO if the total cost of the project is expected to exceed twenty thousand dollars (\$20,000.00).

by the Executive Board, scaled to the time necessary for the appointment.

**Sec. 702. Duration.**

The Liaison Officer shall be appointed by TERO

(a) On a geophysical project or project subject to Section 701 (b) from the start of the project, ordinarily beginning with the surveying, through the final inspection of the Tribes;

(b) On drilling for oil and gas from site preparation through completion, or plugging and abandonment, of the well.

**Sec. 703. Duties.**

The duties of the Liaison Officer shall be as follows:

(a) Act as liaison between the covered entity and the Tribe's oil and gas committee, the Tribal Minerals Resources Department, TERO and the Bureau of Indian Affairs;

(b) Detour projects around tribal historical sites, such as buffalo jumps, teepee rings, burial grounds, social areas, etc., to the extent feasible;

(c) Inspect the right-of-way or the permitted or leased area for the condition of the land, livestock, and fencing prior to the project's start, during the project and at the completion and final inspection of the project or termination of the Liaison Officer's duties as stated in Section 702;

(d) Report all violations of land damage, fire, employee discrimination, and TERO regulations and complaints to the proper authorities;

(e) File weekly reports to the Tribal Oil and Gas Committee, or Tribal Mineral Resources Department, as appropriate, TERO, and the Bureau of Indian Affairs on all daily activities.

**Sec. 704. Liaison Fee.**

Any entity required to have a Liaison Officer under this section shall pay a fee to be determined by TERO for the manpower costs of the assignment in accordance with a fee schedule approved

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 14 - Health and Sanitation**

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## Chapter 1. Disease Control

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#### Sec. 101. Contagious disease.

(a) Whenever the Tribal Health Officer of the Public Health Service on the Fort Peck Indian Reservation has probable cause to believe that an Indian on the Reservation is afflicted with a contagious disease, he/she may apply to the Fort Peck Tribal Court for an order that the affected Indian should be removed to a hospital for examination and treatment.

(b) The application shall:

(1) State that there is probable cause to believe that the Indian is afflicted with a contagious disease, and what disease, and set forth the facts supporting probable cause;

(2) State that the Indian affected will not voluntarily accept treatment and examination; and

(3) State that the Indian, by reason of his/her illness, is endangering or likely to endanger the public health of the community, and set forth the facts supporting that conclusion.

(c) The Court shall promptly set the matter for hearing, and shall cause the affected Indian to be served with reasonable prior notice of the time and place of the hearing, together with a copy of the application of the Tribal Health Officer.

(d) If after the hearing the Court determines that the Indian is afflicted with a contagious disease, or that there is probable cause to believe the Indian is afflicted with a contagious disease, and that the Indian, by reason of his/her illness, is endangering or likely to endanger the public health, the Court may issue an order for the removal of the Indian to a hospital or other appropriate place for such examination and treatment as may be required. Otherwise he/she shall be discharged. The Court, in its discretion, may upon finding probable cause, order the Indian examined prior to the conclusion of the hearing.

(e) The order of the Court shall constitute continuing authority for the detention of the Indian in the place designated until the Indian is discharged by the proper medical authorities or by the Court; provided that the Indian shall not be detained if

he/she is found not to have a contagious disease, nor shall he/she be detained longer than necessary to protect the public health of the community.

(f) Removal, detention, examination and treatment under this Section shall be without cost to the affected Indian.

## Chapter 2. Waste Disposal and Sewage Facilities

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#### Sec. 201. Littering.

(a) No person shall abandon, throw or deposit any destructive, injurious or unsightly material, including but not limited to any glass bottles, glass, nails, tacks, wire, cans, rubbish, motor vehicle parts, or animal carcass, upon or alongside any public right of way, public road or highway.

(b) Any person removing a wrecked or damaged vehicle from a public right of way, public road or highway shall at the same time remove any glass, injurious substance or debris which is a remnant or deposit from such vehicle.

(c) No person shall dump or deposit any garbage or refuse of any kind or any animal carcass on any trust land, except on lands specifically designated by the Fort Peck Tribal Executive Board as a public dumping ground.

(d) Violations. Any Indian who violates this Section shall be punished in accordance with Section 470 of Title 7 (Criminal Offenses). Any other person who shall violate this ordinance shall be delivered to the custody of Federal or State law enforcement officers for prosecution under applicable Federal or State law.

#### Sec. 202. Waste disposal.

No person shall dispose of any body waste, garbage, trash, rubbish or other waste in such a manner as to:

(a) Contaminate any underground water supply used for domestic purposes;

(b) Pollute or contaminate the waters of any bathing area or any stream or body of water used for public or domestic water supply purposes or for recreational purposes;

(c) Create a breeding or harborage place for insects or rodents;

(d) Make such waste accessible to insects, rodents or other possible carriers of disease which may come into contact with food or drinking water;

(e) Make such waste an unsightly appearance or source of noxious order; or

(f) Otherwise be detrimental to the health, welfare and well-being of the community.

**Sec. 203. Sewage and other facilities.**

Any person who has, possesses or operates any sewage facilities, garbage and refuse disposal facilities, water wells, pumps or plumbing equipment and attachments thereto, shall:

(a) Operate such facilities or equipment in an approved sanitary manner, so as not to create a public health hazard; and

(b) Fully maintain and repair such facilities or equipment in such a manner as to keep them operative and so as not to create a public health hazard.

**Sec. 204. Enforcement.**

The law enforcement agency for the Fort Peck Indian Reservation is authorized to enter any premises, dwelling or housing structure to make inspections pursuant to Sections 202 and 203 of this Chapter. If any person refuses to allow an authorized law enforcement officer to inspect a premises, dwelling or housing structure, the law enforcement agency may apply to the Tribal Court for a warrant to enter and inspect the premises, dwelling or housing structure. The Court may issue such a warrant if it finds, after a hearing, either that there is probable cause to believe that the premises, dwelling or housing structure contains a violation of Section 202 or 203, or that the premises, dwelling or housing structure was

selected for inspection pursuant to a general administrative plan for enforcement of Sections 202 and 203.

**Sec. 205. Severability.**

Should any section, paragraph, sentence, clause or phrase of this Chapter be declared unconstitutional or invalid for any reason, the remainder of said Chapter shall not be affected thereby.

**Chapter 3. Sanitation Requirements for Restaurants**

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**Sec. 301. Definitions.**

For the purposes of this chapter:

(a) Restaurant shall mean any restaurant, coffee shop, cafeteria, short order café, luncheonette, tavern, sandwich stand, soda fountain or other eating or drinking establishment, as well as kitchens or other places in which food or drink is prepared for sale elsewhere, located on trust land within the Reservation or owned and operated wholly or in part by any Indian within the Reservation.

(b) Itinerant Restaurant shall mean a restaurant located on trust land within the Reservation or owned and operated wholly or in part by any Indian within the Reservation, operating for a temporary period in connection with a fair, carnival, circus, public exhibition, Tribal ceremonial or other gathering.

(c) Employee shall mean any person who handles food or drink during preparation or serving, or who comes in contact with any eating or cooking utensils, or who is employed in a room in which food or drink is prepared or served.

(d) Utensils shall include any kitchenware, tableware, glassware, cutlery, utensils, containers

or other equipment with which food or drink comes in contact during storage, preparation or serving.

(e) Authorized Representative shall mean a person appointed by the Fort Peck Executive Board to administer this Chapter.

### **Sec. 302. Sanitation requirements.**

All restaurants shall comply with the following requirements:

(a) Floors. The floors of all rooms in which food or drink is stored, prepared or served, or in which utensils are washed, shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair.

(b) Walls and ceilings. Walls and ceilings of all rooms shall be kept clean and in good repair. All walls and ceilings of rooms in which food or drink is stored, prepared or served shall be finished in light color. The walls of all rooms in which food or drink is prepared or utensils are washed shall have a smooth washable surface up to the level reached by splash or spray.

(c) Doors and windows. When flies are prevalent, all openings into the outer air shall be effectively screened and doors shall be self-closing, unless other effective means are provided to prevent the entrance of flies.

(d) Lighting. All rooms in which food or drink is stored, prepared or served, or in which utensils are washed, shall be well lighted.

(e) Ventilation. All rooms in which food or drink is stored, prepared or served, or in which utensils are washed, shall be well ventilated.

(f) Toilet facilities. Every restaurant shall be provided with adequate and conveniently located toilet facilities for its employees, and customers. In restaurants constructed after August 11, 1964, toilet rooms shall not open directly into any room in which food, drink or utensils are handled, stored or served. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept in a clean condition, in good repair, and well lighted and ventilated. Hand-washing signs shall be posted in each toilet room used by employees. In case privies or earth closets are permitted and

used, they shall be separate from the restaurant building, and shall be of a sanitary type.

(g) Lavatory facilities. Adequate and convenient hand washing facilities shall be provided, including hot and cold running water, soap and approved sanitary towels. The use of a common towel is prohibited. No employee shall resume work after using the toilet room without first thoroughly washing his/her hands.

(h) Water supply. Running water under pressure shall be easily accessible to all rooms in which food is prepared or utensils are washed, and the water supply shall be adequate, and of a safe, sanitary quality.

(i) Construction of utensils and equipment. All multi-use utensils and all show and display cases or windows, counters, shelves, tables, refrigerating equipment, sinks and other equipment or utensils used in connection with the operation of a restaurant shall be so constructed as to be easily cleaned and shall be kept in good repair. Utensils containing or plated with cadmium or lead shall not be used, except that utensils using solder containing lead for jointing are permitted.

(j) Cleaning and bacteria treatment of utensils and equipment.

(1) All equipment, including display cases or windows, counters, shelves, tables, refrigerators, stoves, hoods and sinks, shall be kept clean and free from dust, dirt, insects and other contaminating material. All cloths used by waiters, chefs and other employees shall be clean. Single-service containers shall be used only once.

(2) All multi-use eating and drinking utensils shall be thoroughly cleaned and subjected to an effective bactericidal process after each usage. All multi-use utensils used in the preparation or serving of food and drink shall be thoroughly cleaned and subjected to an effective bactericidal process after each usage. All multi-use utensils used in the preparation or serving of food and drink, shall be thoroughly cleaned and subjected to an effective bactericidal process immediately following the day's operation. Drying cloths, if used, shall be clean and shall be used for no other purpose.

(3) No article, polish or other substance containing any cyanide preparation or other poisonous material shall be used for the cleaning or polishing of utensils.

(k) Storage and handling of utensils and equipment. Utensils shall be stored in a clean, dry place protected from flies, dust and other contamination, and shall be handled in such a manner as to prevent contamination as far as practicable. Single-service utensils shall be purchased only in sanitary containers, shall be stored therein in a clean, dry place until used, and shall be handled in a sanitary manner.

(l) Disposal of wastes. All wastes shall be properly disposed of, and all garbage and trash shall be kept in suitable receptacles, in such manner as not to become a nuisance. All waste disposal shall comply with Chapter 2 of this Title.

(m) Refrigeration. All readily perishable food and drink shall be kept at or below fifty degrees (50) Fahrenheit except when being prepared or served. Waste water from refrigeration equipment shall be properly disposed of.

(n) Wholesomeness of food. All food and drink shall be clean, wholesome, free from spoilage and so prepared as to be safe for human consumption. All milk, fluid milk productions, ice cream, and other frozen desserts shall be served in the individual original containers in which they were received from the distributor or from a bulk container equipped with an approved dispensing device, except that cream may be served from the original bottle or from a dispenser approved for such service. All oysters, clams and mussels shall be from approved sources, and if shucked shall be kept until used in the containers in which they were placed at the shucking plant.

(o) Storage, display and serving of food and drink. All food and drink shall be stored, displayed and served so as to be protected from dust, flies, vermin, depredation and pollution by rodents, unnecessary handling, droplet infection, overhead leakage and other contamination. No animals or fowls shall be kept or allowed in any room in which food or drink is prepared, stored or served. All means necessary for the elimination of flies, roaches and rodents shall be used.

(p) Cleanliness of employees. All employees shall wear clean outer garments and shall keep their hands clean at all times while engaged in handling food, drink, utensils or equipment. Employees shall not expectorate or use tobacco in any form in rooms in which food is prepared or served. No person suffering from any disease transmissible by contact or through food or drink or who is a carrier of the germs of such a disease shall be employed in any capacity.

(q) Miscellaneous. The premises of all restaurants shall be kept clean and free of litter or rubbish. None of the operations connected with a restaurant shall be conducted in any room used as living or sleeping quarters. Adequate lockers or dressing rooms shall be provided for employees' clothing and shall be kept clean. Soiled linens, coats and aprons shall be kept in containers provided for this purpose.

### **Sec. 303. Permits.**

(a) It shall be unlawful for any Indian to operate a restaurant within the Fort Peck Reservation, or for any person to operate a restaurant on trust land, who does not possess a valid permit from the authorized representative.

(b) The permit shall be issued by the authorized representative after an initial inspection to assure that the proposed restaurant is in compliance with Section 302 of this Chapter. It shall state the location at which the restaurant is authorized to be operated and name the persons who are authorized to operate it. The permit shall be posted in a conspicuous place in the restaurant.

(c) A permit may be temporarily suspended by the authorized representative, in accordance with Section 304(a) of this Chapter, upon the violation by the holder of any of the terms of this Chapter, or revoked after an opportunity for a hearing by the authorized representative upon serious or repeated violation.

(d) Any person whose permit has been suspended may at any time make application for the reinstatement of the permit. Within one (1) week after the receipt of a satisfactory application, accompanied by a statement signed by the applicant

to the effect that the violations leading to the suspension have been corrected, the authorized representative shall make a re-inspection, and thereafter as many additional re-inspections as he/she may deem necessary to assure himself/herself that the applicant is again complying with the requirements and, in case the findings indicate compliance, shall reinstate the permit. In any case in which an application for reinstatement is denied, the applicant may apply to the Tribal Court within fifteen (15) days for review of the denial. The Tribal Court shall affirm the action of the authorized representative if it is supported by substantial evidence.

(e) As a condition precedent to the issuance of a permit under this section, all itinerant restaurants operating on tribal land in an area, or near or adjacent to an area, set aside for powwows or other Tribal celebrations, shall comply with all rules established by the organization hosting powwow or other celebration, including the payment of all fees required. The Health Officer is authorized to enforce the requirements of this subsection and may enlist the assistance of Tribal law enforcement to close or remove itinerant restaurants that fail to comply with this subsection. **(AMENDED AS PER RESOLUTION NO. 26-2495-2013-06; DATED 6/11/2013)**

#### **Sec. 304. Inspections.**

(a) At least once every six (6) months the authorized representative shall inspect every restaurant located on trust land within the Reservation, or owned and operated wholly or in part by any Indian within the Reservation. In case the authorized representative discovers the violation of any item of sanitation, he/she shall notify the owner and operator of the restaurant of such violation. If exceptional violations are discovered, the authorized representative may suspend all operations of the restaurant until they are cured. Otherwise, he/she shall make a second inspection after the lapse of such time as he/she deems necessary for the defects to be remedied, and may, if he/she shall discover any violation of the same item of this Chapter on such second inspection, suspend

the permit required by Section 303 of this Chapter.

(b) One (1) copy of the most recent inspection report shall be posted by the authorized representative upon an inside wall of the restaurant, and said inspection report shall not be defaced or removed by any person except the authorized representative. Another copy of the inspection report shall be filed with the records of the authorized representative.

(c) Samples of food, drink and other substances may be taken and examined by the authorized representative as often as may be necessary for the detection of unwholesomeness or adulteration. The authorized representative may condemn and forbid the sale of, or cause to be removed or destroyed, any food or drink which is unwholesome or adulterated.

(d) The person operating the restaurant shall, upon request of the authorized representative, permit access to all parts of the establishment and shall permit copying of any or all records of food purchased.

#### **Sec. 305. Special provisions for itinerant restaurants.**

An itinerant restaurant shall comply with the provisions of this Chapter except as follows:

(a) In lieu of Section 302, the itinerant restaurants shall comply with the following sanitary requirements:

(1) It shall be located in clean surroundings and be kept in a clean and sanitary condition. It shall be so constructed and arranged that food, drink, utensils and equipment will not be exposed to insects or to dust or other contamination.

(2) Only food and drink which is clean, wholesome and free from adulteration shall be sold or served.

(3) An adequate supply of water of safe, sanitary quality shall be easily available for drinking and cleaning utensils and equipment.

(4) If multi-use utensils are used in preparation of food or drink, they shall comply with Section 302(i) and be handled in accordance with Sections 302(j) and (k). However, eating and

drinking utensils used by the public shall be single-service utensils only, and shall be purchased and stored in sanitary cartons and handled after removal from the cartons in a sanitary manner.

(5) Adequate provision shall be made for refrigeration of perishable food and drink. Ice used in or with food or drink shall be from an approved source and be so handled as to avoid contamination.

(6) Garbage and refuse shall be kept in tightly covered, water-tight containers until removed, and shall be disposed of in a place and manner approved by the authorized representative and in compliance with Chapter 2 of this Title.

(7) Dishwasher and other liquid wastes shall be disposed of so as not to create a nuisance.

(8) All employees shall comply with Section 302(p).

(9) Adequate and satisfactory toilet and hand washing facilities shall be readily accessible to employees. No person engaged in the handling or serving of food or drink shall return to work after using the toilet without first thoroughly washing his/her hands.

(b) Inspections required by Section 304 shall take place at the discretion of the authorized representative, and a copy of the inspection report need not be posted in the restaurant. The authorized representative may summarily suspend the permit in accordance with (c) (2) below.

(c) (1) The permit required by Section 303 shall state where and for how long the restaurant may operate.

(2) Upon failure of any person maintaining or operating an itinerant restaurant, after warning, to comply with any of these requirements, the authorized representative may summarily suspend the permit and forbid the further sale of serving of food or drink.

#### **Sec. 306. Severability.**

Should any section, paragraph, sentence, clause or phrase of this Chapter be declared unconstitutional or invalid for any reason, the remainder of the Chapter shall not be affected thereby.

## **Chapter 4. Fire Prevention**

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### **Sec. 401. Closing and posting of areas.**

(a) Upon the advice of the Tribal Executive Board, the Chairman of the Tribal Executive Board may order any area of trust land within the Reservation closed to entry by the general public because of the danger of fire.

(b) Whenever an area is closed under subsection (a), such closing shall be announced through available news media, to the extent appropriate, and signs stating that the area is closed to the public, and that campfires and smoking are prohibited, shall be posted in a conspicuous place on each road and trail entering the closed area. However, the validity of any order closing an area shall not be affected by failure to make the announcements or post the signs as provided by this subsection.

### **Sec. 402. Persons prohibited.**

All persons are prohibited from entering or remaining in areas closed under Section 401, except:

(a) Persons who regularly reside within the closed area may go to and from their homes and continue such ordinary activities in and around their homes as do not constitute an unreasonable fire hazard.

(b) Officers and employees of the United States, or the Tribes, in the performance of their official duties.

(c) Lessees, licensees or permittees of the Tribes, and their officers and agents, for the purpose of going to or from their leased, licensed or permitted premises, and conducting activities in such a manner as to not constitute an unreasonable fire hazard.

(d) Grantees of rights of way for the purpose of necessary maintenance of their right-of-way in

such a manner as to not constitute and unreasonable fire hazard, but the closing order may prohibit or restrict the use of any road right-of-way by the general public.

**Sec. 403. Removal of unauthorized persons.**

(a) It shall be the duty of any authorized law enforcement officer to warn any unauthorized person found in a closed area to leave the closed area at once, and if such person does not comply without delay, to remove such person from the closed area.

(b) (1) Any Indian removed may be detained only long enough to remove him/her, unless he/she is arrested in accordance with the procedures of Title 6 (Criminal Procedure).

(2) Any non-Indian removed shall be delivered to the custody of Federal or State law enforcement officials or reported to such officers for prosecution under applicable Federal or State law, and the Chairman of the Tribal Executive Board shall be so advised. Such person may be thereafter excluded from all trust land within the Reservation for such period of time as the Tribal Court shall determine.

**Sec. 404. Campfires and smoking prohibited.**

(a) Campfires are absolutely prohibited within any area closed under Section 401.

(b) Smoking is prohibited in any area closed under Section 401, except inside substantial buildings.

**Sec. 405. Controlled burning.**

A valid burning permit issued by the Superintendent, Fort Peck Agency, or his/her authorized representative, is required for controlled burning on any trust lands within the exterior boundaries of the Fort Peck Indian Reservation.

**Chapter 5. Dogs and Pets**

**Sections:**

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**Sec. 501. Applicability.**

This Chapter applies to all dogs kept or maintained on the Fort Peck Indian Reservation, and to all other mammals kept or maintained on the Reservation as domesticated pets, except small mammals kept in cages at all times.

**Sec. 502. Licenses.**

Each owner of a dog or domesticated pet on the Reservation shall obtain a license for it from the Tribes within a reasonable time of obtaining the dog or pet, and shall thereafter obtain a renewal license prior to the beginning of the calendar year for each year the dog or domesticated pet is kept or maintained on the Reservation. No license or renewal license shall be issued unless a current certificate of vaccination is presented at the time the license is sought. A reasonable fee for licenses and renewal licenses, established from time to time by the Chairman of the Tribal Executive Board, shall be collected when the license is issued.

**Sec. 503. Vaccination.**

(a) All dogs or domesticated pets shall be vaccinated against rabies with a modified live virus inactivated embryo serum. Each owner of a dog or domesticated pet shall see to it that its rabies vaccination is current. Certificates of vaccination shall be retained by the owner and are subject to review upon request by the Fort Peck Tribal police.

(b) All dogs and domesticated pets shall wear collars upon which is displayed a rabies vaccination tag showing the number of the certificate of vaccination and the year of expiration of the vaccination.

**Sec. 504. Stray dogs.**

(a) The Tribes shall maintain a shelter for the collection of all unclaimed or unwanted dogs or domesticated pets. The Tribes shall also provide facilities for the destruction in a humane manner of dogs or domesticated pets not licensed or vaccinated in accordance with this Chapter.

(b) Dogs and domesticated pets shall be kept at the shelter for a period of not less than five (5) days before being destroyed. A dog or domesticated pet may be claimed by its owner at any time before it is destroyed, and by any other person after the five (5) day waiting period and before it is destroyed. Any person other than the owner may request that a particular dog or domesticated pet be reserved for him/her and that he/she be given a chance to claim it before it is destroyed if it is not claimed by the owner during the five (5) day period.

(c) Before a dog or domesticated pet may be removed from the shelter, the claimant shall:

(1) Obtain a license from the Tribes for it, if it is not already currently licensed to the claimant;

(2) Present a certificate of vaccination, or have the pet vaccinated at the shelter and pay a reasonable charge therefor; and

(3) Pay a reasonable board fee established by the Chairman of the Executive Board for each day the dog has been retained at the shelter.

(d) Notwithstanding subsections (b) and (c) of this Section, any unlicensed stray dog or domesticated pet which is a health hazard to the populace of the Fort Peck Reservation may be destroyed immediately.

**Sec. 504-A. Control of pets.**

In any collection of five (5) or more residences, including all recognized Reservation cities, towns and communities, all owners of dogs and other domesticated pets shall prevent their pets from freely roaming from the owner's immediate property. This shall be achieved by the owner's fencing of their property, directly securing their pet(s) by means of leash or harness, or by any other means which adequately prevents their pets from roaming away from the owner's property. Any pet(s), whether licensed or unlicensed, that roam

away from the owner's property shall be considered a stray animal, and shall be dealt with as directed by Section 504.

**(AMENDED AS PER RESOLUTION NO. 2603-87- 5, DATED 05/11/87.)**

**Sec. 504-B. Limitations on dangerous animals.**

(a) It is unlawful for any person to have, own, possess, keep, exercise control over, maintain, harbor, transport or sell within the Fort Peck Reservation any pit bull or restricted breed of dog.

(1) *Pit bull* is defined as any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying the majority of physical traits of any one or more of the above breeds, or any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the American Kennel Club for any of the above breeds.

(2) *Restricted Breed of Dog* shall mean any Rottweiler, Bull Mastiff or wolf breed hybrid or any dog displaying the majority of physical traits of these breeds.

(b) Owners of pit bull dogs and restricted dogs licensed within 60 days of the ordinance's effective date could keep their dogs only under restricted conditions, including:

(1) if the dog is licensed, spay/neutered, and vaccinated against rabies;

(2) the owner is at least 21 years of age and has at least \$100,000 US liability insurance;

(3) the dog is kept indoors or locked in a secured pen, with warning signs posted at entrances to the property;

(4) when off the property, the dog must be kept in a secure transportable container or must wear a muzzle while held on a four-foot long non-extensible leash;

(5) the dog may not be sold or transferred to anyone outside the owner's immediate family;

(6) the owner must notify the Fort Peck Tribal Health Department immediately if the dog is loose, stolen, at-large, unconfined, has mauled, bitten, attacked, threatened, or in any way menaced another animal or human or has died.



(c) Any animal that inflicts a potentially dangerous or severe injury on a person or animal can be ordered to be destroyed immediately after the 10 day quarantine period.

**(AS PER RESOLUTION NO. 27-1885-2015-05; DATED 5/26/2015; 27-286-2011-07; DATED 7/27/2015)**

**Sec. 505. Quarantine.**

(a) Any animal capable of carrying rabies which is reported to have bitten any person shall be quarantined for a period of not less than 10 days with a qualified veterinarian or other approved authority. Such animal shall not be released without permission from competent authority.

(b) Should the animal be quarantined at the Tribal shelter, the owner shall pay the Executive Board for the animal at the rate established under Section 504(c)(3) for each animal that is held.

**(AMENDED AS PER RESOLUTION NO. 27-1886-2015-05; DATED 5/26/2015)**

**Sec. 506. Enforcement.**

This Chapter shall be enforced by the Fort Peck Tribes' animal control officer in cooperation with the Bureau of Indian Affairs police.

**Sec. 507. Severability.**

Should any section, paragraph, sentence, clause or phrase of this Chapter be declared unconstitutional or invalid for any reason, the remainder of the Chapter shall not be affected thereby.

**Sec. 508. Violations.**

Violation of any provision of this chapter shall constitute a Class B misdemeanor.

**Chapter 6. Tribal Board of Health**

**Sections:**

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**Sec. 601. Definitions**

(a) “Local board” means the Fort Peck Tribal Board of Health.

(b) “Local Health Officer” means the Tribal Health Officer appointed by the Tribal Board of Health.

(c) “Physician” means a physician legally authorized to practice medicine.

**Sec. 602. Federal funds – acceptance – allocation.**

With the approval of the Tribal Board of Health, the Tribal Health Officer may accept funds for public health from an agency of the Federal Government, or from any other agency or person, and allocate funds within the Tribal Health Department.

**Sec. 603. Tribal Board of Health – composition.**

There is a Tribal Board of Health consisting of the Health, Education and Welfare Committee, whose members are appointed by the Tribal Executive Board.

**Sec. 604. Legal Advisor.**

The Tribal attorneys shall serve as legal advisors to the Tribal Board of Health and shall represent the Board in those matters relating to the functions, powers and duties of the Board.

**Sec. 605. Functions, Powers and Duties of the Tribal Board of Health.**

(a) The Board shall:

(1) Appoint a local health officer, who will be the Tribal Health Director, unless special circumstances should cause the Tribal Board of Health to appoint a physician or someone else with appropriate education and experience, and fix his salary.

(2) Elect a chairman and other necessary officers.

(3) Employ necessary, qualified staff.

(4) Adopt bylaws to govern meetings.

(5) Hold regular and special meetings as necessary.

(6) Supervise destruction and removal of all sources of filth which cause disease.

(7) Guard against the introduction of communicable disease.

(8) Supervise inspections of public establishments for sanitary conditions and safety.

(9) Guard against the introduction of hazardous materials and wastes.

(10) Supervise the clean-up and disposal of all hazardous wastes.

(b) The Board may:

(1) Adopt regulations and fees ensuring proper, safe construction and operation of sanitary facilities (water supply, sewage disposal and solid waste disposal).

(2) Quarantine persons who have communicable diseases.

(3) Require isolation of persons or things which are infected with communicable diseases or contaminated with hazardous materials or are otherwise unsafe or hazardous.

(4) Furnish treatment for persons who have communicable diseases.

(5) Prohibit the use of places which are infected with communicable diseases or contaminated with hazardous materials or are otherwise unsafe or hazardous.

(6) Require and provide means for disinfecting or decontaminating places which are infected with communicable diseases or hazardous materials.

(7) Accept and spend funds received from a federal agency, the state, other agencies or persons.

(8) Contract with other Boards of Health, federal, state or local agencies or persons for all, or part of, local health services.

(9) Reimburse local health officers for necessary expenses incurred in official duties.

(10) Abate nuisances affecting public health and safety or bring action necessary to restrain the violation of federal or tribal health and safety codes or rules.

(11) Adopt necessary regulations and fees for the control and disposal of sewage from private and public buildings.

(12) Adopt rules for the removal of filth which might cause disease or adversely affect public health.

(13) Adopt rules for the control of communicable diseases and hazardous materials.

(14) Adopt rules on sanitation and safety in public buildings which affect public health.

(15) Adopt rules for construction, heating, ventilation, water supply, waste disposal, plumbing, safety, fire prevention, and other items in public or private facilities which might endanger human lives or health.

**Sec. 606. Tribal Health Officer – powers and duties.**

(a) The Tribal Health Officer or his authorized representatives, shall:

(1) Make inspections for health and safety conditions.

(2) Issue written orders for the destruction and removal of all filth which might cause disease.

(3) Order buildings or facilities where people congregate closed due to health or safety hazards.

(4) Establish and maintain quarantines.

(5) Supervise the disinfecting of facilities or the clean-up and disposal of hazardous materials.

(6) File a complaint with the Tribal Court if provisions of this Title are violated or with the Federal Court if federal regulations are violated.

(7) Enforce federal and tribal laws, codes and regulations and construction standards, that pertain to public health and safety.

(b) The Tribal Health Officer or his authorized representatives may:

(1) Forbid persons to assemble in any place if the assembly endangers public health and safety.

(2) Require isolation of persons or things which are infected with communicable disease or contaminated with hazardous materials.

(3) Require disinfecting or decontamination of places which are infected with communicable disease or contaminated with hazardous materials.

(4) Abate nuisances or public health or safety hazards or bring action necessary to restrain the violation of federal or tribal health and safety codes or rules.

#### **Sec. 607. Tribal Health Officer – assistance of Tribal and Federal officials.**

The Tribal Health Officer or his authorized representatives may request tribal or other government personnel to assist them in carrying out the provisions of this Title of the Comprehensive Code of Justice. If the official does not render the service, he is guilty of a misdemeanor and may be removed from office.

#### **Sec. 608. Cases of Communicable Disease – reports of physician or practitioners of the healing arts.**

If a physician or other practitioner of the healing arts examines or treats a person whom he believes has a communicable disease, or a disease declared reportable by the Tribal Board of Health, he shall immediately report the case to the Tribal Health Officer. The report shall be in the form and contain information, prescribed by the Health Officer.

#### **Sec. 609. Vaccinations**

If there is a reasonable belief that a highly communicable disease exists or may exist, the department may require all persons frequenting any public facility, within the infected or threatened area to be vaccinated, or to present evidence of successful vaccination. Unless a person presents evidence of vaccination, it is unlawful for him to enter any public facility in the area.

#### **Sec. 610. Diseased prisoners – removal from jail to medical facility by the Tribal Health Officer.**

On written order of the Tribal Health Officer, a diseased prisoner who is held in a jail or detention facility and who is considered dangerous to the health of other prisoners may be removed to a medical facility or other place of safety. When the prisoner recovers from the disease, he shall be returned to jail. If the prisoner was committed to jail by order of the court, the order for removal and treatment shall be signed by the Tribal Health Officer and filed with the court.

#### **Sec. 611. Obstructing the Tribal Health Officer in the performance of his duties – unlawful.**

It is unlawful to:

(a) Hinder the Tribal Health Officer or his authorized representatives in the performance of their duties.

(b) Remove or deface any placard or notice posted by the Tribal Health Officer or his representatives.

(c) Violate a quarantine or a lawful order of the Tribal Health Officer or his authorized representatives.

#### **Sec. 612. Penalties**

(a) If a person refuses or neglects to comply with a written order of the Tribal Health Officer or his designated representatives within a reasonable time specified in the order, the Health Officer may cause the order to be complied with and initiate any action to recover any expenses incurred from the person who refused or neglected

to comply with the order. The action to recover the expenses shall be brought in the name of the Tribes.

(b) A person who does not comply with rules adopted by the Tribal Board of Health is guilty of a Class A misdemeanor, unless otherwise specified in another section of the Comprehensive Code of Justice.

**Sec. 613. Reporting of AIDS and HIV diagnoses.**

(a) A physician or other medical practitioner who examines or tests an individual on the Reservation, and makes a diagnosis of Acquired Immunodeficiency Syndrome (AIDS), AIDS-Related Complex (ARC), or Human Immunodeficiency Virus (HIV) infection shall, within 24 hours, inform the Tribal Health Officer (or an official designated by him or her) of the diagnosis. The report shall include the name, age and address (if known) and be in the form, and contain information, prescribed by the Tribal Health Officer.

(b) The administrator of a hospital or nursing home or other medical facility in which a diagnosis of AIDS, ARC, or HIV infection is made, and the director of a medical laboratory in which such tests are conducted, shall ensure that a report has been made to the Tribal Health Officer. If no such report has been made, then he or she shall make the report.

(c) Any person required to make a report under the above provisions, who does not make the report within the stipulated time, shall be subject to a civil fine of a maximum amount of \$5,000.00 for each offense.

(d) Any information received by the Tribal Health Officer in compliance with this section, that identifies the person for whom a diagnosis of AID, ARC, or HIV infection has been made, shall be treated as confidential. Such confidential information shall not be open to public scrutiny and shall be disclosed to persons other than employees of the Tribal Health Department only

(1) With the consent of the patient (or his/her legal representative) or

(2) In compliance with Section 614 of this Chapter or some other legal requirement, or

(3) When such disclosure is otherwise in accordance with established medical ethics and procedure. When such information is disclosed to any person, he/she shall be informed of its confidential nature, and shall keep the information confidential.

**Sec. 614. Contact notification of HIV-infected persons.**

The Tribal health Officer, a physician, or a nominee of the Tribal Health Officer, may inform persons whom they reasonably believe have had contacts with an individual infected with the Human Immunodeficiency Virus (HIV), such that they may have been exposed to the HIV under the following conditions:

(a) The physician or Tribal Health Officer reasonably believes that there is a significant risk of exposure to the person informed,

(b) The infected individual has been counseled regarding the need to inform such potential contacts, and the physician or Health Officer believes that the infected individual will not do so,

(c) The physician or Health Officer informs the infected individual or his/her intention to inform the person,

(d) The person is informed of the risk by a physician or some other person appropriately placed to counsel the contact,

(e) The person informed is given information about HIV testing centers and other facilities offering counseling and services for AIDS/HIV patients, and

(f) The identity of the HIV-infected individual from whom the person may have contracted the infection is not disclosed. Provided, however, that physicians and the Tribal Health Officer are not under any legal obligation to warn contacts that they may have been exposed to the HIV.

**(BY RESOLUTION NO. 2651-97-4, DATED 04/25/97.)**

**Chapter 7. Sexually Transmitted Diseases Sections:**

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**Sec. 701. Sexually transmitted diseases defined.**

Human immunodeficiency virus (HIV), syphilis, gonorrhea, chancroid, chlamydia genital infections, lymphogranuloma venereum, and granuloma inguinale are sexually transmitted diseases. Sexually transmitted diseases are contagious, infectious, communicable, and dangerous to public health.

**Sec. 702. Powers and duties of department.**

The Fort Peck Tribal Health Department shall undertake to prevent, control, and prescribe treatments for sexually transmitted diseases and may conduct education campaigns for this purpose.

**Sec. 703. Rules of department binding.**

Rules adopted by the Fort Peck Tribal Health Department for carrying out the provisions of this chapter are binding on all persons and have the effect of law.

**Sec. 704. Duty to report cases.**

If a physician or other person knows or has reason to suspect that a person who has a sexually transmitted disease is behaving in a way that might expose another to infection, the physician or person shall immediately notify the Fort Peck Tribal Health Department of the name and address of the diseased person and the essential facts in the case.

**Sec. 705. Powers and duties of health officers.**

(a) If found necessary or desirable to protect public health, the Director of the Fort Peck Tribal Health Department or his/her agents shall:

- (1) Examine or have examined persons reasonably suspected of being infected with a sexually transmitted disease;
- (2) Require persons infected to report for treatment to a reputable physician and continue treatment until cured;
- (3) Isolate or quarantine persons who refuse examination or treatment;
- (4) Investigate sources of infection of a sexually transmitted disease.

(b) No one but the Director of the Fort Peck Tribal Health Department may terminate the isolation or quarantine. Examinations may be made repeatedly as deemed advisable or desirable.

**Sec. 706. Examination and treatment of prisoners.**

Any person incarcerated within the Reservation may be examined for a sexually transmitted disease. If infected, the person must be treated by health authorities.

**Sec. 707. Permissible release of information concerning infected persons.**

(a) Information concerning persons infected or reasonably suspected to be infected with a sexually transmitted disease may be released only:

- (1) To the Director of the Fort Peck Tribal Health Department or his/her designated agent;
- (2) To a physician who has written consent of the person whose record is requested.

(b) For the purposes of this section, the term “information” includes all knowledge or intelligence and all communications of all knowledge or intelligence, oral or written or in record form, and also includes but is not limited to information concerning the location or nature of the activities or work of all Tribal, state, or federal employees or officers engaged in sexually transmitted disease eradication work. Communications to and from personnel are privileged.

(c) The purpose of this section is to protect and preserve the principle of confidentiality in sexually transmitted disease work by Tribal, state and federal public service personnel, as confidentiality is important to success of all sexually transmitted disease eradication work and endeavor, and to require that the principle of confidentiality in the work remain inviolate.

**Sec. 708. Infected person not to expose another to sexually transmitted disease.**

A person infected with a sexually transmitted disease may not knowingly expose another person to infection.

**Sec. 709. Violation a misdemeanor.**

A person who violates provisions of this chapter or rules adopted by the Fort Peck Tribal Health Department concerning a sexually transmitted disease or who fails or refuses to obey a lawful order of the Director of the Fort Peck Tribal Health Department is guilty of a Class B misdemeanor for the first offense and a Class A misdemeanor for the second and subsequent offenses.

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 15 – Landlord and Tenant – Forcible Detainer and Eviction**

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## **Chapter 1. Jurisdiction**

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### **Sec. 101. Landlord and Tenant Proceedings.**

The Tribal Court is hereby vested with jurisdiction in all proceedings where forcible detainer or eviction is an appropriate remedy.

## **Chapter 2. Grounds and procedure for forcible detainer or eviction**

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### **Sec. 201. Forcible detainer or eviction.**

(a) A person may be evicted:

(1) Who, as lessee, or tenant, in person or by subtenant

(i) Fails to pay the rent for seven (7) days after the same shall be due, or

(ii) Holds over after the termination of the lease or expiration of the term, or

(iii) Fails to pay costs or damages that have been due and payable for thirty (30) days or more.

Partial payment of rent, costs or damages shall not excuse the payment of any balance due upon demand;

(2) For serious or repeated violations of a rental agreement, or other contract, or of any reasonable rules or regulations of the Fort Peck Housing Authority, the Tribes, HUD, or of any applicable building or housing codes;

(3) For nuisance, damage, destruction, or injury to property or to the person, property or peace of tenants or persons on premises administered by the Housing Authority, or damage to common areas, or to property or common areas;

(4) Who occupies any premises without permission or agreement, following reasonable written demand to leave by a person in authority over the premises;

(5) Who by force, intimidation, fraud, or stealth, enters upon the prior actual possession of real property of another and detains the same;

(6) Who after entering peaceably upon real property, turns out the party in possession by force, threats, or menacing conduct;

(7) Who by force or by threat of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise;

(8) Who continues in unauthorized possession;

(i) After a sale of the real property, or

(ii) After a foreclosure sale of real property covered by a HUD mortgage as defined in Title 25, Section 102, or

(iii) After expiration of the period of redemption following a sale in foreclosure of any non HUD mortgage, or

(iv) After a sale in partition under an order or decree of a court of competent jurisdiction;

(9) For any valid reason not otherwise covered in this Section 201 (a).

### **Sec. 202. Notice to quit.**

(a) When notice to quit is required. Except as provided in Subsection 202 (b), when a person entitled to possession desires to obtain possession of a dwelling or dwelling unit or other real property and there exists one or more of the valid grounds to evict listed in Section 201 of this Title, the person entitled to possession shall give notice to quit possession of such property to the party in possession in accordance with the provisions of this Section 202.

(b) Exception when the Fort Peck Housing Authority is the landlord. When the landlord is the Fort Peck Housing Authority, the Housing Authority's notice to quit or termination notice shall qualify as the notice to quit required by this Title 15 so long as the Housing Authority's time requirements are at least as long as those fixed in Subsection 202(e).

(c) Contents of notice to quit. The notice to quit shall be in writing, shall state the grounds for eviction and the date by which the tenant or persons in possession must quit possession and vacate the property. The notice may be in the following form:



“You are hereby given notice to quit possession or occupancy of the dwelling unit [or other real property] now occupied by you at [here insert address or other reasonable description of the location of the dwelling unit or other real property], on or before the [here insert the date] for the following reason [here insert the reason or reasons for the notice to quit possession using the language of Section 201, Title 15]. Signed,”[her insert the signature, name and address of the person seeking possession, as well as the date and place of signing].”

(d) Time periods for service of notice to quit. The notice must be served within the following periods of time:

(1) No less than seven (7) calendar days prior to the date to quit specified in the notice to quit for violation of this Section 201(a)(1) and(9).

(2) No less than three (3) calendar days prior to the date to quit specified in the notice to quit for violation of this Section 201(a)(2) through (a)(7).

(3) No less than thirty (30) calendar days prior to the date to quit specified in the notice to quit for violation of this Section 201 (a)(8).

(e) Service of notice to quit.

(1) Notice to quit shall be served in the manner provided in Title 8, Section 102 of this Code. If the notice cannot be served on an adult, or other person of suitable age residing on the premises, service may be made by securing a copy of the notice to the main entry door of the unit or residence or, if there is no unit or residence and it is feasible to do so, by securely posting a copy at the entrance to the property, in such a manner that it is not likely to blow away, and by mailing a copy of the notice, certified mail return receipt requested, to the last known address of the person(s) to whom the notice is directed. If suit is instituted, the notice to quit, the return of service duly verified, and the proof of certified mailing shall be attached to the complaint.

(2) A copy of the notice to quit served under the preceding subsection (1) with proof of service shall be delivered to the respective offices of the Chairman of the Tribes and the Superintendent, Fort Peck Indian Agency

(3) Where an emergency exists, such as a fire or conditions making a dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be served and be returnable in a period of time that is reasonable, under the circumstances.

**Chapter 3. Judicial eviction procedures.**

**Sections:**

Sec. 301. Complaint for eviction: order to respond..... 2  
 Sec. 302. Judgment..... 3  
 Sec. 303. Stay of execution of the judgement. .... 4  
 Sec. 304. Removal, storage and sale of personal property following forcible eviction. .... 4

**Sec. 301. Complaint for eviction: order to respond.**

(a) Complaint. In landlord-tenant matters, the notice to quit where required under Section 202(a) is a prerequisite to filing suit unless waived by the Court for good cause shown. In landlord and tenant matters, if possession of the property has not been surrendered by the date set forth in the notice to quit, and in all other situations where eviction or forcible detainer is sought, suit may be commenced by filing a complaint in the Tribal Court for eviction or forcible detainer and for such other relief as the Court may deem just and proper. The complaint shall include the following:

(1) The names of the party(ies) plaintiff and party(ies) defendant;

(2) The address or other identification of the location of the premises;

(3) In landlord-tenant matters, a description of the pertinent rental or other agreement, if any, and a statement that all required notices to quit and all other required termination notices have been served in accordance with this code or other applicable tribal laws;

(4) If the party bringing suit (plaintiff) is the Fort Peck Housing Authority, a statement that the

Housing Authority has complied with all required regulatory processes prior to filing the eviction action;

(5) The grounds for eviction or forcible detainer; and

(6) A statement of the relief demanded, including where applicable, a request that the Court order the defendant(s) and persons in possession to vacate the premises in not less than five days after service of the summons and complaint, and for damages, costs of litigation, attorneys' and other fees, and such other relief as may be appropriate.

(b) Order for appearance or to respond in landlord-tenant suits. Promptly on the date that the complaint in the landlord-tenant suit is filed, the Court, if it determines that the complaint appears to be in compliance with the provisions of Section 301 of this Chapter, shall issue an order requiring the named defendant(s) to appear in person before the Court or to respond in writing to the complaint by a date no more than three (3) calendar days following service of the summons, complaint and order for appearance or to respond. The order for appearance shall provide;

(1) That unless the named defendant(s) timely appear(s) in response to the order and presents defenses satisfactory to the Court, the defendant and all occupants of the premises will be forcibly evicted together with their personal property; and

(2) That a hearing on any judgement for money shall be held not more than fifteen (15) days after the complaint is filed, unless the defendant(s) consent(s) that such matters be heard at the earlier hearing set on the demand for eviction.

(c) Service of process. Except as otherwise provided in this subsection service of process shall be in accordance with Title 8, Section 102 of this Code. When the suit involves a matter where notice to quit has been given pursuant to Section 202(a) of this Title, a copy of the notice and the order to appear shall be annexed to the complaint and shall be served without delay within twenty-four (24) hours after the complaint is filed.

(d) Delivery of the complaint and order to the Tribal Chairman and Superintendent. In any action for eviction arising under this Chapter 3, if the tenant in possession depends on social security, or public assistance for funds to pay the rent, the Chairman of the Tribe and the Superintendent of the Fort Peck Indian Agency shall be notified of the proceeding by delivering a copy of the complaint and the Court's order to the respective offices of the Chairman and Superintendent.

### **Sec. 302. Judgment.**

(a) Contents. In landlord and tenant cases, the Court, within five (5) calendar days after the date of the hearing shall grant the relief supported by the record. The judgement may:

(1) Order the immediate eviction of a tenant and delivery of the premises to the plaintiff;

(2) Grant damages, costs, attorneys' fees and other fees as required by the law and evidence, plus interest;

(3) Where appropriate, establish a payment plan for the tenant;

(4) Where appropriate, order that the tenant grant a power of attorney to a bonded officer of the Court authorizing the Superintendent of the Fort Peck Indian Agency, under a plan approved by the Superintendent to pay to the bonded officer the judgement and where applicable, prospective rent out of the Judgement debtor's per capita payments or the tenant's IIM account.

(5) Order the parties to carry out the obligations imposed by law;

(6) Grant such further relief as may be permitted by law.

(b) Order of eviction. The order of eviction shall inform the defendant and those claiming under the defendant that unless the premises are voluntarily vacated by the effective date fixed by the Court, the defendant and occupants of the premises will be forcibly evicted by tribal law enforcement officers. That the defendant is free to remove from the premises all personal property on the premises will be subject to storage, sale, and disposal as set forth in Section 304 of this Title, and judgement for the net costs and expenses of

removal, storage and sale will be entered against the defendants.

**Sec. 303. Stay of execution of the judgement.**

The Court may not stay eviction except in landlord-tenant suits for nonpayment of rent, where the reason for nonpayment is delay in the receipt of social security or public assistance funds, provided that the defendant agrees in writing and on penalty of contempt, that when the defendant receives the check for social security or for public assistance funds, the defendant will deliver the check or checks to the Court for payment of the rent, and where there is information, or reason to believe that the defendant will receive a per capita, or has funds in an IIM account and the defendant provide a valid power of attorney as prescribed in Section 302(a)(4).

**Sec. 304. Removal, storage and sale of personal property following forcible eviction.**

Following forcible eviction, the personal property on the premises shall be stored by the plaintiff for at least thirty (30) days, either on the premises, or at another suitable location. The former occupants may reclaim their personal upon payment of the reasonable costs of removal and storage. If such costs are not paid within the thirty (30) day storage period, the plaintiff is authorized to sell the personal property under the direction of the Court, and to remit the proceeds to the Clerk of Court together with a report of the sale receipts and an itemized statement of the cost of removal, storage and sales. Any proceeds in excess of the cost of removal, storage and sales shall be credited against any judgement for money, or if there is no indebtedness, remitted to the former occupants. With the consent of the landlord or owner of the premises, the former occupant may reclaim the personal property on such terms as may be agreed upon by the landlord or owner and the former tenant or occupant.

**(AMENDED AS PER RESOLUTION NO. 3185-97-8, DATED 08/11/97.)**

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 16 – Tribal Education Code**

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## Chapter 1. General Provisions

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### Sec. 101. Title.

This Title is the Education Code of the Fort Peck Tribes and it may be cited as the Tribal Education Code.

### Sec. 102. Authority of the Tribal Government.

(a) Inherent authority over formal education. The Fort Peck Tribal Government has the power and duty to exercise its inherent authority over formal education on the Fort Peck Reservation, by enacting and implementing a tribal education code applicable to local schools, other educational institutions, and chartered educational programs and chartered schools.

(b) Tribal laws apply to local schools and other educational institutions to maximum extent. In the operation of local schools and other educational institutions, the laws and ordinances of the Fort Peck Tribes apply to the maximum extent of the jurisdiction of the Tribes.

(c) Authority of Board to negotiate agreements to implement Tribal Education Code. As provided in the Tribal Constitution, Art. 7, Sec. 1, the Tribal Executive Board is empowered to negotiate with the federal, state, and other tribal governments, or their political subdivisions, any agreements necessary to implement the policies and provisions of this Tribal Education Code.

(d) Other rights and powers not abrogated by authority over formal education. In exercising its authority over formal education on the Fort Peck

Reservation, the Tribal Executive Board does not sanction or cause any abrogation of the rights of the Tribes or its members based upon federal law or inherent sovereign powers, nor does it diminish any trust responsibility of the federal government, including but not limited to obligations set forth in the laws of the United States or of the state government or any political subdivision thereof, including but not limited to the obligation to provide a non-discriminatory public education.

### Sec. 103. Findings, Intentions and Purposes, and Declaration of Policy.

(a) Findings. The Fort Peck Executive Board finds that:

(1) Achievement levels at all elementary and secondary schools on the Fort Peck Reservation with high Native American enrollment are notably low.

(2) Drop-out rates in the elementary and secondary schools on the Fort Peck Reservation are exorbitant when compared to State of Montana and national averages.

(3) Indian Studies is taught in only some elementary and secondary schools on the Fort Peck Reservation on a limited basis. Specific tribal studies curricula have not been fully developed or implemented in any school system;

(4) Dakota and Nakoda languages are not offered in all elementary or secondary schools on the Fort Peck Reservation;

(5) While the elementary and secondary school population on the Fort Peck Reservation in 1995 was over fifty percent Indian, the percentage of Indian faculty and staff at those schools is much lower.

(6) Due to the number of middle and secondary school students on the Fort Peck Reservation who are parents, parenting and family life education has been identified as a primary need on the reservation to encourage positive, effective parenting skills, as well as effective parental involvement in the schools;

(7) Parental and community involvement in the schools is inadequate. Such involvement, for

the most part, is limited to parent groups, committees, and procedures as required under federal Indian education laws and programs; and

(8) The federal government has a trust obligation, as embodied in treaties, statutes, and the United States Constitution, to provide for the formal education of Indian students who attend federal, tribal, and state schools. The federal government historically has failed to live up to its responsibilities in the area of Indian education. The State of Montana has also historically failed to meet the needs of Indian students on the Fort Peck Indian Reservation. Recognizing that a good formal education is critical to the survival of the Fort Peck Tribes, it is in the best interests of the Tribes to assert its responsibility over the formal education systems on the reservation to improve those systems and the Tribes.

(b) Intents and Purposes. It is the intent and purpose of this Tribal Education Code to:

(1) Preserve, protect, and perpetuate the Tribes. Provide the necessary resources to preserve, protect, and perpetuate the Fort Peck Tribes with its human and land resources.

(2) Promote intra-government understanding and coordination. Provide a means to promote understanding and coordination of branches, agencies, and entities of the Fort Peck Tribal Government on the purposes, standards, and functions of education on the Fort Peck Reservation; and

(3) Make education a good experience and good preparation for life. Make education on the Fort Peck Reservation a good experience and provide a means to prepare tribal members for life on and off the Reservation.

(c) Declaration of Policy. It is hereby declared to be the policy of the Fort Peck Tribes that:

(1) Tribal government must provide for education to protect its members. The most valuable resources of the Fort Peck Tribes are its tribal members and the Reservation landbase. To preserve, protect, and perpetuate the human resources within and on the native homelands of the Assiniboine and Sioux Tribes, the Tribal Government must be actively involved with all educational endeavors on the Reservation to ensure an

effective, appropriate, and relevant education of its tribal members.

(2) Education must be effective, appropriate for and relevant to the Reservation. An effective, appropriate, and relevant formal education on the Reservation includes, but is not limited to: academic excellence and high but realistic expectations for all students; competence in all basic academic and cognitive skills; competence in English language and knowledge of the non-Indian American culture, governments, economics, environment, and history; knowledge of Fort Peck Dakota and Nakoda languages and knowledge of Fort Peck Assiniboine and Sioux culture, government, economics, and environment; knowledge of the history of the Fort Peck Tribes and the role of tribal members in promoting the future of the Tribes; development of students as healthy individuals, members of families and communities, parents, citizens of the Tribes, the State, and the United States of America; development of self-discipline and positive self-worth; development of respect for all other living beings; development of attitude which encourages life-time learning, decision-making, and undertaking of responsibilities in family life, community and tribal affairs, employment, recreation, and the use of the environment; and parental and community involvement in the formal education process whereby the educational aspirations and the cultural values of parents and community members are promoted and respected;

(3) Education shall help prepare students to perpetuate the Tribes. Curriculum, education standards, educational policies and programs, and employment practices developed, implemented, or regulated under this Tribal Education Code shall help prepare students to assume their responsibilities to perpetuate the Tribes, its resources, and its culture; shall be carried out through coordinated efforts between the Tribal Education Department, local schools, other educational institutions, and chartered educational programs and chartered schools; and shall otherwise incorporate the intents, purposes, and policies of this code to the maximum extent possible;

(4) Tribal government shall work with state and federal governments to improve education. The Tribal Government shall develop cooperative working relationships with the state and federal governments to improve the education systems on the Reservation; and

(5) Ultimate education goal of Tribes is self-determination consistent with its heritage. The Tribes are a people with a distinct political, economic, and cultural heritage. The ultimate goal of the Tribes regarding education is self-determination consistent with this heritage.

#### **Sec. 104. Definitions.**

Unless the Tribal Education Code otherwise indicates, the following definitions apply herein:

(a) Board of Directors. "Board of Directors" means the Board of Directors of the Fort Peck Tribal Education Department, which shall function as the policy making body of the Fort Peck Tribal Education Department, subject to the ratification authority of the Tribes' Health, Education and Welfare Committee.

(b) Charter or Chartered. "charter" or "chartered" means chartered by the Executive Board under the Tribal Constitution.

(c) Code. "Code" means the Tribal Education Code of the Fort Peck Tribes.

(d) College. "College" means Fort Peck Community College.

(e) Culture. "Culture" means shared patterns of human behavior adopted by a group of humans in order to survive as a people, including but not limited to (a) interpersonal and kinship relationships with all living beings; (2) spiritual relationships; (3) values, assumptions, rules, and attitudes; (4) language; (5) social and individual development processes; and (6) acquisition and use of knowledge.

(f) Curriculum. "Curriculum" means any planned education experience provided for students.

(g) Director. "Director" means the Director of the Fort Peck Tribal Education Department.

(h) Education standards. "Education standards" means minimum levels of performance that local schools and other educational institutions

must attain or minimum requirements that local schools and other educational institutions must meet to provide and document quality curriculum and educational policies and programs.

(i) Educational data. "Educational data" or "data" includes but is not limited to: attendance reports, achievement data, test results, progress reports, evaluations, language proficiency data, information about curricula and instruction, information about employment practices and staffing, information about social and economic variables, information about funding, budgets, and finance, health and safety information, and information about school grounds and buildings.

(j) Educational policies and programs. "Education policies and programs" include but are not limited to policies or programs other than curriculum that develop strong student or parent knowledge of, skills in, or involvement with schools, their students, and their curricula.

(k) Educators. "Educators" includes but is not limited to: teachers, administrators, counselors, and other professional staff of local schools and other educational institutions.

(l) Governing body of an other educational institution. "Governing body of an other educational institution" is the authorized governing body of any other educational institution, with general charge, direction, and management of the institution and control and care of all property used by or belonging to it, as provided and limited by law.

(m) Indian Preference. "Indian preference" means that first preference shall be given to qualified members of the Tribes, second preference shall be given to qualified members of other federally recognized tribes, and third preference shall be given to qualified non-members who are not prejudiced towards American Indians.

(n) Local school. "Local School" is any school offering grades Kindergarten through twelfth, or any part of that span, located on the Reservation, and the Fort Peck Head Start Program.

**(AMENDED PER RESOLUTION #1592-99-5, May 25, 1999.)**

(o) Other Educational Institution. "Other Educational Institution" is any school (except Fort Peck Community College) other than a local school that is located on the Reservation, including but not limited to: chartered educational programs, chartered schools, early childhood programs, and any other education program or school authorized by the Executive Board or the Tribes.

(p) Parent. "Parent" means anyone who is a parent or legal guardian of a student, and includes parent groups and committees established under federal, state, and tribal education laws.

(q) Parenting and Family Life. "Parenting and family life" includes but is not limited to: family responsibilities, child growth and development, child birth and child care, prenatal and postnatal care for infants and mothers, prevention of child abuse, and related topics.

(r) Policies and procedures regarding school governance. "Policies and procedures regarding school governance" shall include but not be limited to education policies and procedures prescribed under federal, state, and tribal law.

(s) Reservation. "Reservation" and "Fort Peck Reservation" means all land, waters, and waterways within the exterior boundaries of the Fort Peck Indian Reservation, Montana, as set forth in the Agreement of December 28 and December 31, 1885, confirmed by the Act of May 1, 1888, 25 Stat. 113, Chap. 212.

(t) School. "School" is a place, institution, or process for formal teaching and learning.

(u) School Board. "School board" is the authorized governing body responsible for developing, maintaining, and locating local schools, and for providing educational opportunities and services on the Reservation.

(v) State. "State" or "state government" means the State of Montana, or any political subdivision thereof.

(w) Student. "Student" means anyone who is officially enrolled in a local school or an other educational institution.

(x) Tribal Constitution. "Tribal Constitution" or "constitution" means the Constitution of the Fort Peck Tribes.

(y) Tribal Executive Board. "Executive Board" or "Board" means the Executive Board of the Fort Peck Tribes.

(z) Tribal Education Department. "Tribal Education Department" or "Department" means the department within the Tribal Government charged with administering and empowered to administer this Tribal Education Code.

(aa) Tribal Government. "Tribal Government" means the authorized government of the Fort Peck Tribes, which is the Fort Peck Tribal Executive Board.

(bb) Tribal Education Committee. "Tribal Education Committee" or "Education Committee" means the Education Committee of the Fort Peck Tribes.

(cc) Tribes. "Tribes" or "Tribal" means the Fort Peck Tribes and includes the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation.

#### **Sec. 105. Construction of Tense Used.**

In construing the provisions of this Tribal Education Code, the present tense includes the past and future tenses, and the future tense includes the present.

#### **Sec. 106. Masculine Gender Inclusive.**

In construing the provisions of this Tribal Education Code, the masculine gender includes the feminine and the neuter genders.

#### **Sec. 107. Reference to Code Includes Amendments.**

When reference is made to any portion of this Tribal Education Code, the reference shall apply to all amendments and additions made hereafter.

#### **Sec. 108. Severability.**

If any part of this Tribal Education Code is invalidated by a court of competent jurisdiction, all valid parts that are severable from the invalid part remain in effect. If a part of the Code is invalid in one or more of its applications, that part remains in effect in all valid applications that are severable from the invalid applications.



**Sec. 109. Repeal of Inconsistent Ordinances.**

All education ordinances, resolutions, and other laws inconsistent with this Tribal Education Code are hereby repealed. To the extent that this Code provides other than any other tribal law regarding education, this Code shall govern.

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**Sec. 201. Education Committee.**

(a) Pursuant to resolution of the Fort Peck Tribal Executive Board, the Tribal Education Committee (Education Committee) shall have standing authority over Tribal Education Department. The Fort Peck Tribal Education Committee shall have standing authority over the Tribal Education Department, and shall ratify, reject or amend the recommendations of the Board of Directors of the Fort Peck Tribal Education Department. As the body with standing authority, the Education Committee shall:

(1) Ratify Employment of Director of Tribal Education Department. The Education Committee shall ratify, reject or amend the employment of a Director of the Tribal Education Department who shall be the principal administrator and enforcer of this Tribal Education Code;

(2) Ratify Employment of Tribal Education Department Staff. The Education Committee shall ratify, reject or amend the employment of Tribal Education Department Staff, who shall work under the supervision of the Director in such tasks as may be assigned;

(3) Ratify contracts and agreements with consultants. The Education Committee shall ratify, reject or amend contracts and agreements with consultants that have been reviewed and recommended by the Board of Directors and that are consistent with this Code;

(4) Ratify tribal curriculum. The Education Committee shall ratify, reject or amend tribal curriculum, recommended by the Board of Directors, in the areas specified in and in accordance with this Code. Such curriculum shall include a tribal orthography to be used in Dakota and Nakoda language instruction on the Reservation;

(5) Ratify tribal education standards. The Education Committee shall ratify, reject or amend tribal education standards, recommended by the Board of Directors, in accordance with this Code;

(6) Ratify tribal educational policies and programs. The Education Committee shall ratify, reject or amend tribal educational policies and programs, recommended by the Board of Directors, as specific in and in accordance with this Code;

(7) Review regular reporting by the Board of Directors. The Education Committee shall review regular reporting by the Board of Directors of the Tribal Education Department regarding the condition, needs, and progress of education on the Reservation. Such reporting shall include, but not be limited to, an annual State of the Reservation Education Report as provided in this Code;

(8) Actively promote and assist coordination of tribal services and programs. The Education Committee shall actively promote and assist the coordination of tribal services and programs on critical education issues to meet the intents, purposes, and policies of this Code;

(9) Adopt or reject rules recommended by Board of Directors or delegate rule authority to Director. The Education Committee shall adopt or reject rules recommended by the Board of Directors as provided by this Code. The Education Committee may also delegate rule-making authority to the Board as it deems necessary;

(10) Approve or disapprove tribal education department appropriations and operating budgets. The Education Committee shall approve or disapprove appropriations and operating budgets requested from the Board of Directors for the Tribal Education Department consistent with this Code and tribal appropriation law;

(11) Seek grants and funding for education improvement. The Education Committee shall seek federal, state, and private funding and grants

for the improvement of education on the Reservation, including funding and grants for research, planning, and evaluation of education services;

(12) Promote local control of education. The Education Committee shall actively promote local control of education under charters consistent with the intents, purposes, and policies of this Code;

(13) Establish advisory commissions and committees on educational policies and legislation as necessary. The Education Committee shall establish advisory commissions and committees on education as it deems necessary. Such commissions or committees shall serve in an advisory capacity to the Board in the development of tribal education legislation and policies, and in other matters affecting education on the Reservation; and

(14) Enact education legislation. The Education Committee shall regularly consider the condition, needs, and progress of education on the Reservation and recommend enactment of such additional legislation or changes in existing legislation as may be deemed desirable to the Tribal Executive Board.

### **Sec. 202. Board of Directors of the Fort Peck Tribal Education Department.**

(a) The Board of Directors of the Fort Peck Tribal Education Department to be policy determining body of Tribal Education Department. Subject to the ratification authority of the Education Committee, the currently constituted Board of Directors of the Fort Peck Tribal Education Department shall be the policy-determining body of the Tribal Education Department. As the policy-determining body, the Board of Directors shall:

(1) Employ Director of Tribal Education Department. The Board of Directors, upon ratification by the Education Committee, shall employ a Director of the Tribal Education Department who shall be the principal administrator and enforcer of this Tribal Education Code;

(2) Employ Tribal Education Department Staff. The Board of Directors, upon ratification by the Education Committee, shall employ Tribal

Education Department Staff, who shall work under the supervision of the Director in such tasks as may be assigned;

(3) Review regular reporting by the Tribal Education Department. The Board of Directors shall require and review regular reporting by the Tribal Education Department regarding the condition, needs, and progress of education on the Reservation. Such reporting shall include, but not be limited to, an annual State of the Reservation Education Report as provided in this Code;

(4) Actively promote and assist coordination of tribal services and programs. The Board of Directors shall actively promote and assist the coordination of tribal services and programs on critical education issues to meet the intents, purposes, and policies of this Code;

(5) Review and recommend contracts and agreements with consultants. The Board of Directors shall review and recommend contracts and agreements with consultants consistent with this Code. Such recommendations shall be submitted to the Education Committee for ratification;

(6) Review and recommend Tribal curriculum. The Board of Directors shall review and recommend Tribal curriculum in the areas specified in and in accordance with this Code. Such recommendations shall be submitted to the Education Committee for ratification;

(7) Review and recommend Tribal education standards. The Board of Directors shall review and recommend Tribal education standards in accordance with this Code. Such recommendations shall be submitted to the Education Committee for ratification;

(8) Review and recommend Tribal educational policies and programs. The Board of Directors shall review and recommend Tribal educational policies and programs as specific in and in accordance with this Code. Such recommendations shall be submitted to the Education Committee for ratification;

(9) Review and recommend rules recommended by Director or delegate rule authority to Director. The Board of Directors shall review and recommend for adoption rules recommended by the Director as provided by this Code. The Board

of Directors may also recommend delegation of rule-making authority to the Director as it deems necessary. Such recommendations shall be submitted to the Education Committee for ratification;

(10) Review and recommend Tribal Education Department appropriations and operating budgets. The Board of Directors shall review and recommend appropriations and operating budgets for the Tribal Education Department consistent with this code. Such recommendations shall be submitted to the Education Committee for ratification. Such funding for equipment, facilities, and resources for the Tribal Education Department as deemed advisable to meet the intents, purposes, and policies of this Code;

(11) Seek grants and funding for education improvement. The Board of Directors shall seek federal, state, and private funding and grants for the improvement of education on the Reservation, including funding and grants for research, planning, and evaluation of education services;

(12) Promote local control of education. The Board of Directors shall actively promote local control of education under charters consistent with the intents, purposes, and policies of this Code;

### **Sec. 203. Tribal Education Department.**

(a) Establishment of Department. It is hereby recognized that the Tribal Education Department is an established part of the Tribal Government with the power and duty to administer and enforce this Tribal Education Code and other tribal education laws unless such powers and duties are otherwise delegated.

(b) Board of Directors to employ Director of Tribal Education Department. The Board of Directors shall, upon ratification of the Education Committee, employ a Director of the Tribal Education Department, who shall be a full-time employee of the Tribes and who shall maintain an office in Poplar, Montana. The Director has the power and duty to exercise all powers, duties, and responsibilities of the Tribal Education Department set forth in this code or other Tribal law.

(1) Qualifications and Salary of Director. The Board of Directors shall establish the qualifications for and the salary of the Director of the Tribal Education Department.

(2) Staff of Tribal Education Department. Subject to the ratification of the Education Committee, the Board of Directors shall have the power and duty to employ qualified professional, clerical, and other employees, who may be full-time or temporary, as may be necessary for the administration of the Department,

(3) Staff Duties. Subject to approval of the Board of Directors, the Director shall plan and direct the duties and responsibilities of the Department staff and shall ensure that the staff carries out their duties and responsibilities. The Director shall ensure that the Department staff is qualified and receives appropriate professional training.

(c) Personnel policies and procedures. It is hereby recognized that the present department personnel policies and procedures, as adopted by Resolution No. 874-52-5 shall remain in effect, provided that this code shall supersede any inconsistent provision.

(d) Power and duties of Director. Subject to the authority of the Board of Directors and Education Committee, the Director of the Tribal Education Department has the power and duty to:

(1) Administer and enforce this Tribal Education Code. Be the principal administrator and enforcer of this Tribal Education Code. In doing so, the Director shall:

(A) Exercise oversight over the administration and operation of the Tribal Education Department's functions, and over the compliance by local schools and other educational institutions with the Tribal Education Code;

(B) Maintain current knowledge of the law and procedures in administration and enforcement of Tribal education laws, and serve as the principal technical and professional advisor to the Board of Directors on all matters relating to the Code and education on the Reservation;

(C) Provide leadership in and otherwise promote the improvement of education on the Reservation, including through constant contact with educators, personal appearances at public

gatherings, research, planning, and evaluation of education service; and

(D) Seek and coordinate tribal and non-tribal resources to implement this Tribal Education Code and to improve generally the condition, needs, and progress of education on the Reservation;

(2) Maintain office for filing and records. Have and maintain an office in Poplar, Montana, provided by the Tribes, in which he shall: file all papers, reports, public documents, and other data transmitted to him and hold the same subject to inspection by the Executive Board; and keep records of all matters pertaining to the Tribal Education Department;

(3) Establish uniform data gathering, compiling, and reporting system. Establish a uniform system for the gathering, compiling, and reporting of educational data from local schools and other education institutions, the Tribes, and the state and federal governments. The Department shall use the data to evaluate and ensure compliance with this Code, and to improve generally the condition, needs, and progress of education on the Reservation. The system for gathering the data shall include but not be limited to:

(A) Receiving and examining written education data; policies and procedures regarding school governance; and educational policies and programs provided by local schools and other educational institutions. The Department shall specify a format for the reporting or written educational data by local schools and other educational institutions;

(B) Establishing a human network system comprised of educators; administrative or professional staff of other tribal and non-tribal agencies, departments, and programs; members of the community; and parents. The Director shall, at least twice a year, call and conduct meetings with the network. Through such meetings, the Director shall endeavor, through discussion and explanation, to establish, maintain, and refine administration and enforcement of this Tribal Education Code, and standards, programs, and rules developed under the Code;

(C) On-site assessment visits of local schools and other educational institutions conducted by an evaluation team. In the case of local schools, each team shall include: (1) the Director of the Tribal Education Department; and (2) a member of the state department of education or a local school administrator. In the case of other educational institutions, each team shall include: (1) the Director of the Tribal Education Department; and (2) a member of the Bureau of Indian Affairs area office or agency, or their designee. Such on-site visits shall be conducted at least once every three years for each local school and once every two years for every other educational institution. The team shall evaluate compliance with the Code; the problems and progress of students; action taken to correct previous areas of noncompliance and problems; and other areas identified during the data gathering of the Department;

(4) Report results of gathering and compiling data to the Education Committee, Board of Directors, school board(s); State of the Reservation Education Report. Report the current results of the gathering and compiling of data to the Executive Board, Department Board of Directors, and to the school board or governing body of any other educational institution to which the data pertains. Such reporting shall include, but not be limited to, a State of the Reservation Education Report, prepared annually by the Tribal Education Department. The State of the Reservation Education Report shall detail the conditions, needs and current progress of education on the Reservation, and shall include recommendations of the Director regarding needed legislation or action on behalf of education;

(5) Communicate this Code to school boards, governing bodies of other educational institutions, and educators. Communicate to school boards, the governing bodies of other educational institutions, and educators all information and instructions regarding curriculum, education standards, and educational policies and programs established and developed under this Code;

(6) Act as a liaison between the Tribes and the State on education matters. Act as a liaison between the Tribes and the state on education

matters, as directed by the Board of Directors. This shall include, but not be limited to, attending and interacting at meetings of the school board, the State Board of Education, and the state legislature. The Director shall serve on Tribal or state committees, as directed by the Board of Directors;

(7) Coordinate the services and activities of the Department and negotiate cooperative agreements.

(A) To ensure that the intents, purposes, and policies of this Code are pursued, including the policy of developing cooperative working relationships with the state and federal governments, the Director shall coordinate the services and activities of the Tribal Education Department with those of other departments, agencies, offices, entities, and programs of the Tribes, and with those of the state and federal governments.

(B) To facilitate the coordination of services and activities of the Tribal Education Department, the Director is hereby authorized to negotiate cooperative agreements between the Department and school boards, the governing bodies of other educational institutions, chartered educational programs and chartered schools, and other tribal departments, agencies, offices, entities, and programs; provided, that any cooperative agreement negotiated under this section is ineffective unless and until reviewed and recommended by the Board of Directors and ratified by the Education Committee;

(8) Hire or contract with consultants. Subject to the review and recommendations of the Board of Directors and ratification of the Education Committee, hire or contract with such consultants as he deems necessary to administer and enforce this Tribal Education Code.

(9) Develop Tribal curriculum. Develop Tribal curriculum in the areas specified in and in accordance with this Code;

(10) Develop Tribal education standards. Develop Tribal education standards in accordance with this Code;

(11) Enforce and evaluate compliance by local schools with Tribal curriculum and education standards. On behalf of the Tribes, and jointly

with the State, enforce compliance by local schools with tribal curriculum and tribal education standards. Compliance shall be evaluated as part of the data gathering provisions of this Code;

(12) Enforce and evaluate compliance by other educational institutions with Tribal curriculum and education standards. Enforce compliance by other educational institutions with Tribal curriculum and Tribal education standards. Compliance shall be evaluated as part of the data gathering provisions of this Code;

(13) Develop and enforce Tribal educational policies and programs and evaluate compliance by local schools and other educational institutions with Tribal educational programs. Develop Tribal educational policies and programs in the areas specified in and in accordance with this Code, and enforce compliance by local schools and other educational institutions with the Tribal educational policies and programs. Compliance shall be evaluated as part of the data gathering provisions of this Code;

(14) With Fort Peck Community College, develop accredited Tribal re-certification courses for educators, and work with the College in other areas. With Fort Peck Community College, develop accredited Tribal re-certification courses for educators in accordance with this Code. In addition, the Director shall work with the College as necessary to implement the provisions of this Code, including the provisions regarding Tribal curriculum, education standards, and educational policies and programs. The Director shall also work with the College regarding research on and planning for education on the reservation and in promoting and providing leadership in education on the Reservation;

(15) Review budget estimates of and appropriations for local schools and other educational institutions. Participate in public hearings and other budget and finance processes of local schools and other educational institutions, and review budget and financial information provided by local schools and other educational institutions. Such participation and review shall include, but not be limited to, determining the links between budgets and financial plans and meeting

and promoting the intents, purposes, and policies of this Code;

(16) Develop advisable rules. Develop and recommend to the Board of Directors such rules or action as he deems advisable for the condition, needs, and progress of students and the improvement of education on the Reservation; provided, that such rules and action are ineffective unless and until reviewed and recommended by the Board of Directors and adopted by the Education Committee unless the Committee otherwise provides. The Board of Directors may delegate rule-making authority to the Director as it deems necessary, and upon proper delegation, the Director may exercise that authority in a manner not inconsistent with this code or other Tribal law or federal law.

(17) Report and consult with Board of Directors. In all matters relating to the Director's duties, report and consult with the Board of Directors at the Board's regular and special meetings.

(d) Department Budget Preparation and Fiscal Management Responsibility.

(1) Director to prepare department budget. The Director shall annually prepare a written budget for the operation of the Tribal Education Department. The budget shall include, but not be limited to, salaries, vehicles, travel and per diem expenses, supplies, communication equipment, consultants, and data gathering, compiling, and reporting facilities. The Director shall timely submit the budget along with a written justification to the Board of Directors and Education Committee. The Director shall make any necessary presentations and attend any necessary hearings regarding the budget. The Director shall participate in the preparation of budgets for other education needs and matters of the Tribes when so authorized by the Board of Directors.

(2) Director to be responsible for the proper management of annual department appropriation. The Director shall be responsible for the proper management of the annual appropriation for the operation of the Tribal Education Department, and shall adhere to established tribal expenditure policies and procedures in administering the appropriation. The Director shall maintain regular

contact with the Treasurer of the Tribes on accounting matters, and shall cooperate with auditors during audits as required by law. The Director shall be responsible for all tribal properties assigned to the Tribal Education Department and the proper use thereof.

(18) Establish and coordinate 2 meetings a year regarding Impact Aid with all area school districts.

**(AMENDED AS PER RESOLUTION NO. 17-1526-2015-01; DATED 1/26/2015.)**

### **Chapter 3. School Board and Governing Bodies**

#### **Sections:**

Sec. 301. School Boards. ....	10
Sec. 302. Governing Bodies of Other Educational Institutions. ....	11

#### **Sec. 301. School Boards.**

(a) State law and Tribal law govern school boards. State law, including but not limited to that set forth in Title 20 of the Montana Code Annotated, governs school boards. In addition, school boards are subject to this Tribal Education Code, and other Tribal law as specified in this Code and as otherwise permitted by federal law and Tribal law.

(b) School boards to cooperate with the Tribal Education Department. School boards shall ensure that their schools and staff cooperate with the Tribal Education Department in the implementation of this Code and in addressing other education problems and issues that arise on the Reservation. Such cooperation shall include, but not be limited to: providing written educational data to the Tribal Education Department annually following the format specified by the Department; ensuring that their educators participate effectively in the human network system provided for by this Code; and ensuring that their administrators participate effectively in the on-site assessment evaluation teams provided for by this Code.

(c) School boards to provide policies and procedures to Tribal Education Department and align them with Tribal Education Code. School boards shall provide a complete and current copy of all existing written policies and procedures regarding school governance to the Tribal Education Department. School boards shall annually pro-

vide copies of any and all amended or new policies to the Department. Existing policies and procedures which are inconsistent with this Code are subject to revision with technical assistance from the Tribal Education Department. Amended or new policies shall be aligned with relevant provisions of the Tribal Education Code before their adoption by the school board.

(d) School boards to include Tribal Education Department in their established processes for reviewing curriculum, education standards, and educational policies and programs. Because such inclusion may be necessary to the development by the Department of tribal curriculum, education standards, and educational policies and programs under this Code, school boards shall include the Tribal Education Department in their established processes used for reviewing applicable curriculum, education standards, and educational policies and programs.

(e) School boards to ensure that local schools include Tribal curriculum in their curriculum and standards. School boards shall ensure that local schools provide instruction that is in substantial compliance with the Tribal curriculum provided for and developed under this Tribal Education Code.

(f) School boards to ensure that local schools attain Tribal education standards. School boards shall ensure that local schools attain or meet the Tribal education standards provided for and developed under this Tribal Education Code.

(g) School boards to provide Tribal educational programs. School boards shall ensure that local schools provide the Tribal educational programs provided for and developed under this Tribal Education Code.

### **Sec. 302. Governing Bodies of Other Educational Institutions.**

(a) Establishment and creation of governing bodies. The establishment or creation of the governing bodies of other educational institutions shall be accomplished by charter or by other enactment of the Tribal council. Their powers and duties, administrative organization and structure, and operation shall also be so accomplished.

(b) Tribal Education Code governs governing bodies of other educational institutions. In addition to their charter or other enactment establishing or creating them, the governing bodies of other educational institutions are subject to this Tribal Education Code and to other tribal law as specified in this Code.

(c) Governing bodies of other educational institutions to cooperate with the Tribal Education Department. The governing bodies of other educational institutions shall ensure that their schools and staff cooperate with the Tribal Education Department in the implementation of this Code and in addressing other education problems and issues that arise on the Reservation. Such cooperation shall include, but not be limited to: Providing written educational data to the Tribal Education Department annually following the format specified by the Department, and ensuring that their educators participate effectively in the human network system provided for by this Code.

(d) Governing bodies of other educational institutions to provide policies and procedures to Tribal Education Department and align policies with Tribal Education Code. The governing bodies of other educational institutions shall provide a complete and current copy of all existing written policies and procedures regarding school governance to the Tribal Education Department. The governing bodies of other educational institutions shall annually provide copies of any and all amended or new such policies to the Department. Existing policies and procedures which are inconsistent with this Code are subject to revision with technical assistance from the Tribal Education Department. Amended or new policies shall be aligned with relevant provisions of the Tribal Education Code before their adoption by the governing bodies.

(e) Governing bodies of other educational institutions to include Tribal Education Department in their established processes for reviewing curriculum, education standards, and educational policies and programs. Because such inclusion may be necessary to the development by the Department of Tribal Curriculum, education standards, and educational policies and programs under this

Code, the governing bodies of other educational institutions shall include the Tribal Education Department in the established processes use by other educational institutions for reviewing applicable curriculum; education standards, and educational policies and programs.

(f) Governing bodies to ensure that other educational institutions include Tribal curriculum in their curriculum. The governing bodies of other educational institutions shall ensure that other educational institutions provide instruction that is in substantial compliance with the Tribal curriculum provided for and developed under this Tribal Education Code.

(g) Governing bodies to ensure that other educational institutions attain Tribal educational standards. The governing bodies of other educational institutions shall ensure that other educational institutions attain or meet the Tribal education standards provided for and developed under this Tribal Education Code.

(h) Governing bodies to ensure that other educational institutions provide Tribal educational policies and programs. The governing bodies of other educational institutions shall ensure that other educational institutions provide the Tribal education policies and programs provided for and developed under this Code.

## **Chapter 4. Curriculum and Education Standards**

### **Sections:**

Sec. 401. Curriculum. ....	12
Sec. 402. Education Standards. ....	14

### **Sec. 401. Curriculum.**

(a) Procedures for developing tribal curriculum. In developing tribal curriculum, the Tribal Education Department shall:

(1) Review the curriculum of local schools and other educational institutions. Review the applicable current curriculum of local schools and other educational institutions. Such review may be conducted independently by the Department, or the Department may participate in the established processes used by local schools and other

educational institutions for reviewing their curriculum;

(2) Coordinate and consult with school boards and governing bodies. Coordinate and consult with school boards and the governing bodies of other educational institutions;

(3) Consult with educators, community members, parents, and students. Consult with and obtain the comments of educators, community members, parents, and students;

(4) Keep curricula on file in the Department. Maintain a file in the Department of copies of all current curricula, and proposed changes to curricula for public inspection consistent with tribal law;

(5) Draft tribal curriculum. Draft tribal curriculum in the areas specified by this Code. Such tribal curriculum shall be consistent with the curriculum of local schools, Montana law, and tribal law; provided that to the extent tribal curriculum conflicts with the curriculum of local schools or with Montana law, the tribal curriculum shall govern.

(6) Circulate draft tribal curriculum for review and comment. Circulate the draft tribal curriculum, or any proposed changes to major curricula objectives, for review and comment and for a specified period of time, among school boards, the governing bodies of other educational institutions, selected educators, parents, members of the community, and such other persons as deemed necessary;

(7) Review comments on draft tribal curriculum and make necessary changes. Review the comments and suggestions of those to whom the draft tribal curriculum has been circulated, and after evaluating the comments and suggestions with the advice of the Board of Directors, make such revisions to the curriculum as deemed necessary; and,

(8) Submit draft curriculum to Board of Directors. Submit the curriculum, or changes, or both, to the Board of Directors in the form of proposed tribal curricula objectives for adoption or amendment.



(b) Education Committee to ratify tribal curriculum. The Education Committee shall ratify, reject or amend the tribal curriculum which shall apply: to local schools under the joint enforcement by the State Department of Education and the Tribal Education Department; and, to other educational institutions under enforcement by the Tribal Education Department.

(c) Tribal Education Department to maintain file of curriculum for public inspection. The Tribal Education Department shall maintain a file of copies of all approved tribal curriculum for public inspection consistent with tribal law.

(d) Content of tribal curriculum.

(1) Tribal curriculum to include instruction in the Dakota and Nakoda languages of the Fort Peck Tribes. Because the language is an essential element of the life, culture, and identity of the Tribes, and because the Tribal Government recognizes the importance of preserving and perpetuating the language as necessary for the survival of the Tribes, Tribal curriculum shall include for all grade levels instruction in the Dakota and Nakoda languages. The Director of the Tribal Education Department shall recommend to the Executive Board a proposed Tribal orthography for Dakota and Nakoda adoption or amendment. The Executive Board shall establish a Tribal orthography to be used in language instruction on the Reservation. Instruction by local schools and other educational institutions in the Dakota and Nakoda languages shall follow the official Tribal orthography adopted by the Executive Board.

(2) Tribal curriculum to include Assiniboine and Sioux culture. The Tribes must survive as a unique group of people, growing and developing in a social, economical, and political society within the larger American society. This requires that members of the Tribes and those nonmembers who reside among the Tribes, retain or develop knowledge and an understanding of, and respect for, Assiniboine and Sioux culture. To ensure this survival and perpetuate the Tribes, Tribal curriculum shall include for all grade levels, courses or course content that develops knowledge and an understanding of, and respect for, the Assiniboine and Sioux culture.

(3) Tribal curriculum to include tribal government and the federal-tribal and state-tribal relationships. Tribal curriculum shall include for all grade levels, courses or course content that develops knowledge and understanding of the historical and modern Tribal Government, including its sovereign status and its government-to-government relationships with the federal and state governments.

(4) Tribal curriculum to include health and nutrition instruction. Tribal curriculum shall include for all grade levels, courses or course content that develops knowledge and an understanding of health and nutrition practices and problems. Such courses or course content shall emphasize those problems that affect the Reservation, such as the effect of alcohol, nicotine or tobacco, and drugs on individual, family, community, and tribal life, culture, and development. Such curriculum shall also emphasize the need for the alcohol, nicotine or tobacco, and drug abuse education policies and programs provided for by this Code.

(5) Tribal curriculum to include parenting and family life. Tribal curriculum shall include, for all grade levels beginning with grade seven (7), courses or course content that develops knowledge and an understanding of, and skills in, parenting and family life. Such courses or course content shall include, but not be limited to, information about: cultural practices of the Tribes; specific problems regarding parenting and family life on the Reservation; and the need for the parental and community involvement policies and programs provided for by this Code.

(6) Tribal curriculum to include Tribal and American economics. Tribal curriculum shall include for all grade levels, course or course content that develops knowledge and an understanding of the historical and modern Tribal economy and the American economic system.

(7) Tribal curriculum to include the reservation landbase, Tribal natural resources, and community environments. Tribal curriculum shall include for all grade levels, courses or course content that imparts knowledge and fundamental un-

derstandings about the historical, political, socioeconomic, and cultural elements of the Tribes's reservation landbase and natural resources. Such courses or course content shall include, but not be limited to, the historical development of the reservation landbase, the legal status of reservation land tenure, cultural philosophies and value orientations about reservation land uses, past and contemporary management practices of Tribal land resources, socioeconomic impacts of Tribal natural resource development, physical environmental impacts of Tribal land development, contemporary perspectives about global environmental issues, and vocational careers in Tribal land management and decision-making.

(e) Local schools and other educational institutions to comply with Tribal curriculum. All local schools and other educational institutions shall provide instruction that is in substantial compliance with the Tribal curriculum established by the Tribes. All students who graduate from local such schools and other educational institutions must be familiar with the subjects required by Tribal curriculum under this Tribal Education Code.

(f) Local schools and other educational institutions to report compliance with Tribal curriculum. Local schools and other educational institutions shall annually report compliance with the provisions of this Code regarding compliance with Tribal curriculum to the Tribal Education Department.

(g) Tribal Education Department to evaluate and report compliance by local schools and other educational institutions with Tribal curriculum. The Tribal Education Department shall evaluate compliance by local schools and other educational institutions with the provisions of this code regarding Tribal curriculum. The Department shall annually report its findings and recommendations regarding compliance with Tribal curriculum to the Board of Directors and Education Committee.

#### **Sec. 402. Education Standards.**

(a) Procedures for developing Tribal education standards. In developing Tribal education standards, the Tribal Education Department shall:

(1) Review education standards of local schools and other educational institutions. Review the current education standards of local schools and other educational institutions for the attainment of academic excellence and high, but realistic expectations for all students; competence in all basic academic and cognitive skills; competence in English language and knowledge of the non-Indian American culture, governments, economics, and environment; competence in Dakota and Nakoda languages and knowledge of Assiniboine and Sioux culture, government, economics, and environment; knowledge of the history of the Fort Peck Tribes and of the role of Tribal members in promoting the future of the Tribes; development of students as healthy individuals, members of families and communities, parents, citizens of the Tribes, the State, and the United States of America; development of self-discipline and positive self-worth; development of respect for all other living beings; development of attitude which encourages lifetime learning, decision-making and undertaking of responsibilities in family life, community and tribal affairs, employment, recreation, and the use of environment; and parental and community involvement in the formal education process whereby the educational aspirations and the cultural values of parents and community members are promoted and respected;

(2) Coordinate and consult with school boards and governing bodies. Coordinate and consult with school boards and the governing bodies of other educational institutions;

(3) Consult with educators, community members, and parents. Consult with and obtain the comments of educators, parents, and members of the community;

(4) Draft Tribal education standards. Draft Tribal education standards consistent with the standards of local schools, Montana law, and Tribal law; provided, that to the extent Tribal education standards conflict with the standards of

local schools or with Montana law, the Tribal education standards shall govern;

(5) Circulate draft Tribal education standards for review and comment. Circulate the draft Tribal education standards, for review and comment and for a specified period of time, among school boards, the governing bodies of other educational institutions, selected educators, parents, members of the community and such other persons as the Department deems necessary;

(6) Review comments on draft Tribal education standards and make necessary changes. Review the comments and suggestions of those to whom the draft Tribal education standards have been circulated, and after evaluating the comments and suggestions, make such revisions to the education standards as deemed necessary; and

(7) Submit draft Tribal education standards to Board of Directors. Submit the draft Tribal education standards to the Board of Directors in the form of proposed Tribal education standards for adoption or amendment.

(b) Education Committee to ratify Tribal education standards. The Education Committee shall ratify, reject or amend the Tribal education standards which shall apply: in local schools under the joint enforcement by the State Department of Education and the Tribal Education Department; and, in other educational institutions under enforcement by the Tribal Education Department.

(c) Local schools and other educational institutions to comply with Tribal education standards. All local schools and other educational institutions shall attain or meet the Tribal education standards established by the Tribes.

(d) Local schools and other educational institutions to report compliance with Tribal education standards. Local schools and other educational institutions shall annually report compliance with Tribal education standards to the Tribal Education Department.

(e) Tribal Education Department to evaluate and report compliance by local schools and other educational institutions with Tribal education standards. The Tribal Education Department shall regularly evaluate compliance by local schools

and other educational institutions with Tribal education standards. The Tribal Education Department shall annually report its findings and recommendations regarding compliance with Tribal education standards to the Board of Directors and Education Committee.

(f) Tribal education standards may be exceeded. Tribal education standards do not prohibit or limit local schools, school boards, Montana law, other education institutions, or the governing bodies of other educational institutions from exceeding the standards. The Tribal Education Department shall publicly recognize such achievement.

## **Chapter 5. Parental and Community Involvement**

### **Sections:**

Sec. 501. Parental and Community Involvement. ....	15
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### **Sec. 501. Parental and Community Involvement.**

(a) Tribal Education Department to include parents and community members in implementation and refinement of Tribal Education Code. The Tribal Education Department shall include parents and community members in the implementation and refinement of this Tribal Education Code. Such inclusion and involvement shall include, but not be limited to, inclusion in: the development of Tribal curriculum, education standards, and educational policies and programs; and the preparation of the annual State of the Reservation Education Report. Such inclusion and involvement shall be accomplished through open public meetings, and through other appropriate means. The Tribal Education Department shall also strive to include and involve parents and community members in addressing specific education problems and issues and in improving education on the Reservation.

(b) Tribal Education Department to provide annual in-service training for parents and community members. The Tribal Education Department shall provide annually for parents and community

members in-service training in the priority education areas and issues of the Tribes, and in asserting and advocating for the education of their children.

(c) Local schools, schools boards, other educational institutions, and the governing bodies of other educational institutions to involve parents and community members. Local schools, school boards, other educational institutions, and the governing bodies of other educational institutions shall involve parents and members of the community in the schools in ways that include the following:

(1) Formal processes regarding curriculum, education standards, policies regarding school governance, programs, and extra-curricular activities. They shall include at least one (1) parent or community member in the formal process of planning, developing, and evaluating curriculum, education standards, policies regarding school governance, educational policies and programs, and extra-curricular activities;

(2) Distribution of proposed curriculum and policies regarding school governance and curriculum and policy changes. They shall distribute draft copies of proposed curriculum, policies regarding school governance, and changes in curriculum and policies to parents and community members for review and input before the curriculum, policies, or changes are adopted or effective;

(3) Develop materials regarding curriculum, policies, and activities. They shall develop written materials designed to familiarize parents with the school's curriculum and policies and detailing specific activities that parents and students may undertake together to enrich the students' formal educational experience and development; and

(4) Procedures for parent-school communication. In cooperation with the Tribal Education Department, they shall review their procedures for communication between the parents and the schools, and shall review the effectiveness of those procedures. With the Tribal Education Department and parents, they shall strive to develop ways to improve such procedures.

(d) Local schools and other educational institutions to report compliance and progress of parental and community involvement. Local schools and other educational institutions shall annually report to the Tribal Education Department their compliance with and progress under the provisions of this code regarding parental and community involvement.

(e) Tribal Education Department to evaluate compliance by local schools and other educational institutions with provisions for parental and community involvement. The Tribal Education Department shall regularly evaluate the compliance by and progress of local schools and other educational institutions with the provisions of this code regarding parental and community.

(f) Relationship of parental and community involvement to parenting and family life curriculum. The provisions of this Code regarding parental and community involvement apply to all parents and community members, including those students who are parents. The need for parental and community involvement in local schools and other educational institutions shall be included in the Tribal curriculum containing instruction on parenting and family life.

## **Chapter 6. Educators**

### **Sections:**

Sec. 601. Educators..... 16

### **Sec. 601. Educators.**

(a) Qualifications. To the extent required by federal, state, or tribal law, all educators shall maintain state certification in their work area. In addition, all educators shall gain and maintain specific knowledge and skills that will assist in improving their ability to serve students in the priority education areas of the Tribes as set forth in this Tribal Education Code.

(b) Training. The Tribal Education Department shall regularly identify re-certification areas appropriate for educators. In such identification, the Tribal Education Department shall consult and coordinate with school boards, the governing bodies of other educational institutions, and Fort

Peck Community College. The Tribal Education Department and the College shall develop and provide accredited courses in those areas. Such courses shall be provided at the College or at local schools and other educational institutions for pre-service or in-service training. The Tribal Education Department shall work with the state to gain state recognition of accredited tribal courses for educational recertification as qualifying to satisfy state re-certification requirements for educators.

(c) Competency Guidelines and Evaluations. Local schools and other educational institutions shall evaluate educators at least annually. Educator evaluations shall be done according to the policies and procedures of local schools and other educational institutions; provided, that:

(1) Evaluations to be made in writing. Evaluations shall be made in writing after reasonable observation of each educator's performance and review of the results of that performance; and

(2) Evaluation summaries and processes to be provided to Tribal Education Department. Copies of written evaluation summaries, the evaluation processes, and any changes in the evaluation processes shall be provided annually to the Tribal Education Department; and

(3) Teacher evaluations. Evaluations of teachers shall include but not be limited to: assessment of instructional strategies; adherence to curricula objectives, including applicable Tribal curriculum; student progress and performance; learning climate; and use of evaluation findings; and

(4) Non-teacher evaluations. Non-teacher evaluations shall be based upon their specific job descriptions and shall include but not be limited to: assessment of adherence to the goals of tribal educational policies and programs and the intents, purposes, and policies of this Tribal Education Code; and student progress and performance.

(d) Certification. The Tribes shall recognize successful completion of accredited Indian related courses as qualifying to meet state and tribal re-certification requirements for educators.

(e) Hiring and Retention. In addition to satisfying the requirements of the State for hiring and

retention, educators must satisfy tribal re-certification requirements as provided by this Tribal Education Code.

## **Chapter 7. Indian Preference**

### **Sections:**

Sec. 701. Indian Preference. .... 17

### **Sec. 701. Indian Preference.**

(a) Tribal Education Department to apply Indian preference. In implementing this Tribal Education Code, the Tribal Education Department shall apply Indian preference in the hiring, training, retention, and promotion of all staff, personnel, consultants, and contractors.

(b) Local schools and other educational institutions to apply Indian preference. Local schools and other educational institutions shall apply Indian preference in the hiring, training, retention and promotion of all personnel, including but not limited to educators and support personnel; provided, that nothing in this section prohibits or limits the application of other tribal Indian preference laws.

(c) Local schools and other educational institutions to report compliance with Indian preference. Local schools and other educational institutions shall annually report compliance with the provisions of this Code on Indian preference to the Tribal Education Department.

(d) Tribal Education Department to evaluate and report compliance by local schools and other educational institutions with Indian preference. The Tribal Education Department shall regularly evaluate compliance by local schools and other educational institutions with the Indian preference provisions of this Tribal Education Code. The Tribal Education Department shall annually report to the Board of Directors and Education Committee its findings and recommendations regarding compliance with the Indian provisions of this Code.

**Chapter 8. Chartered Educational Programs and Chartered Schools**

**Sections:**

Sec. 801. Chartered Educational Programs and Chartered Schools. .... 18

**Sec. 801. Chartered Educational Programs and Chartered Schools.**

(a) Executive Board may charter educational programs and schools. The Executive Board, pursuant to the Tribal Constitution, may issue charters of incorporation by which the Board establishes a public corporation or other organization and charges that corporation or organization with providing for specific educational programs and schools on the Reservation.

(b) Chartered educational programs and schools. The Executive Board has chartered the following educational programs and schools:

(1) Fort Peck Community College Center Inc., by Resolution No. 486-76-4, to provide for higher (post-secondary) education on the Reservation.

(2) Fort Peck Head Start Component, by Resolution No. 436-66-12, to provide for preschool and early childhood education programs on the Reservation.

(c) Chartered educational programs and schools subject to Tribal Education Code. Consistent with and to the extent permitted by tribal, state, federal law, chartered educational programs and schools shall operate according to the tribal resolutions approving their charter; their charters of incorporation; their articles of incorporation; and their bylaws, including all amendments and updates thereto. In addition, chartered educational programs and chartered schools are subject to applicable provisions of this Code and shall carry out their roles as described in this Code.

(d) Tribal Education Code does not affect other obligations of chartered educational programs and schools. Except as otherwise provided in this Tribal Education Code, nothing in this Code shall affect the incorporation of chartered educational programs and schools under state law or the obligations of chartered educational programs and chartered schools under state or federal law.

**(ADOPTED AS PER RESOLUTION NO. 3809-95-8, DATED 08/29/95.)**

**Chapter 9. Home School**

**Sections:**

Sec. 901. Purpose..... 18  
Sec. 902. Qualifications for home school. ... 18  
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**Sec. 901. Purpose.**

Recognizing that a good formal education is critical to the survival of the Fort Peck Tribes, it is in the best interests of the Tribes to assert its responsibility over home school education on the Reservation to ensure an effective, appropriate and relevant education of its Tribal members.

**Sec. 902. Qualifications for home school.**

To qualify its students for exemption from compulsory enrollment under 7 CCOJ 462, a non-public or home school shall:

(a) Give written notice to the Director, Fort Peck Tribal Education Department (FPTED), within 10 days of September 1 or within 10 days of the date the child arrives on the Reservation, of their intent to home school their child;

(b) Maintain records on pupil attendance and disease immunization and make the records available to the Director, FPTED, on request;

(c) Be housed in a building that complies with applicable local health and safety regulations;

(d) Provide at least the minimum aggregate hours of public instruction in accordance with the laws of the State of Montana; that is 360 hours for kindergarten, 720 hours for grades 1 through 3 and 1,080 hours for grades 4 through 12 per school year;

(e) Provide instruction by an instructor with a minimum of an Associate of Arts degree;

(f) Submit to the Director, FPTED, the curriculum showing the basic academic program provided;

(g) Provide a basic academic program that at a minimum includes, English, mathematics, science, social studies, history, geography, economics, and government;

(h) Strive to have the student complete the General Educational Development (GED) test.

**Sec. 903. Home school testing.**

Children who are in the equivalent grade level of 2, 4, 8, and 11 must be tested using the standardized test of the local public school districts or any other nationally standardized test. Testing records shall be brought to the Director, FPTED, to show academic progress and be archived.

**Sec. 904. Home school visitation and evaluation.**

Home school programs are subject to on-site visitation and evaluation at the discretion of the Director, FPTED. At a minimum, an on-site visitation and evaluation shall be conducted annually.

Violations of this chapter are punishable pursuant to 7 CCOJ 462.

**(AS PER RESOLUTION NO. 26-1328-2012-08; DATED 8/27/2012.)**

**Fort Peck Tribal Court**  
**807 Court Avenue - P.O. Box 1027**  
**Poplar, MT 59255**



**Title 17 - Highways**

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## **Chapter 1.**

### **Sec. 101. Driving without a license.**

(a) No person shall drive a motor vehicle on the public highways without a valid driver's license. Public highway means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to use of the public for purposes of vehicular traffic.

(b) When an unlicensed minor driving a motorized vehicle is detained by a law enforcement officer, the officer may:

(1) Notify the parent or custodian of the minor to retrieve the vehicle; or

(2) If the parent or custodian is unavailable, the officer may remove the vehicle from the scene at the owner's expense;

(3) The officer may issue a citation to the minor and the officer may issue a citation to the owner of the vehicle pursuant to 17 CCOJ 102.

(c) Any person convicted of a first offense under this Section is guilty of a Class B misdemeanor. Any person convicted of a subsequent offense under this Section within a year of the first conviction is guilty of a Class A misdemeanor.

**(AMENDED AS PER RESOLUTION #26-639-2012-04; DATED 4/11/2012)**

### **Sec. 102. Permitting an unauthorized minor to drive.**

No person shall permit a child or ward to drive a motor vehicle on the public highways, unless such minor is licensed to drive.

### **Sec. 103. Driving with vehicle in unsafe condition.**

No person shall operate a motor vehicle on the roadways within the Reservation unless such vehicle is in safe mechanical condition.

### **Sec. 104. Starting, turning and stopping without regard to safety.**

(a) No person shall start a vehicle which is stopped, standing or parked unless and until such movement can be made with reasonable safety.

(b) No person shall turn a vehicle at an intersection unless the vehicle is in such position on the highway that such movement can be made with reasonable safety and a signal of intention to turn right or left, when required, has been given continuously during not less than the last one hundred (100) feet traveled by the vehicle before turning.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal to the driver of any vehicle immediately to the rear where there is opportunity to give such signal.

(d) The signals herein required shall be given either by means of a standard hand and arms signals or by mechanical or electrical signal device.

(e) Every driver of a vehicle approaching an intersection with a stop sign, or a flashing red light, shall stop on the rear side of the intersection, or railroad grade crossing, at the point where he/she has a view of approaching traffic and shall not proceed until the intersection is clear.

### **Sec. 105-A. Speeding - commercial motor vehicle.**

The speed limit for a commercial motor vehicle traveling on any public highway on the Reservation is 60 miles an hour during daytime and 55 miles an hour during nighttime. Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(a) Has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(b) Has a gross weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(c) Is designed to transport at least 16 passengers, including the driver;

(d) Is a school bus; or

(e) Is of any size and is used in the transportation of hazardous materials.

Daytime means from one-half hour before sunrise to one-half hour after sunset. Nighttime means at any other hour.

**(AS PER RESOLUTION NO. 26-909-2012-05; DATED 05/25/2012.)**

### **Sec. 105 Speeding.**

(a) Every person operating or driving a vehicle of any character on a highway shall drive in a careful and prudent manner and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, condition of brakes, condition of surface, freedom from obstruction to view head and the rights of any other person entitled to use the street or highway.

(b) Where no special hazard exists that requires lower speed for compliance with paragraph (a), any speed not in excess of seventy (70) miles per hour and any night time speed not in excess of sixty-five (65) miles per hour shall be lawful, but it is illegal for any person to drive at any speed in excess of the limits specified in this Section:

(1) Fifteen (15) miles per hour within residential areas;

(2) Twenty (20) miles per hour when passing a school during recess or when children are coming to or from school during opening or closing hours;

(3) Twenty (20) miles per hour when approaching within fifty (50) feet of a railroad grade crossing or highway intersection or when the driver's view is obstructed within a distance of one hundred (100) feet;

(4) Twenty five (25) miles per hour in any urban district unless a different speed limit is posted;

(5) At a speed that is unsafe.

(c) The speed limitations set forth above shall not apply to vehicles when operated with due regard for safety under the direction of the police in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire departments when traveling in response to a fire alarm, nor to public or

private ambulances when traveling in emergencies. This exemption shall not, however, protect the driver of any such vehicle from the consequences of a reckless disregard of the safety of others.

(d) As an aid to enforcement of this Section or any other Section of this Title, BIA and Tribal law enforcement officers on the Reservation may use radio microwaves or other electrical devices to test the speed of a motor vehicle. The results of such tests shall be admissible in Tribal Court as evidence of the speed of the motor vehicle at issue. If a person charged with a violation of this Title requests a hearing under Section 125(a)(2)(B), or is required to appear for a hearing under Section 125(e), and the tribal prosecutor wishes to present the results of an electrical speed test as evidence, a law enforcement officer who operated the device or observed its operation during the alleged offense must appear to testify. This requirement does not apply if the individual charged with the offense does not contest the results of the test.

(e) Any person convicted of a violation under this Section is guilty of a Class B misdemeanor. For the third conviction within one (1) year of the first under this Section, the maximum penalty for such misdemeanors must be imposed.

**(AMENDED AS PER RESOLUTION NO. 287-96-1, DATED 01/08/96, and RESOLUTION NO. 491a-2000-3, DATED 30/27/00.)**

### **Sec. 106. Reckless or careless driving.**

(a) Any person who drives a vehicle carelessly and heedlessly in willful or wanton disregard of the rights or safety of others or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property of another is guilty of reckless driving.

(b) Any person who drives any vehicle upon a highway carelessly in disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to be likely to endanger any person or property shall be guilty of careless driving.

(c) Any person convicted of a first (1st) offense under this Section is guilty of a Class B misdemeanor. Any person convicted of a further offense under this Section within one (1) year of the first conviction is guilty of a Class A misdemeanor. In addition to the penalties prescribed for such misdemeanors, the Court in its discretion for both the first (1st) and (2nd) second offenses may suspend such person's right to operate a motor vehicle for a period of not to exceed one (1) year.

**Sec. 106-A. Fleeing from or eluding law enforcement officer.**

(a) A person operating a motor vehicle commits the offense of fleeing from or eluding a law enforcement officer if a uniformed law enforcement officer operating a vehicle in the lawful performance of the officer's duty gives such person a visual or audible signal by hand, voice, emergency light, or siren directing such person to stop the motor vehicle and such person knowingly failed to obey the signal by increasing the speed of the motor vehicle, extinguishing the motor vehicle's lights, or otherwise fleeing from, eluding, or attempting to flee from or elude the officer.

(b)(1) Except as provided in subsection (b)(2), a person convicted of or pleading guilty or nolo contendere to an offense under subsection (a) is guilty of a Class A misdemeanor. A person committing a second and subsequent offenses is guilty of a felony.

(2) A person convicted of an offense of fleeing from or eluding a peace officer during which the person causes serious bodily injury or the death of any person is guilty of a felony.

**(AS PER RESOLUTION NO. 2277-2005-10, DATED 10/24/05)**

**Sec. 107. Driving a motor vehicle while under the influence of intoxicating liquor or drugs.**

(a) It is unlawful and punishable for any person who is under the influence of intoxicating liquors, under the influence of any drug, or under the combined influence of alcohol and any drug, to a degree which renders him/her incapable of safely driving a motor vehicle to operate or be in actual

physical control of any motor vehicle upon the ways of this Reservation open to the public.

(1) Ways of the Reservation open to the public means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public, including any frozen river, stream or lake on the Reservation.

(b) In any criminal prosecution for a violation of subsection (a) of this Section relating to driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, urine, breath or other bodily substance, shall give rise to the following presumptions:

(1) If there was at that time 0.05 percent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor.

(2) If there was at that time in excess of 0.05 percent but less than 0.08 percent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(3) If there was at that time 0.08 percent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.

(4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 cubic centimeters of blood.

(5) In addition to the results of chemical analysis as set forth in subsection (b), other competent evidence may be introduced on the question of whether the defendant was under the influence of intoxicating liquor.

(c) Any person who is convicted of a violation of this Section is guilty of a Class A misdemeanor, except that the 3rd and any subsequent conviction shall be felonies. In addition to the penalties prescribed, the Court, in its discretion, may suspend such person's right to operate a motor vehicle for a period not to exceed 1 year. On

the 2nd and subsequent convictions under this Section, the Court must impose a sentence of at least 10 days imprisonment and suspend the defendant's right to operate a motor vehicle for at least 30 days. On the 3rd conviction, the Court must impose a penalty of at least 90 days imprisonment and suspend the defendant's right to operate a motor vehicle for at least 6 months. On the 4th conviction, and any subsequent convictions, the Court must impose a sentence of at least 6 months imprisonment, but not to exceed 1 year. On a 3rd or any subsequent conviction, the Court, in its discretion, may defer the imposition of a sentence by referring the defendant into a DUI Court Program or other alternative sentencing program where the defendant will benefit from treatment or therapy.

**(AMENDED PER RESOLUTION NO. 1781-2001-5, DATED 05-14-01; AMENDED PER RESOLUTION NO. 164-2009-12, DATED 12/28/2009; AMENDED AS PER RESOLUTION NO. 25-2174-2011-5; DATED 05/23/2011.)**

**Sec. 107-A Driving a motor vehicle by a person under 21 years of age with alcohol concentration of 0.02 or more.**

(a) It is unlawful for a person under the age of 21 who has an alcohol concentration of 0.02 or more to drive or be in actual physical control of a vehicle upon ways of the Reservation open to the public. Absolute liability is imposed for a violation of this section.

(b) The first conviction under this section is a Class B misdemeanor. Any subsequent convictions is a Class A misdemeanor.

(c) In addition to the punishment provided in this section, regardless of disposition:

(1) the person shall comply with the chemical dependency education course; and

(2) the Court shall suspend the person's driver's license for 90 days upon the first conviction, 6 months upon the second conviction, and 1 year upon the third or subsequent convictions.

(d) A conviction under this section may not be counted as a prior conviction under 17 CCOJ

107.

**(AS PER RESOLUTION NO. 28-1467-2016-12, DATED 12/27/2016.)**

**Sec. 108. Chemical blood, breath, or urine tests.**

(a) Any person who operates or is in actual physical control of a motor vehicle upon the ways of this Reservation open to the public shall be deemed to have given consent to a chemical test of his blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body. This test shall be administered at the direction of the arresting officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the ways of this Reservation open to the public while under the influence of intoxicating liquor or drugs. The arresting officer may designate which one of the aforesaid tests shall be administered.

(b) The law enforcement officer shall inform the individual charged that the Fort Peck Tribal law requires the individual to take the test to determine whether the individual is under the influence of alcohol or drugs; that refusal to take the test directed by the law enforcement officer is a crime punishable pursuant to 17 CCOJ 108(k).

A test administered under this Section is not admissible in any criminal proceeding to determine a violation of 17 CCOJ 107 if the law enforcement officer fails to inform the individual charged as required under this Subsection.

(c) Any person who is unconscious or who is otherwise in a condition rendering him/her incapable of refusal, shall be deemed not to have withdrawn the consent provided for in paragraph (a) of this Section.

(d) If the test to be given is a blood test, only a physician or registered nurse or other qualified person acting under the supervision and direction of a physician or registered nurse, may, at the request of the law enforcement officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. Any person withdrawing blood shall not incur any civil or criminal liability as a result of his/her assistance.

(e) If the test to be given is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will ensure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

(f) Upon the request of the person tested, full information concerning the test taken at the direction of the law enforcement officer shall be made available to such person or his/her attorney.

(g) The person tested may, at his own expense, have a physician or registered nurse or other qualified person acting under the supervision and direction of a physician or registered nurse administer a test, in addition to any tests administered at the direction of the law enforcement officer, for the purpose of determining the amount of alcohol and/or drugs in his/her blood at the time alleged as shown by chemical analysis of his/her blood, breath or urine.

(2) contraband; or

(h) If a person under arrest refuses upon the request of a law enforcement officer to submit to a chemical test designated by the arresting officer, the officer shall, on behalf of the Fort Peck Tribal Court, immediately seize his/her driver's license. The law enforcement officer shall forward the license to the Court, along with a sworn report that he/she had reasonable grounds to believe the arrested person had been driving or was in actual control of a motor vehicle upon the ways of the Reservation open to the public while under the influence of intoxicating liquor or drugs, and that the person had refused to submit to the test on the request of the law enforcement

officer. Upon receipt of the report, the Court shall suspend the license for 90 days.

(i) All suspensions under subsection (h) are subject to appeal to the Tribal Court. The issue on appeal shall be limited to whether a law enforcement officer had reasonable grounds to believe that the person had been driving or was in actual physical control of a motor vehicle upon the ways of the Reservation open to the public while under the influence of intoxication liquor or drugs, whether the person was placed under arrest, and whether the person refused to submit to the test.

(j) If the arrested person has refused to provide a blood, breath, or urine sample, the officer may apply for a search warrant to be issued to collect a sample of the person's blood for testing.

A warrant may be issued under this section to search for and seize any:

(1) evidence, including blood samples that may yield evidence of any measured amount or detected presence of alcohol or drugs in a person's body when subjected to testing;

(3) a person for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained.

(k) A person refusing to take the test directed by the law enforcement officer can be charged with a Class A misdemeanor. **(AMENDED AS PER RESOLUTION NOS. 52-2005-11, DATED 11/25/2003; 25-2174-2011-05; DATED 5/23/2011; 28-1466-2016-12, DATED 12/27/2016.)**

**Sec. 109. Admissibility of evidence.**

(a) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs, evidence of the amount of alcohol or drugs in the person's blood at the time of the act alleged as shown by a chemical analysis of his/her blood, breath, or urine is admissible.

(b) If the person under arrest refused to submit to the test as hereinabove provided, proof of refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon the ways of this Reservation open to the public while under the influence of intoxicating liquor or drugs.

(c) The provisions of this Section do not limit the introduction of any competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor or drugs.

**(AMENDED AS PER RESOLUTION NO. 25-2174-2011-05; DATED 05/23/2011.)**

**Sec. 110. Failure to drive on right side of roadway.**

(a) Upon all highways of sufficient width, the driver of a vehicle shall drive upon the right half of the highway, except

(1) When overtaking and passing another vehicle proceeding in the same direction, or

(2) When the right half of the roadway is closed to traffic while under construction or repair or signposted for one-way traffic or other conditions.

(b) No person shall at any time drive a vehicle to the left side of the roadway

(1) When approaching the crest of a grade or upon a curve in the highway where the driver's view of the highway is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction, or

(2) When approaching within one hundred (100) feet of or traversing any intersection or railroad grade crossing, or

(3) When the view is obstructed upon approaching within one hundred (100) feet of any bridge, viaduct, or tunnel.

**Sec. 111. Following too closely.**

The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon and condition of the highway.

**Sec. 112. Overtaking a vehicle without regard for safety.**

(a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass it at a safe distance to the left, and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(b) The driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on signal and shall not increase the speed

of his/her vehicle until completely passed by the overtaking vehicle.

(c) No person shall drive a vehicle to the left side of the center line of a highway in overtaking another vehicle unless such left side is clearly visible and is free from oncoming traffic for a sufficient distance ahead to permit such overtaking to be made in safety. No driver shall overtake another vehicle in a NO PASSING zone.

**Sec. 113. Failure to stop for school bus flashing lights.**

Every driver, approaching from whatever direction, shall stop before reaching a school bus receiving or discharging school children, when flashing lights are in operation, and shall not proceed until the school bus resumes motion, or signaled by the driver to proceed.

**Sec. 114 Failure to give right-of-way.**

(a) The driver of a vehicle about to enter or cross a highway from a private drive or road shall yield the right-of-way to all vehicles approaching on the highway.

(b) When two (2) vehicles from different highways enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right-of way to the vehicle on the right.

(c) The driver of a vehicle within an intersection intending to turn left shall yield the right-of-way to any vehicle approaching from the opposite direction which is so close as to constitute a hazard.

(d) The driver of a vehicle approaching, but not having entered, an intersection shall yield the right-of- way to a vehicle already within such intersection and making a left turn, provided the driver of the vehicle turning left has given a plainly visible signal of his intention to turn.

(e) Upon the immediate approach of an authorized emergency vehicle making use of audible or flashing light signals, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position as close as possible to the right-hand edge of the road and stop until the emergency vehicle has passed. This provision

shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(f) The driver of any vehicle upon a highway within a business or residence district shall yield the right-of-way to a pedestrian crossing at any marked or unmarked crosswalk at an intersection.

**Sec. 115. Stopping, standing or parking on highway.**

(a) No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or unpaved or main traveled portion of any highway outside of a business or residence district when it is practicable to park or leave such vehicle standing off of the paved or unpaved or main traveled portion of such highway; but in every event an unobstructed width of highway opposite the standing vehicle shall be left free for the passage of other vehicles and the vehicle must be clearly visible for a distance of five hundred (500) feet to the drivers of vehicles approaching from either direction.

(b) The prohibition in paragraph (a) shall not apply to any person who, by reason of a traffic accident or other emergency, is unable to move a vehicle off the highway in accordance with this Section.

(c) Whenever any duly authorized law officer finds a vehicle standing upon a highway in violation of this provision, or as a result of an emergency as described in paragraph (b), he/she is hereby authorized to move such vehicle or require the driver or person in charge of such vehicle to move such vehicle to the nearest place of safety.

(d) No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, effectively setting the brake, and, when standing upon any grade, turning the front wheels to the curb or side of the highway.



**Sec. 116. Obstruction to driver's view or driving mechanism.**

(a) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such number of persons, exceeding three (3), as to obstruct the view of the driver to the front or sides of the vehicle or so as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his/her control over the driving mechanism of the vehicle.

**Sec. 116-A. Windshields required - unobstructed and equipped with wipers - window tinting and suncreening.**

(a) A motor vehicle, except a motorcycle, quadricycle, motor-driven cycle, or farm tractor, must be equipped with a front windshield.

(b) A person may not drive a motor vehicle with:

(1) A sign, poster, substance, or other non-transparent material upon the front windshield, side wings, or side or rear windows of the vehicle that materially obstructs, obscures, or impairs the driver's clear view of the public road or an intersecting public road; or

(2) A windshield that is shattered or in such a defective condition that it materially impairs or obstructs the driver's clear view.

(c) The windshield on a motor vehicle must be equipped with a device for clearing rain, snow, or other moisture from the windshield. The device must be maintained in good working order.

(d) A person may not operate a motor vehicle upon a public road if:

(1) The windshield has sunscreening material that is not clear and transparent below the AS-1 line or if it has suncreening material that is red, yellow, or amber in color above the AS-1 line;

(2) The front side windows have sunscreening or other transparent material that has a luminous reflectance of more than 35% or has light transmission of less than 24%;

(3) The rear window or side windows behind the front seat have sunscreening or other transparent material that has a luminous reflectance of more than 35% or has light transmission of less than 14%, except for the rear window or side windows behind the front seat on a multipurpose vehicle, van, or bus.

(e) As used in this section, the following definitions apply:

(1) Light transmission means the ratio of the amount of total light, expressed in percentages, that is allowed to pass through the sunscreening or transparent material to the amount of total light falling on the motor vehicle window.

(2) Luminous reflectance means the ratio of the amount of total light, expressed in percentages, that is reflected outward by the sunscreening or transparent material to the amount of total light falling on the motor vehicle window.

(3) Multipurpose vehicle means a motor vehicle designed to carry 10 or fewer passengers that is constructed on a truck chassis or with special features for occasional off-road use.

(4) Sunscreening material means a film, material, tint, or device applied to motor vehicle windows for the purpose of reducing the effects of the sun.

(f) Upon the first citation, the motor vehicle owner shall have 60 days to bring the motor vehicle into compliance with this statute.

**(PER RESOLUTION NO. 27-1066-2014-08; DATED 8/25/2014)**

**Sec. 117. Riding on fenders, bumpers, hoods, or other exterior parts of motor vehicles, and attachment to the exterior parts of motor vehicles.**

(a) While the motor vehicle is in motion, no driver shall permit passengers to ride on the fenders, bumpers, hood, or any other exterior part of a motor vehicle, or attach themselves to an exterior part of the motor vehicles so as to be propelled or pulled by such motor vehicle, nor shall any passengers ride on any such exterior part, or attach themselves to any such part in the manner herein described.

(b) Nothing in this Section shall be construed to prevent passengers from riding in the back of a pick-up truck or other similar vehicle, nor shall it be construed to prohibit an individual from riding in a reasonably safe manner on the exterior part of a motor vehicle as an official participant in a parade or other ceremony permitted by the Tribes.

**Sec. 118. Pedestrians on roadways without regard for safety.**

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk to all vehicles upon the roadway.

(b) Where sidewalks are provided, it is unlawful for any pedestrian to walk along or upon an adjacent roadway. Where sidewalks are not provided, a pedestrian walking along a highway shall, when practical, walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

(c) No pedestrian shall be upon or along any roadway while under the influence of intoxicating liquor, drugs or other substances.

**Sec. 119. Unlawful use of or tampering with a motor vehicle.**

(a) No person shall tamper with the motor vehicle of another with intent to injure the same or cause inconvenience to the owner thereof, or take and operate the motor vehicle of another under such circumstances as not to constitute larceny, but without the consent of the owner or person lawfully in charge thereof.

(b) Any person convicted of a violation of this Section is guilty of a Class A misdemeanor.

**Sec. 120. Abandonment of motor vehicle.**

(a) Any motor vehicle which is abandoned on

(1) Tribal trust land or in any urban area within the Fort Peck Reservation, except in areas designated for abandonment by the Tribal Executive Board, or

(2) On individual trust land within the Fort Peck Reservation, except with the consent of an

Indian owner of the land, shall be removed to designated sites by law enforcement officials authorized by the Tribal Executive Board.

(b) A motor vehicle shall be deemed abandoned if it is

(1) Lacking in one or more parts essential to its mechanical functioning, or is otherwise inoperable so that it has no substantial potential for further use consistent with usual functions, and

(2) Is not moved and no repairs are attempted for seven (7) consecutive days.

(c) The Tribal Executive Board may designate sites where motor vehicles may be abandoned lawfully. The Tribal Executive Board shall provide the public with appropriate notice of the location of designated sites.

(d) Upon removal of any abandoned vehicle, law enforcement officials shall inspect an abandoned vehicle for evidence of ownership, and shall make a reasonable effort to learn or determine its ownership and any liens of record. If the name and address of the owner and/or lien holder of the vehicle are ascertained, the officer shall notify the owner and/or lien holder by certified or registered mail of the impoundment and location of the vehicle. If the name and address of the owner and/or lien holder cannot be ascertained, notice shall be posted at the Tribal Office, which notice may contain multiple listings. The notice shall specify that the owner or lien holder may redeem the vehicle upon presenting satisfactory proof of ownership or right to possession, and payment of the civil penalty and expenses of removing and storing the vehicle as provided in paragraph (f) not more than ten (10) days after the date of notice; otherwise the vehicle will be sold in accordance with the provisions of this Chapter.

(e) If the vehicle is not redeemed within ten (10) days after the date of notice as provided in paragraph (d) of this Section, the vehicle may be sold or otherwise disposed of by the Court, provided that it first finds that the vehicle has been abandoned within the meaning of subsection 120(a) and (b). When any vehicle is sold, the Court shall execute a certificate of sale in duplicate, deliver an original copy to the purchaser and

retain the copy. The certificate of sale shall contain the name and address of the purchaser, the date of sale, the consideration paid, a description of the vehicle and a stipulation that no warranty is made as to the condition or title of the vehicle.

(f) Any person who

(1) Unlawfully abandons a motor vehicle; or

(2) Owns a motor vehicle that is abandoned unlawfully is guilty of a Class B misdemeanor, and in addition to the penalties prescribed for such misdemeanors shall be charged with the expenses of moving and storing the vehicle.

### **Sec. 121. Driving in violation of an order of the Court.**

(a) No person whose right to operate a motor vehicle has been suspended by the Court shall operate or attempt to operate a motor vehicle upon a public highway in violation of the Court's order.

(b) A driving permit may be issued by the Court on such conditions as the Court may impose to any person whose right to operate a motor vehicle has been suspended.

(c) Any person who is convicted of driving in violation of an order of the Court is guilty of a Class A misdemeanor, and in addition to the penalties prescribed for such misdemeanors, the Court may deprive such person of the right to operate a motor vehicle for a period not to exceed one (1) year.

### **Sec. 122. Emergency medical assistance.**

Any physician, registered nurse, licensed practical nurse, or individual with a valid medical certification to administer emergency care, who in good faith renders such care at or near the scene of a motor vehicle accident to the victims of the accident, shall not be held liable for any damages resulting from the rendering of that care, provided that the person rendering such care shall at the least render such emergency care as in his/her judgment is indicated at the time. The provisions of this Section shall not apply to injuries or death resulting from the intoxication, willful misconduct or gross negligence of the person rendering the care, nor in instances where the emergency

care was provided with the expectation of compensation.

### **Sec. 123. Duties in the event of accident.**

(a) The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall give his name, address, and the registration number of the vehicle he/she is driving and shall upon request, and if available, exhibit his/her driver's or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including hospital or medical attention.

(b) The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

(c) The driver of any vehicle involved in any accident resulting only in damages to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of the accident, and of his/her name and address, and of the registration number of the vehicle he/she is driving, and shall upon request and if available exhibit his/hers operator's or chauffeur's license.

(d) The driver of any vehicle involved in an accident resulting in injury to or death of any person or property damage to another or others to an apparent extent of fifty dollars (\$50.00) or more shall as soon as practicable thereafter give notice of such accident to a police officer.

**Sec. 124. Law officers to report accidents.**

Every Reservation law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident either at the time of and at the scene of the accident or thereafter by interviewing the participants or witnesses shall, within twenty four (24) hours after completing such investigation, forward a written report of such accident to the Chief of Police.

**Sec. 125. Traffic violations procedures.**

(a) Any person cited for violations of any provisions of this Title, other than Sections 107 or 121, shall elect among the following alternative options:

(1) Prior to the date scheduled for hearing on the citation, he/she may pay a fine in the amount provided in Section 125(d) either in person or by mail, which fine shall be specifically noted on the citation; or

(2) The person shall appear for a hearing in Court at the time scheduled on the citation. At the appearance, he/she may either:

(A) Make a statement in explanation of his/her action, and the Court may at that time, in its discretion, impose, waive, reduce, or suspend the statutory fine provided in Section (125(d); or

(B) Request a hearing on the violation charged. If at the hearing the individual is found guilty of the violation charged, the penalty imposed shall be that prescribed in the section establishing the violation, of if there is no such penalty, the penalty prescribed in Section 127.

(b) If the person cited follows the procedures in Sections 125(a)(1) or 125(a)(2)(A), he/she shall be deemed to have admitted the violation and to have waived his/her right to a hearing on the issue of commission of the violation.

(c) If a person fails to appear at the hearing scheduled, after being properly summoned by summons or citation, the judge may at once issue an arrest warrant. The arrest warrant may set cash bail equivalent to the statutory fine. The person may notify the Court that the cash bail will be forfeited as the penalty for the offense charged. Such

forfeiture will be taken as a guilty plea of the offense charged and a conviction of the offense documented on the person's criminal record.

(d) The following fines shall be assessed for the following offenses for any person electing to pay the fine in advance of the hearing. A person so electing need not attend the hearing scheduled on the citation. Each citation shall clearly and plainly advise the person of this option, and of the fine to be paid for the offense charged:

(1) For a speeding, driving without a valid license and reckless driving violation, \$25.00 for the first offense, \$50.00 for a second offense within 1 year of the first offense, and \$75.00 for each additional offense within 1 year of the first. Any defendant submitting an insufficient amount for a fine shall be summoned into Court to pay the balance.

(2) For all other violations except those listed in Section 125(a), a fine in the amount of \$25.00, unless the Court summons the person to appear in Court because of multiple offenses.

(e) A person cited for a violation of Sections 107 or 121 shall appear for a hearing in Court at the time scheduled on the citation.

**(AMENDED AS PER RESOLUTION NO. 1771-2007-06; DATED 6/22/2007; AMENDED AS PER RESOLUTION 26-638-2012-04; DATED 4/11/2012)**

**Sec. 126. Notification of parents or guardians of juvenile traffic offenders**

The juvenile officer shall notify the parent or guardian of any juvenile scheduled to appear before the Court on a traffic offense of the charge as contained in the citation, the penalty attached to the offense, and the time and place of any court hearing on the matter.

**Sec. 127. Penalties not otherwise prescribed.**

Any person who is convicted of an offense enumerated in this Title, for which another penalty is not specifically provided, is guilty of a Class B misdemeanor and the Court may impose any penalty prescribed for this class of offense.

**Sec. 128. Right of appeal.**

Any person who has been sentenced to imprisonment or whose right to operate a motor vehicle has been suspended under authority of this Title shall have the right of appeal on such sentence or suspension in accordance with Title 2, Chapter 2 of this Code by filing a notice of appeal within fifteen (15) days after entry of the Court's order. Notwithstanding any other provision of this Code, no other persons on whom penalties have been imposed under authority of this Chapter shall have the right of appeal.

**Sec. 129. Statute of limitations.**

No prosecution shall be maintained under this Chapter unless the action shall have been commenced within three (3) months after the commission of the offense.

**Sec. 130. Child restraint systems.**

(a) No person may transport a child between 0 and 4 years old, or weighing less than 40 pounds, in a motor vehicle unless the child is properly restrained in a safety belt or other properly designed and manufactured child restraint system.

(b) This section is not applicable to a vehicle that is a motorbus, school bus, moped, motorcycle or 3 or 4 wheel all-terrain vehicle.

(c) Violation of this section is a primary offense and is a Class B misdemeanor.

**(AMENDED PER RESOLUTION NOS. 1200-90-8, DATED 08/27/90; 26-1200-2012-08.)**

**Sec. 131. Safety belt use required.**

(a) Every person 16 years of age or older operating or riding in a motor vehicle shall wear the safety belt assembly in a properly adjusted and securely fastened manner.

(b) No person shall operate a motor vehicle unless all passengers under the age of 16 are either wearing a safety belt assembly or are securely fastened into an approved child restraint system as set forth in Section 130(a) of this Title.

(c) Enforcement of this section by law enforcement officers shall be accomplished as a primary action.

(d) This section is not applicable to:

(1) Operators or passengers of motorbuses, school buses, taxicabs, mopeds, motorcycles, 3 or 4 wheel all-terrain vehicles or vehicles over 10,000 pounds gross vehicle weight (GVW), and

(2) An operator or passenger who possesses written verification from a licensed physician that the operator or passenger is unable to wear a safety belt assembly for physical or medical reasons.

(e) Failure to comply with the requirements of this section does not constitute negligence, nor may failure to wear a safety belt assembly be admissible as evidence of negligence in any civil action.

(f) Violation of this section is a Class B misdemeanor.

**(AMENDED AS PER RESOLUTION NO. 514-92-2, DATED 02/24/92; AMENDED AS PER RESOLUTION NO. 383-2010-02; DATED 02/22/2010).**

**Sec. 132. Mandatory financial responsibility.**

(a) Required maintenance of financial responsibility. Every driver and every owner of a motor vehicle, within the Reservation, shall at all times maintain in force one of the forms of financial responsibility specified in subsection (b), and shall at all times carry in the vehicle written evidence of the form of financial responsibility in effect for the vehicle, as specified in subsection (d).

(b) Forms of financial responsibility. Financial responsibility of a driver or owner is established if they are one of the following, according to the laws of any competent jurisdiction:

(1) An insured or obligee under a form of insurance or bond which complies with the requirements of subsection (c) .

(2) A self-insurer according to the provisions of subsection (c).

(3) A deposit with a governmental official in compliance with the provisions of subsection (c).

(c) Amount of minimal financial responsibility. All forms of financial responsibility shall provide the following minimal liability coverage; exclusive of interest and costs, with respect to each motor vehicle:

(1) \$25,000 because of bodily injury to or death of one person in any one accident and subject to said limit for one person.

(2) \$50,000 because of bodily injury to or death of two or more persons in any one accident; and

(3) \$10,000 because of injury to or destruction of property of others in any one accident.

(d) Evidence of financial responsibility. For purposes of subsection (a), "written evidence" shall be limited to include the following forms:

(1) (i) Name of the insurance or surety company which issued the motor vehicle liability policy or bond meeting the requirements of subsection (c),

(ii) Name of the insured,

(iii) Effective date of policy for the vehicle,

(iv) Description of insured vehicle, and

(v) Number of the insurance policy or surety bond; or

(2) If the driver or owner is self-insured under the laws of any competent jurisdiction, proof of a certification of self-insurance from the issuing department of such jurisdiction;

(3) If the driver or owner has deposited security under the laws of any competent jurisdiction, proof of certification from the treasurer of such jurisdiction.

(e) Enforcement of financial responsibility. For purposes of enforcement, any law enforcement officer is hereby authorized to request written evidence, as provided in subsection (d), when the law enforcement officer has probable cause to stop an individual for violating any provision of this title or other applicable law.

(f) Criminal remedies, penalties and civil remedies.

(1) No penalty or civil remedies shall be imposed for failure to carry written evidence, provided that written evidence is produced to the Clerk of the Tribal Court within 30 days of the violation.

(2) Any Indian who fails to produce such written evidence will be subject to the following penalties:

(i) Any Indian convicted of a first offense under this Section is guilty of a Class B misdemeanor.

(ii) Any Indian convicted of a subsequent offense under this Section within one year of the first conviction is guilty of a Class A misdemeanor.

(3) Any non-Indian who fails to produce such written evidence will be subject to the following civil remedies:

(i) A civil fine of not to exceed \$100 for the first offense;

(ii) A civil fine of not to exceed \$500 for any subsequent offense.

**(AMENDED AS PER RESOLUTION NO. 1781-2001-5, DATED 05/15/01.)**

### **Sec. 133. Parking in restricted areas.**

(a) No person shall violate any parking restriction posted by a municipality or an entity authorized by Tribal, State or federal law to set parking restrictions.

(b) A person, who does not have a special parking permit, may not park in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by a person with a disability. However, a person charged with violating this section may not be convicted if within 24 hours the person produces in Court or the office of the arresting officer a special parking permit that was previously issued to the person and that is valid at the time of arrest.

Violation of this section is a Class B misdemeanor.

**(AS PER RESOLUTION NO. 25-2175-2011-05; DATED 05/23/2011.)**

### **Sec. 134. Headgear required for minor motorcycle riders.**

(a) An operator and passenger under 18 years of age of a motorcycle or quadricycle operated upon the streets or public highways of the Reservation shall wear protective headgear upon the head. The headgear must meet standards established by the current Federal Motor Vehicle Safety Standard No. 218.

(b) A person may not operate a motorcycle upon the streets or public highways of the Reservation unless all passengers under 18 years of age are in compliance with subsection (a).

**(AS PER RESOLUTION #26-640-2012-04; DATED 4/11/2012)**

**Sec. 135. Lighting equipment.**

(a) *When lighted lamps are required.* Every vehicle upon the ways of the Reservation open to the public at any time one-half hour after sunset to one-half hour before sunrise and at any time when due to insufficient light or unfavorable atmospheric conditions persons and vehicles on the ways of the Reservation open to the public are not clearly discernible at a distance of 500 feet ahead shall display light lamps.

(b) *Use of multiple-beam road-lighting equipment.* Whenever a vehicle is being operated on a roadway or shoulder adjacent to a roadway during the times specified in Subsection (a), the driver shall use a distribution of light, or composite beam, capable of revealing persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(1) Whenever the driver of a vehicle approaches an oncoming vehicle within 1,000 feet, the driver shall use a distribution of light or composite beam that does not project into the eyes of the oncoming driver.

(2) Whenever the driver of a vehicle follows another vehicle within 500 feet to the rear, the driver shall use a distribution of light or composite beam that does not project into the vehicle being approached.

(c) *Special restrictions on lamps.*

(1) A lighted or illuminating device upon a vehicle other than headlamps, spot lamps, auxiliary lamps, or flashing turn signals, emergency vehicle warning lamps, and school bus warning lamps that projects a beam of light of an intensity greater than 300 candlepower must be so directed that the high intensity portion of the beam may not strike the level of the roadway on which the vehicle stands at a distance of more than 75 feet from the vehicle.

(2) A person may not drive or move a vehicle or equipment upon a highway with a lamp or device displaying a red or blue light visible from in front of the center of the vehicle. This section does not apply to a vehicle upon which a red or blue light visible from the front is expressly authorized.

(3) Flashing, blinking, sequential, rotating, or pulsating lights are prohibited except on vehicles that are authorized to contain the lights or on a vehicle as a means for indicating a right or left turn or the presence of a vehicular traffic hazard requiring unusual care in approaching, overtaking, or passing.

(4) License plate decorative lighting that is not original manufacturer's equipment or undercarriage decorative lighting that rotates, flashes, or oscillates or that displays a color authorized for use by police vehicles and authorized emergency vehicles may not be illuminated on a vehicle that is operated upon a highway or street.

**(AS PER RESOLUTION NO. 28-1721-2017-03; DATED 3/27/2017)**

**Sec. 136-138. Reserved.**

**Sec. 139. Hand-held electronic communications device use prohibited.**

(a) (1) Except as provided in subsections (a)(2) and (e), a person may not use or have in the person's immediate physical possession a hand-held electronic communications device while operating a motor vehicle on a public road, including operation while temporarily stationary because of traffic, traffic light, or a stop sign.

(2) A person may use or have in the person's immediate physical possession a hand-held electronic communications device while operating a motor vehicle if the vehicle has been driven off or to the side of an active roadway and has stopped in a location where it can safely remain stationary.

(b) A person who violates subsection (a) shall be fined \$50. A person who commits a second violation and any subsequent violation of subsection (a) shall be fined \$100. An insurance company may not hold a violation of this section against the insured driver.

(c) An operator of a motor vehicle who commits a moving violation while engaged in an activity prohibited in this section shall be fined \$100 in addition to the penalty or fine imposed for the moving violation.

(d) The provisions of this section may not be construed as authorizing the seizure or forfeiture of a hand-held electronic communications device unless otherwise provided by law.

(e) This section does not apply to:

(1) A person reporting a health, fire, safety, or police emergency; or

(2) A person 18 years of age or older who is:

(A) Using a hands-free accessory;

(B) An employee of a governmental fire agency, ambulance service, or law enforcement

agency, an emergency responder, or the operator of an authorized emergency vehicle in the performance of the person's duties as an emergency service provider.

(C) Registered with the Fort Peck Tribes or a county sheriff to assist in emergency response and who holds a valid amateur radio operator license issued by the federal communications commission and is using a two-way radio while engaged in an emergency response; or

(D) Employed as a commercial motor vehicle driver or a school bus driver and who uses a hand-held electronic communications device within the permissible scope of the person's employment.

(f) As used in this section, the following definitions apply:

(1) Hand-held electronic communications device means a hand-held or portable electronic device that uses shortwave analog or digital radio transmissions between the device and a transmitter to permit wireless communications to and from the user of the device. A hand-held electronic communications device includes but is not limited to a cell phone, text messaging device, paging device, personal digital assistant, and laptop computer.

(2) Hands-free accessory means an external accessory that connects to an electronic communications device and enables the operator of a motor vehicle to use the electronic communications device without touching it.

(3) Immediate physical control means touching the hand-held electronic communications device. Merely having the device on one's person or in a motor vehicle does not constitute immediate physical possession.

(4) Moving violation means a violation of a traffic regulation of the Fort Peck Tribes by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a public road.

**(PER RESOLUTION NO. 27-1065-2014-08;  
DATED 8/25/2014)**



**Sec. 140. Purpose.**

The Tribal Executive Board finds that it is fundamental to have safe, drivable, dependable roadways to ensure the highest level of public safety and to allow all Reservation residents to connect housing, health care centers, schools, emergency services, employment centers and to open access for tourism and resource use. The Tribal Executive Board further finds that it is in the best interests of the Tribes to impose maximum gross weight on vehicles traveling upon the roadways of the Reservation, for the political integrity, economic security, and health and welfare of the Tribes.

**Sec. 141. Maximum gross weight.**

(a) An axle may not carry a load in excess of 20,000 pounds, and not two consecutive axles more than 40 inches or less than 96 inches apart may carry a load in excess of 34,000 pounds. An axle load is the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle. For purposes of this section, axles 40 inches or less apart are considered to be a single axle. The maximum gross weight allowed on a vehicle, group of axles, or combination of vehicles must be determined by the formula:

$$W = 500((LN/(N - 1)) + 12N + 36)$$

in which W equals gross weight, L equals wheelbase in feet, and N equals number of axles, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more. The maximum gross weight allowed on a vehicle may not exceed the weight limits adopted by the Indian Reservation Roads department. The Indian Reservation Roads department will adopt rules for weight limits based upon the most recent version of 23 CFR, part 658, appendix c.

(b)(1) Notwithstanding a vehicle's conformance with the requirements of subsection (a), except for the steering axle, all axles weighing over 11,000 pounds must have at least four tires or have wide-base tires. The maximum load on a

axle, other than a steering axle, equipped with wide-base tires is limited to 500 pounds for each inch of tire width.

(2) The provisions of subsection (b)(1) do not apply to passenger buses.

(3) For the purpose of this section, wide-base tires are tires that are 14 or more inches in nominal width. The maximum tire weight limit is computed for wide-base tires based on the number of inches shown on the tire marking, or if the tire marking is shown by metric size, the tire weight limit is computed by conversion to the metric size.

(c) This section does not apply to highways that are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent the Fort Peck Tribes from receiving federal funds.

**Sec. 142. Penalties.**

(a) A person, firm, or corporation found to be violating 17 CCOJ 141 shall be subjected to civil fines in the following amounts:

(1) \$30 for any excess weight up to and including 2,000 pounds;

(2) \$75 for any excess weight more than 2,000 pounds and less than 4,001 pounds;

(3) \$125 for any excess weight more than 4,000 pounds and less than 6,001 pounds;

(4) \$175 for any excess weight more than 6,000 pounds and less than 8,001 pounds;

(5) \$250 for any excess weight more than 8,000 pounds and less than 10,001 pounds;

(6) \$275 for any excess weight more than 10,000 pounds and less than 12,001 pounds;

(7) \$300 for any excess weight more than 12,000 pounds and less than 14,001 pounds;

(8) \$400 for any excess weight more than 14,000 pounds and less than 16,001 pounds;

(9) \$500 for any excess weight more than 16,000 pounds and less than 18,001 pounds;

(10) \$600 for any excess weight more than 18,000 pounds and less than 20,001 pounds;

(11) \$1,000 for any excess weight more than 20,000 pounds and less than 25,001 pounds;

(12) \$2,000 for any excess weight more than 25,000 pounds.

(b) If a motor vehicle is equipped with a retractable axle that is not fully extended and carrying its proportionate share of the load while the motor vehicle is operated upon the roads of the Reservation, the weight penalties in subsection (a) apply to all weight over the legal maximum allowed by the fixed axles regardless of whether the axle is extended at the time of weighing. In addition to the penalties in subsection (a), the owner or operator shall be fined \$100 for failure to have the retractable axle fully extended while the gross weight of the vehicle exceeds the legal maximum allowed by the fixed axles.

(c) A complaint filed and a summons or notice to appear issued pertaining to a violation of subsection (a) must specify the amount of the excess weight that the defendant is alleged to have had upon the vehicle or combination of vehicles.

**(AS PER RESOLUTION NO. 25-2320-2011-7;  
DATED 7/11/2011)**

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 18 - Livestock**

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## Chapter 1. Livestock Trespass

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### Sec. 101. Definitions.

As used in this Chapter:

(a) “Secretary” means the Tribal Secretary.

(b) “Livestock Officer” means the officer appointed by the Tribal Executive Board to carry out and enforce this Chapter and includes any other persons acting under his/her authority or otherwise designated by the Tribal Executive Board to carry out and enforce this Chapter.

(c) “Trespassing livestock” means any bovine animal, horse, mule, sheep, swine or goat, running without a properly approved use arrangement on the property of another or the Tribes, whether fenced or unfenced, within the exterior bounds of the Reservation, that falls within one or more of the following classes:

(1) The owner of the trespassing livestock is unknown in the locality where the livestock is found, or the owner is known but cannot with reasonable diligence be found;

(2) The trespassing livestock is unbranded or unmarked, except unweaned animals running with their mothers who bear a brand or mark;

(3) The trespassing livestock is branded with 2 or more brands and the ownership is disputed;

(4) The owner of the trespassing livestock is known but does not have a properly approved use arrangement.

(d) “Service” or “to serve” as used in this ordinance means one or the other of the following:

(1) Delivery to the designated person by handing such person a true and correct copy of a notice or other paper, or by leaving a copy at his/her dwelling house or usual place of abode, with a person of suitable age and discretion then residing therein;

(2) Delivery by certified mail, return receipt requested, to the address, if known, or to the last known address, of the designated person. Service shall be made by a person at least 18 years of age and proof of such service shall be made by such person by filing with the Livestock Officer a statement certifying the date, time, place and manner of service.

**(AMENDED AS PER RESOLUTION NO. 27-1793-2015-05; DATED 4/27/2015)**

### Sec. 102. Impoundment.

The Livestock Officer may impound trespassing livestock that falls into one or more classes of Section 101(c). Before taking such action, the Livestock Officer shall inspect the trespassing livestock for brands and other evidence or ownership, and shall make a diligent effort to learn or determine the ownership of such trespassing livestock. In his/her discretion, the Livestock Officer may hold such trespassing livestock for not more than ten (10) days after his/her inspection to enable him/her to complete his/her investigation of ownership. If the owner is found, the Livestock Officer shall serve the owner with notice as provided in Section 103 and shall proceed in accordance with Section 103. If the owner is not found, the trespassing livestock shall be sold in accordance with the provisions of this Chapter.

### Sec. 103. Impoundment and notice where the owner of trespassing livestock is known.

If the owner of the trespassing livestock is known, after impoundment, the Livestock Officer shall serve the owner in the manner provided in Section 101(d) with written notice of such impoundment. The notice shall describe the livestock impounded, including any brands or marks, the dates and place of trespass, and the date and place of impoundment. A copy of this Chapter shall accompany the notice and the notice shall

specify that the owner may redeem the trespassing livestock upon payment of the accrued costs and expenses as hereinafter defined, not more than ten (10) days after the date of service of the notice, and that otherwise the trespassing livestock will be sold in accordance with the provisions of this Chapter. The owner may redeem the trespassing livestock within the time allowed upon payment of the costs of feed and care incurred by the Tribes, and all other costs and expenses incurred under authority of this Chapter, including the costs of the time spent by the Livestock Officer as measured by the compensation paid by the Tribes to the Livestock Officer, plus the reasonable reimbursement expenses incurred by the Livestock Officer.

**Sec. 104. Sale of trespassing livestock.**

If there is an unsettled dispute as to the identity of the rightful owner, or if the rightful owner of trespassing livestock is not found, or, when found, refuses or fails within the time allowed, to pay the costs and charges specified in Section 103, the Livestock Officer either shall send the trespassing livestock to the nearest available open market or licensed sales ring where the Montana brand inspection is maintained, and shall direct that such livestock be there sold, or, at the option of the Livestock Officer, the Livestock Officer shall sell the trespassing livestock at public sale to the highest bidder. The Secretary shall execute and deliver a bill of sale from the Tribes to the purchaser of such trespassing livestock. The bill of sale shall identify this Chapter and shall recite that it is issued under authority of this Chapter.

**Sec. 105. Disposition of proceeds of sale.**

From the proceeds of any sale under Section 104, the Tribes shall be reimbursed for all costs and expenses as defined in Section 103, incurred in carrying out the provisions of this Chapter. Any remaining balance shall be deposited in a Montana bank or savings and loan institution, in the name of the Tribes, in a special interest-bearing account identified as "Assiniboine and Sioux Tribes, Trespassing Livestock Account". Should

the proceeds of any sale under this Chapter be insufficient to pay all costs and expenses incurred under this Chapter, the deficit shall be paid by the Tribes.

**Sec. 106. Payment to owner upon proof of ownership.**

The remaining balance from the sale of trespassing livestock on deposit in accordance with Section 105 of this Chapter, together with accrued interest, shall be paid to the rightful owner of such trespassing livestock, provided satisfactory proof of claim for such payment is made within one (1) year from the date of sale; otherwise, such balance, together with accrued interest thereon, shall be paid into the general account of the Tribes and any and all claims against such balance shall stand extinguished. If more than one (1) person claims to be the rightful owner, no payment shall be made except upon resolution of the dispute by the claimants or by adjudication by any court of competent jurisdiction.

**Sec. 107. Destruction of diseased trespassing livestock.**

The Livestock Officer is hereby authorized to destroy any trespassing livestock certified by a licensed veterinarian to have any infections, contagious, or communicable disease, and that such destruction is necessary to prevent the spread of disease. Neither the Tribes, the Livestock Officer, nor any other tribal employee or agent shall be liable for destroying such trespassing livestock.

**Sec. 108. Liability for death or loss of trespassing livestock.**

Neither the Tribes, the Livestock Officer, nor any other tribal employee or agent shall be liable for the loss of any trespassing livestock by reason of the death of such trespassing livestock while in the possession of the Tribes, the Livestock Officer, or any other employee or agent of the Tribes.

**Sec. 109. Reports of Livestock Officer.**

The Livestock Officer shall file a report with the Secretary every thirty (30) days of all trespassing livestock as to which action has been taken under this Chapter. The report shall describe the livestock, identify any brands or other marks, and set out the status of the action under this Chapter. The reports shall be open to the public for inspection.

**Chapter 2. Livestock-At-Large on Highways**

**Sections:**

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Sec. 202. Impoundment where the owner is not known.....3

Sec. 203. Notice of initial violations where owner of livestock-at-large is known.....3

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**Sec. 201. Definitions.**

The definitions of Section 101 of this Title shall apply to this Chapter. In addition, for the purposes of this Chapter:

(a) "Non-private roads" means any public (state, county or Bureau of Indian Affairs) roads that are located within the Reservation.

(b) "Livestock-at-large" means any bovine animal, horse, mule, sheep, swine or goat that falls within one (1) or more of the classes set out in Section 101(c)(1)-(3) and is found running on or beside any non-private road or any unfenced land abutting any such road, or on any berm or

shoulder abutting any such road, except that livestock fixed to a post or picket from one (1) hour after sunrise to one (1) hour before sundown shall not be included within this definition.

**Sec. 202. Impoundment where the owner is not known.**

The Livestock Officer may impound livestock-at-large. Before taking such action, the Livestock Officer shall inspect the livestock-at-large for brands and other evidence of ownership, and shall make a diligent effort to learn or determine the ownership of such livestock. In his/her discretion, the Livestock Officer may hold such livestock-at-large for not more than ten (10) days after his/her inspection to enable him/her to complete his/her investigation of ownership. If the owner is found, the Livestock Officer shall serve the owner with notice as provided in Section 203 and 204 of this Chapter and shall proceed in accordance with Sections 203 and 204. If the owner is not found, the livestock-at-large shall be sold in accordance with the provisions of this Chapter.

**Sec. 203. Notice of initial violations where owner of livestock-at-large is known.**

Where the owner of livestock-at-large is known and no prior notice of violation has been served on the owner, the Livestock Officer shall serve a notice of initial violation on the owner. The notice shall set forth the date(s) and place(s) at which the livestock was found at large and shall inform the owner that impoundment pursuant to Section 204 shall occur if the violation reoccurs. The owner shall also be notified that in the event of a recurring violation no further notice shall be served on the owner prior to impoundment.

**Sec. 204. Impoundment and notice where the owner of livestock-at-large is known.**

If the owner of the livestock-at-large is known, and except as provided in Section 203, after impoundment the Livestock Officer shall serve the owner with written notice of such impoundment. The notice shall describe the livestock impounded, including any brands or marks, the dates and place at which the livestock-at-large

was found, and the date and place of impoundment. A copy of this Chapter shall accompany the notice and the notice shall specify that the owner may redeem the livestock-at-large upon payment of the accrued costs and expenses as hereinafter defined, not more than ten (10) days after the date of service of the notice; otherwise, the livestock-at-large will be sold in accordance with the provisions of this Chapter. The owner may redeem the impounded livestock-at-large within the time allowed upon payment of the costs of feed and care incurred by the Tribes, and all other costs and expenses incurred under authority of this Chapter, including the costs of the time spent by the Livestock Officer, plus the reasonable expenses incurred by the Livestock Officer.

**Sec. 205. Sale of livestock-at-large.**

If there is an unsettled dispute as to the identity of the rightful owner, or if the rightful owner of livestock-at-large is not found, or when found, refuses or fails within the time allowed to pay the costs and charges specified in Section 204 of this Chapter, the Livestock Officer either shall send the livestock-at-large to the nearest available open market or licensed sales ring where the Montana brand inspection is maintained and shall direct that such livestock be there sold, or, at the option of the Livestock Officer, the Livestock Officer shall sell the livestock-at-large at public sale to the highest responsible bidder. The Secretary shall execute and deliver a bill of sale from the Tribes to the purchaser of such livestock.

**Sec. 206. Disposition of proceeds of sale.**

From the proceeds of any sale under Section 205 of this Chapter, the Tribes shall be reimbursed for all costs and expenses as defined in Section 204 in carrying out the provisions of this Chapter. Any remaining balance shall be deposited in a Montana bank or savings and loan institution, in the name of the Tribes, in a special account identified as "Assiniboine and Sioux Tribes, Livestock-at-Large Account". Should the proceeds of any sale under this Chapter be insuffi-

cient to pay all costs and expenses incurred under this Chapter, the deficit shall be paid by the Tribes.

**Sec. 207. Payment to owner upon proof of ownership.**

The remaining balance from the sale of livestock-at-large on deposit in accordance with Section 206 of this Chapter, together with accrued interest, shall be paid to the rightful owner of such livestock, provided satisfactory proof of claim for such payment is made within one (1) year from the date of sale; otherwise, such balance, together with accrued interest thereon, shall be paid into the general account of the Tribes and any and all claims against such balance shall stand extinguished. If more than one person claims to be the rightful owner, no payment shall be made except upon resolution of the dispute by the claimants or by adjudication by any court of competent jurisdiction.

**Sec. 208. Destruction of diseased livestock-at-large.**

The Livestock Officer is hereby authorized to destroy any livestock-at-large that a licensed veterinarian certifies to have any infectious, contagious, or communicable disease, and certifies that such destruction is necessary to prevent the spread of disease. Neither the Tribes, the Livestock Officer, nor any other tribal employee or agent shall be liable for destroying such livestock.

**Sec. 209. Liability for death or loss of livestock-at-large.**

Neither the Tribes, the Livestock Officer, nor any other tribal employee or agent shall be liable for the loss of any livestock-at-large by reason of the death of such livestock while in the possession of the Tribes, the Livestock Officer, or any other employee or agent of the Tribes.

**Sec. 210. Reports of Livestock Officer.**

The Livestock Officer shall file a report with the Secretary every thirty (30) days of all livestock-at-large as to which action has been taken under this Chapter. The report shall describe the

livestock, identify any brands or other marks, and set out the status of the action under this Chapter. The reports shall be open to the public for inspection.

**Sec. 211. Notice of this Chapter.**

As a convenience to the public, this Chapter shall be conspicuously posted in the Fort Peck Indian Agency, the Tribal Office building, and in such other public places as the Executive Board of the Tribes may direct. A classified advertisement shall be published in the local newspapers of general publication, describing the nature and purpose of the Chapter, specifying that copies of the Chapter are available on request at the Fort Peck Indian Agency and the Tribal Office, and identifying the places where the full text of the Chapter is posted. Nothing stated in this Section and no action or failure to act under this Section shall affect the validity of this Chapter.

**Sec. 212. Effective date.**

This Chapter shall become effective upon expiration of the period for rescission by the Secretary of the Interior under Article 18, Section 2 of the Constitution.



**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 19 – Game and Fish Management**

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## Chapter 1. Scope and Application

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### Sec. 101. Application.

(a) Members of the Assiniboine and Sioux Tribes of the Fort Peck Reservation. Subject to the special conditions set forth in Section 203(a), the provisions of this Title and regulations issued pursuant thereto shall govern the taking of game, fish and other wildlife within the exterior boundaries of the Fort Peck Reservation by members of the Assiniboine and Sioux Tribes.

(b) Indians of the Fort Peck Indian Reservation not members of the Tribes. The provisions of this Title, the regulations issued pursuant thereto and the conditions of the tribal permit shall govern the taking of fish and birds by all Indians on the Fort Peck Indian Reservation who are not members of the Tribes. The law of the United States, including Title 18 U.S.C. 1164 and 1165 shall also govern the taking of fish and birds by all such non-member Indians. The taking of other types of game by non-member Indians within the exterior limits of the Fort Peck Reservation is prohibited.

(c) Non-Indians. Subject to the special conditions set forth in Section 203 (b), the provisions of this Title and regulations issued pursuant thereto shall govern the taking of fish and birds within the exterior boundaries of the Fort Peck Indian Reservation by non-Indians.

**(AMENDED AS PER RESOLUTION NO. 1363-88- 9, DATED 09/23/88., and RESOLUTION NO. 579-90-4, DATED 4/09/90.)**

### Sec. 102. Fort Peck Game and Fish Commission.

There is hereby created a Fort Peck Game and Fish Commission, herein called the "Commission", consisting of one representative of each of the six (6) Reservation communities. The Commission shall operate according to a charter and by-laws adopted by the Commission and approved by the Executive Board. Where no Commission exists, the functions of the Commission

shall be performed by the Executive Board and any reference in this Title to the Commission shall be read to mean the Executive Board.

**(AMENDED AS PER RESOLUTION NO. 1264-2000-11, DATED 11/13/00).**

## Chapter 2. Permits

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### Sec. 201. Hunting, fishing or trapping without permits prohibited.

Members of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation shall be allowed to hunt and fish on the Reservation with special free permits as provided in Sections 202 and 203. No Tribal member under eighteen (18) years of age shall hunt on the Reservation, except that Tribal members twelve (12) years of age or more may hunt if they successfully complete a hunter safety course approved by the Commission. No other person shall hunt, fish or trap within the exterior boundaries of the Fort Peck Reservation, as set forth in Section 101, unless duly authorized by permit issued by the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation (hereinafter the "Tribes") in accordance with this Chapter and the regulations issued pursuant thereto.

**Sec. 202. Persons eligible for permits.**

(a) Indians of federally recognized tribes. Indians of federally recognized tribes shall be eligible for Tribal permits without the requirement of state licenses.

(b) Non-Indians licensed by the State. Non-Indians are eligible to obtain a Tribal permit to hunt birds or fish subject to the special conditions set forth in Section 203(b) of this Chapter, and Section 101(c) of Chapter 1.

**(AMENDED AS PER RESOLUTION NO. 1363-88- 9, DATED 09/23/88, AND RESOLUTION NO. 579-90-4 DATED 4/09/90.)**

**Sec. 203. Special Permits, hunting and birding permits, and specific stamps.**

(a) Each hunter or fisherman who is a member of the Assiniboine and Sioux Tribes shall have a Tribal I.D. in their possession that serves as their hunting and fishing permit.

(b) Each hunter or fisherman who is not a member of the Assiniboine and Sioux Tribes shall obtain a bird permit and fishing permit and in addition shall obtain stamps for the specific birding and fishing privileges sought. The Specific stamps available shall be determined from time to time by the Commission. The permit and stamps shall be valid for a period specified by the Commission.

**(AMENDED BY RESOLUTION NO 133-2001-12) (REAFFIRMED BY RESOLUTION NO. 756- 2002-7, DATED 7/22/2002)**

**Sec. 204. Distribution of permits and stamps; accounting for fees and stubs.**

All general permits and stamps will be issued by the Commission. The Commission may appoint bonded Tribal game wardens or agents to distribute permits and stamps. Agents may deduct twenty five cents (\$.25) for each permit or stamp sold as a service fee. The balance of the fees collected and stubs of permits will be turned over to the Commission. Money and stubs will be turned over to the Commission at the end of each month. Deposits are to be accompanied by a report showing the amount received from the sale of each class of permit or stamp. Fees are to be deposited

by the Commission to a special Fish and Wildlife Fund which will be used to help run the program.

**Sec. 205. Failure to turn money over.**

Any person who fails, refuses or neglects to turn over money collected or permit stubs to the Commission shall be punished by a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00) plus court costs. The Commission may take appropriate action to recover on the bond of the person in default.

**Sec. 206. Supervisor to file license stubs.**

The supervisor of the Fish and Game Department will keep a file of all permit stubs. These stubs may be inspected at any time by game wardens. At the end of each open season the unused permits will be returned to the Commission.

**Sec. 207. Contents of permits.**

Each permit shall:

(a) Describe the applicant, including weight, height, color of hair and color of eyes.

(b) Designate applicant's place of residence, including street address and post office.

(c) Have printed upon it in large letters the word "Nontransferable".

(d) Have printed upon it in large figures the year for which it is issued, and the date of expiration.

(e) Have printed upon it that the holder agrees to abide by Tribal game, fish and trapping provisions and agrees, subject to Section 201, to be subject to Tribal Jurisdiction while within the boundaries of the Fort Peck Reservation.

(f) Be issued in the name of the Fort Peck Tribal Executive Board.

**Sec. 208. False oath or statement on permit application.**

No person shall make any false oath or statement in an application for any permit issued under this Chapter.

**Sec. 209. Alteration, transfer or improper use of permit.**

No person shall alter or change in any manner or loan to another any permit or stamp issued by the authority of this Chapter. No person other than the person to whom it is issued shall use a permit or stamp.

**Sec. 210. Permit to be in possession while hunting, fishing or trapping.**

Any person holding a special permit, birding or fishing permit and a birding or fishing stamp as required under this Title shall carry such permit and stamps when hunting, fishing or trapping. Upon request of any member of the Commission or any game warden, he/she shall show the permit and stamps.

**Chapter 3. Limits and Seasons**

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**Sec. 301. Seasons.**

The Commission shall establish the season for various types of hunting and fishing. The seasons shall be set forth in regulations issued pursuant to this Title.

**Sec. 302. Limits.**

The Commission shall establish the bag and creel limits before each season. Such limits shall be set forth in regulations issued pursuant to this Title. The limits may be adjusted from time to time during the season as needed.

**Sec. 303. Applicability to tribal members.**

No seasons or limits shall restrict hunting or fishing by Tribal members unless the regulations specifically state they are applicable to such hunting or fishing.

**Chapter 4. Restrictions on Hunting**

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**Sec. 401. Hunters to wear fluorescent orange outer garment.**

Every person while hunting or accompanying someone hunting shall wear an outer garment above the waist containing a quantity of no less than four hundred square inches of daylight fluorescent orange.

**(AMENDED AS PER RESOLUTION NO. 1084 2002-10, DATED 10/28/2002)**

**Sec. 402. Hours for hunting wildlife.**

No person shall pursue, shoot, kill, take or attempt to take any wildlife, between one-half (1/2) hour after sunset of one (1) day and one-half (1/2) hour before sunrise of the next day.

**Sec. 403. Use of snow machines prohibited.**

No person shall use snow machines for the hunting of deer, elk, or antelope, or other big game. Predators can be hunted by snow machine.

**Sec. 404. Hunting and harassing game from aircraft prohibited.**

Except when necessary for protection of life or property, no person operating or controlling the operation of any aircraft shall intentionally kill, chase, or harass any wild life animal or wild bird, protected or unprotected. The Commission may make exceptions for the hunting of predators that are killing livestock. A special permit issued by the Commission will be required for such hunting.

**Sec. 405. Spotlighting prohibited.**

(a) No person shall throw or cast the rays of a spotlight having a luminance of greater than .75 candlepower into any field, pasture, woodland, forest, or prairie wherein wildlife or domestic livestock may be or may be reasonably expected to be while having in his/her possession or their possession or under their control a firearm or other implement whereby any wildlife or domestic animal could be killed by aid of an artificial light.

(b) The following persons shall be exempt from this Section:

(i) All officers authorized to enforce the game and livestock laws on the Reservation;

(ii) A landowner, including any lessee, permittee, employee or agent of such landowner, engaged in the pursuit of a legitimate activity on his/her own lands.

(c) The provisions of this Section do not apply where the headlights of a motor vehicle, operating and proceeding in a normal manner on any highway or roadway, cast a light upon such animal on or adjacent to the highway or roadway and there is no intent or attempt to locate that animal.

**Sec. 406. Hunting with firearms while intoxicated or under the influence of liquor prohibited.**

No person shall go in the field to hunt wildlife at any time with a firearm, when intoxicated or under the influence of intoxicating liquor or drugs. On conviction, his/her hunting permit shall become void. If the conviction is reversed, the permit shall be restored to the defendant.

**Sec. 407. Hunting near occupied building(s) without permission prohibited.**

No person shall hunt or pursue game upon the premises of another within five hundred (500) yards of any occupied building, without consent of the person occupying such building.

**Sec. 408. Hunting for remuneration prohibited.**

(a) All hunting shall be for the subsistence use of the hunter and his or her family. No person shall hunt for another for remuneration, nor shall any person hire another to hunt for remuneration without permission of the Commission. Outfitting and/or guiding for remuneration is prohibited.

(b) No person shall hunt or kill any big game solely for the purpose of taking and selling the carcass. No person shall capture, kill or injure a big game animal and thereafter abandon or fail to dress or care for the same where the carcass is reasonably accessible.

(c) Pursuant to 19 CCOJ 702, violation of this section includes punishment as a Class A misdemeanor for an Indian and a civil fine up to \$500 for a non-Indian.

**(AMENDED AS PER RESOLUTION NO. 26-1653-2012-11; DATED 11/14/2012.)**

**Sec. 409. Unlawful possession of game prohibited.**

No person shall possess any wild game on the Reservation except:

(a) A person authorized to hunt or catch such game under this Title, or

(b) A person who can show that he was given game by a person authorized to hunt or catch such game, or

(c) A person who can show he/she possesses such game for a legitimate cultural purpose, and that such game has previously been designated as culturally significant by the Commission.

**Sec. 410. Possession or control of game, birds, or animals prima facie evidence of unlawful activity.**

Possession or control of any game, birds, or animals, or any part thereof on the Reservation, the killing, taking, or possession of which is unlawful or by a person who is not authorized to hunt such game is prima facie evidence that such game was caught, taken or killed in violation of this Title.

**Sec. 411. Aiding in concealment of game unlawfully taken or possessed prohibited.**

No person shall knowingly aid or assist in the concealment of any game that has been unlawfully taken or that is unlawfully possessed.

**Sec. 412. Fence gates to be closed; destruction of property.**

A person who opens a gate or bars in a fence enclosing farm premises shall not leave such gate or bars open unless he/she is in lawful possession of the premises. No person shall cut fences or otherwise destroy property belonging to another on any premises. In addition to other remedies, any person violating this provision will be required by the court having jurisdiction over the matter to pay for all damages resulting from such violation.

**Sec. 413. Waste of game animal, game bird, or game fish.**

(a) A person responsible for the death of any game animal, game bird, or game fish suitable for food may not purposely waste the game by:

(1) Detaching or removing only the head, hide, antlers, tusks, or teeth or any or all of these parts from the carcass of a game animal, and/or abandoning the carcass of a game animal or any portion of the carcass suitable for food in the field; or

(2) Transporting, hanging, or storing the carcass in a manner that renders it unfit for human consumption; or

(b) A person in possession of a game animal or game animal parts, a game bird, or a game fish suitable for food may not purposely waste the game by:

(1) Transporting, storing, or hanging the animal, bird, or fish in a manner that renders it unfit for human consumption; or

(2) Disposing of or abandoning any portion of the animal, bird, or fish that is suitable for food.

(c) A person convicted of a violation of this section is guilty of a Class B misdemeanor for the first violation and a Class A misdemeanor for the second and subsequent violations. Additionally, the defendant's hunting, fishing and trapping privileges shall be suspended as stated in Chapter 7 of this Title.

**(AS PER RESOLUTION NO. 26-2219-2013-04; DATED 04/08/2013)**

**Sec. 414. Unlawful shooting of buffalo.**

(a) Any unlawful shooting of a buffalo or unlawful shooting at a buffalo within the exterior boundaries of the Fort Peck Reservation is punishable pursuant to Chapter 7 of this Title.

(b) Any attempt to shoot any buffalo within the exterior boundaries of the Fort Peck Reservation by any licensee, lessee, permittee, renter and/or tenant holder will result in rescinding all licenses, leases, right-of-ways, permits, rental agreements and tenancy agreements of Tribal lands held by the perpetrator.

**(AS PER RESOLUTION NO. 26-2224-2013-04; DATED 04/08/2013)**

**Sec. 415. Buying and selling of antlers prohibited.**

The buying and selling of the antlers of any game animal is prohibited. A person convicted of a violation of this section is guilty of a Class A misdemeanor.

**(AS PER RESOLUTION NO. 27-1243-2014-10; DATED 10/27/2014)**

## **Chapter 5. Restrictions on Fishing**

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### **Sec. 501. Illegal methods for taking fish.**

No person shall lay, set or use any drug, poison, lime, medicated bait, explosive or any other lethal or injurious substance for the purpose of catching, taking, killing or destroying any fish. No person shall lay, set or use a gill net for the purpose of catching, taking, killing or destroying any fish.

### **Sec. 502. Commercial sale of fish prohibited.**

No sale, barter, or trading of fish, other than minnows and similar bait fish, found in the waters of the Fort Peck Reservation shall be legal.

### **Sec. 503. Unlawful possession of fish prohibited.**

No person shall possess any fish on the Reservation except:

(a) A person authorized under this Title to take such fish, or

(b) A person who can show that he/she was given fish by a person authorized to take such fish.

### **Sec. 504. Possession of fish prima facie evidence of unlawful activity.**

Possession or control by any person of any fish, or any part thereof on the Reservation, the taking or possession of which is unlawful or by a person who is not authorized to fish, is prima facie evidence that such fish were taken in violation of this Chapter.

### **Sec. 505. Aiding in concealment of fish unlawfully taken or possessed prohibited.**

No person shall knowingly aid or assist in the concealment of any fish that have been unlawfully taken or are unlawfully possessed.

## **Chapter 6. Remedies for Destruction of Property by Hunter, Fisherman, or Trapper**

### **Sections:**

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### **Sec. 601. Remedy for destruction of property of landowner.**

Any person who destroys or severely damages the property of a landowner or allottee while in the course of hunting, fishing, or trapping under authority of a Tribal permit, may have a complaint lodged against him or her with the Commission on such forms provided by, or in such a manner as prescribed by the Commission. The Commission shall make a determination as to the cause of such damage and as to the extent, and may prescribe such remedies deemed equitable and reasonable. The Commission may also revoke the permit of a hunter, fisherman or trapper found to be at fault in causing any damage to another's property.

## **Chapter 7. Administration and Enforcement**

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**Sec. 701. Commission may prescribe regulations.**

(a) The Commission, will prescribe regulations establishing permit fees, season, limits, and such other conditions to the Tribal permit as it may deem appropriate.

(b) All regulations issued by the Tribes pursuant to this Section shall be published in the official newspapers of the area affected by the regulations. No order or regulation shall take effect until after such publication is released.

(c) All regulations issued under this Section will have the force of law. Any person violating a provision of such regulation shall be subject to the provisions of Section 702.

**Sec. 702. Violations of the Chapter.**

(a) Penalties applicable to Indians. Any Indian found guilty of violating any applicable provision of this Chapter, the regulations issued pursuant thereto, or the conditions of the permit, for which another penalty is not specifically provided, shall be guilty of a Class A misdemeanor, and in addition, at the discretion of the Court, the Court may suspend the privilege to hunt, fish or trap within the Reservation for period to be fixed by the Court.

(b) Penalties applicable to Non- Indians. Any non-Indian hunting, fishing or trapping who violates any applicable provision of this Code, the regulations issued pursuant thereto, or the conditions of the permit, for which another penalty is not specifically provided, shall be subject to a civil fine up to five hundred dollars (\$500.00). In addition, the non-Indian violator may be delivered to the custody of the Federal or State law enforcement officers, or reported to such officers for prosecution under applicable Federal or State law, as the case may be. In either case, all fish and game in custody or possession shall be taken by the arresting officer and preserved as evidence, and in addition, may, at the discretion of the Tribal Court, have the privilege to hunt, fish or trap on trust lands within the Reservation suspended for period to be fixed by the Court.

(c) Upon suspension of hunting and fishing provisions, the Court shall take any hunting or

fishing permit held by the defendant and forward it, together with a certified copy of the suspension, to the Commission. Upon expiration of the suspension, the Commission shall return the defendant's permit if it is still valid. No person shall attempt to purchase a hunting or fishing permit while his or her privilege to hunt or fish is suspended.

**Sec. 703. Confiscation of fish, game and firearms.**

Game and fish wardens shall confiscate all wild birds, wild animals or fish or any part thereof taken, killed, possessed or transported contrary to this Chapter. They shall also confiscate all dogs, guns, seines, nets, lights, or other implements unlawfully used, in pursuing, taking, or attempting to take, concealing, or disposing of wild birds, wild animals, or fish, or parts thereof.

**Sec. 704. Unlawful game or fish mixed with legal.**

If two (2) or more animals, birds, or fish, or parts thereof are packed, stored, or contained in the same shipment, bag, or other container, and one (1) has been taken in violation of this Title, the entire contents shall be confiscated.

**Sec. 705. Confiscated property may be sold.**

A court having jurisdiction over the matter may order the sale of birds, animals, or fish, or any part thereof, or other property which has been confiscated. This order may be enforced only after a hearing and proper notice to the owner and the finding of the Court that the property:

(a) Was taken, filled, possessed, or was being transported contrary to this Chapter by the person from whom it was confiscated,

(b) Was being used in violation of this Chapter at the time it was confiscated, or

(c) Had been used in violation of this Chapter within six (6) months previous to the time it was confiscated.



**Sec. 706. Proceeds from sale of confiscated property.**

All confiscated property ordered to be sold shall be sold by the Commission, for the highest price obtainable. A bill of sale will be given to each purchaser on forms prepared by the Commission. All proceeds after sale expenses shall be collected by the Commission and deposited to the properly established Tribal Fish and Game Fund.

**Sec. 707. Perishable confiscated property.**

Perishable property confiscated pursuant to this Chapter may be sold without Court Order by the officer making the confiscation, under the supervision of the Commission. The proceeds of such a sale will be deposited in the Tribal Court to await disposition by the Court.

**(THIS TITLE IS AMENDED AS PER RESOLUTION NO. 1364-88-9, DATED 09/23/88.)**

**Fort Peck Tribal Court**  
**807 Court Avenue - P.O. Box 1027**  
**Poplar, MT 59255**



**Title 20 – Water Resources Use and Administration**

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## Chapter 1. General Provisions

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### Sec. 101. Purposes.

The purpose of this Code is

(1) To provide for the orderly resolution of disputes between persons authorized to use the Tribal Water Right,

(2) To regulate and administer all diversions and uses of water under the Tribal Water Right within the Reservation except for diversions or uses received from the Fort Peck Irrigation Project, and

(3) To implement the Fort Peck-Montana Compact.

### Sec. 102. Uses of Tribal Water Right prohibited unless authorized pursuant to this Code.

No person or entity shall divert or use any portion of the Tribal Water Right unless authorized to do so pursuant to the provisions of this Code.

### Sec. 103. All diversions and uses subject to paramount rights of Tribes.

All diversions and uses of the Tribal Water Right shall be subject to the overriding rights and interests and the governmental authority of the Tribes, the provisions of this Code now or hereafter in force, and actions taken pursuant to this Code.

### Sec. 104. Protection of rights which arise under the laws of the United States.

This Code shall not be construed to deny any person a water right owned by that person which arises under the laws of the United States.

### Sec. 105. Construction to be consistent with Compact.

This Code shall not be construed in any manner which is consistent with the provisions of the Fort Peck-Montana Compact.

### Sec. 106. Effective date.

This Code shall take effect on November 15, 1986, or on such earlier date as it is approved by the Secretary of the Interior.

### Sec. 107. Definitions.

(a) "Administrator" shall mean the Water Administrator of the Tribes.

(b) "Commission" shall mean the Water Resources Control Commission.

(c) "Compact" shall mean the Fort Peck-Montana Compact ratified by the Tribal Executive Board on April 29, 1985.

(d) "Domestic use" means any use of water by one or more individuals, family units or households for drinking, cooking, bathing, laundering, sanitation and other personal comforts and necessities, and for the irrigation of a family garden or orchard not exceeding one-half (½) acre in area.

(e) "Effective date" means November 15, 1986 or such earlier date as this Code is approved by the Secretary of the Interior.

(f) "Fort Peck Indian Reservation" or "Reservation" means the Fort Peck Reservation as established in the Agreement of December 28 and December 31, 1986, and confirmed by the Act of May 1, 1988, 25 Stat. 113.

(g) "Fort Peck Irrigation Project" means those irrigation systems and works constructed pursuant to the Act of May 30, 1908, 35 Stat. 558, and all lands receiving water from such systems and works.

(h) "Indian" means any person who:

(1) Is an enrolled member of the Tribes; or

(2) Is a member of a tribe that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(3) Holds or is recognized by the Secretary of the Interior as eligible to hold trust or restricted property on the Reservation.

(i) "Municipal uses" means all reasonable water uses within the Reservation necessary in carrying out the functions of municipal government.

(j) "Nonuse" shall mean the voluntary failure, without sufficient cause,

(1) To put water to actual use within two (2) years after a permit is granted, or

(2) To use all or a portion of the water available under such permit for a period of five (5) consecutive years. "Sufficient cause" shall include:

(A) Drought or other unavailability of water;

(B) Active service by the permit holder in the armed forces of the United States;

(C) The operation of legal proceedings restraining water use;

(D) The application of any laws restricting water use;

(E) Incarceration of the permit holder in a penal institution;

(F) Confinement of the permit holder in a mental institution, whether voluntary or not;

(G) Incompetence of the permit holder by reason of age or mental incapacity;

(H) Other causes of nonuse clearly and demonstrably beyond the control of the holder or holders of the permit.

(k) "Person" means an individual or any other entity, public or private, including the State of Montana, the Tribes, and the government of the United States and all officers, agents, and departments thereof.

(l) "Tribal Executive Board" means the governing body of the Tribes.

(m) "Tribes" mean the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation.

(n) "Tribal Water Right" means the right of the Tribes to divert annually from the Missouri River,

certain of its tributaries, and ground water beneath the Reservation the lesser of (1) 1,050,472 acre-feet of water, or (2) the quantity of water necessary to supply a consumptive use of 525,235 acre-feet per year for the uses and purposes set forth in the Compact with priority date of May 1, 1988, provided that no more than 950,000 acre-feet of water, or the quantity of water necessary to supply a consumptive use of 475,000 acre feet may be diverted annually from surface water sources. This right is held in trust by the United States for the benefit of the Tribes and is further defined and limited as set forth in the Compact.

(o) "Waste" means the unreasonable loss of water through the design or negligent operation of a diversion or of a water distribution facility. Inadvertent loss of water owing to defects in equipment for diversions and withdrawals shall not be construed as waste if necessary repair is made with reasonable diligence.

## **Chapter 2. Notice of Enactment of this Code**

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### **Sec. 201. Notice required.**

To insure that all persons and entities affected by this Code are given adequate notice of the enactment and effect of this Code, public notice of this Code shall be provided by the Administrator within fifteen (15) days of its enactment in accordance with the provisions of this Chapter.

### **Sec. 202. Contents of notice.**

Such public notice shall contain the following statement, prominently displayed and in large, boldface type:

#### **NOTICE**

THE ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION HAVE ENACTED A TRIBAL WATER CODE, TO GOVERN THE DIVERSION AND USE OF THE TRIBAL WATER RIGHT AS DEFINED

IN THE TRIBAL WATER CODE AND THE FORT PECK-MONTANA COMPACT. AFTER OCTOBER 1, 1987, NO DIVERSION OR USE OF THE TRIBAL WATER RIGHT SHALL BE ALLOWED EXCEPT AS AUTHORIZED BY THE FORT PECK TRIBAL WATER CODE. THE COURT REQUIRES THAT ANY DIVERSION OR USE OF THE TRIBAL WATER RIGHT ON THE RESERVATION BY (1) THE TRIBES; (2) ANY INDIAN; (3) ANY NON-INDIAN SUCCESSORIN- INTEREST TO ANY ALLOTTEE ACTUALLY USING WATER WITHIN THE RESERVATION BY VIRTUE OF A WATER RIGHT ACQUIRED DIRECTLY OR INDIRECTLY FROM AN INDIAN PREDECESSOR-IN-INTEREST; OR (4) ANY OTHER PERSON WISHING TO USE WATER ON THE RESERVATION UNDER AN AGREEMENT WITH THE TRIBES, MUST OBTAIN A TRIBAL WATER USE PERMIT OR OTHER APPROVAL. THE NECESSARY FORMS FOR PERMIT APPLICATIONS MAY BE OBTAINED FROM THE TRIBAL OFFICE AT POPLAR, MONTANA (406) 768- 5155. COMPLETE COPIES OF THE FORT PECK TRIBAL WATER CODE ARE ALSO AVAILABLE AT THE ABOVE ADDRESS.

**Sec. 203. Procedure for giving notice.**

(a) The notice provided above shall be placed in at least one regularly published newspaper on the Reservation at least once every other week over a twelve (12) continuous week period.

(b) The notice provided in Section 202 shall be placed in a prominent and conspicuous location in the County Courthouses of Roosevelt, Valley, Sheridan and Daniels Counties, the Agency Office of the Bureau of Indian Affairs at Poplar, Montana, and the Tribal Office, Poplar, Montana and may be posted in other locations as designated by the Commission or Administrator.

**Chapter 3. Water Resources Control Commission**

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**Sec. 301. Creation of Water Resources Control Commission.**

There is hereby established the Water Resources Control Commission.

**Sec. 302. Composition of the Commission, appointment and term.**

The Commission shall consist of three (3) members appointed for a term of three (3) years each by a two-thirds (2/3) majority vote of those voting at a meeting of the Tribal Executive Board at which a quorum is present; provided however that the initial Commission shall have one member serving for a term of three (3) years, one member serving for a term of two (2) years, and one member serving a term of (1) year, such initial terms as designated by the Tribal Executive Board. Commission members shall attend such programs for training about the Compact, this Tribal Water Code and water resources as the Tribal Executive Board shall require. The Commission shall be majority vote designate which member shall serve as Chairman.

**Sec. 303. Qualifications of Commission members.**

To be eligible to hold the office of Commission member, a person

- (1) Must be at least twenty-five (25) years of age;

(2) Must have at least a high school education or its equivalent;

(3) Must be of high moral character and integrity;

(4) Must have never been convicted of a criminal offense other than traffic offenses;

(5) Must be knowledgeable about the Compact and the provisions of this Tribal Water Code; and

(6) Must be physically able to carry out the duties of the office. Members of the Tribal Executive Board may serve as members of the Commission. Commission members must also be members of the Tribes.

**Sec. 304. Oath of office. On taking office, each member of the Commission shall take an oath as follows:**

"I, \_\_\_\_\_, do solemnly swear that I will administer justice and do equal right without respect to persons and will truly, faithfully and impartially discharge and perform all the duties incumbent upon me as (member) of the Water Resources Control Commission according to the best of my abilities and understanding. So help me God."

**Sec. 305. Compensation and bond of Commission members.**

The compensation of Commission members shall be fixed by the Tribal Executive Board. The rates of compensation so established may not be decreased during a member's term of office. Commission members shall be bonded by a surety bond satisfactory to the Tribal Executive Board. Commission members shall receive compensation only for those days they sit as members of the Commission, including meetings they are required to attend as member of the Commission.

**Sec. 306. Suspension and removal of Commission members.**

(a) Upon written charges of specific misconduct in office or permanent physical or medical disability to carry out the duties of office, adopted by a majority vote of those voting at a meeting of the Tribal Executive Board at which a quorum is

present, the Tribal Executive Board may initiate proceedings to remove the Chairman or any other member of the Commission from office. "Misconduct", as used in this Section, shall mean:

(1) Conviction of a crime other than a traffic offense;

(2) Abusive or incompetent performance of duties in office, or repeated failure to perform the duties of office;

(3) Self-dealing or biased decision making in performing the duties office.

(b) All charges shall be in writing and served on the Commission member personally, or by certified or registered mail, return receipt requested, not less than ten (10) days prior to the date of hearing before the Tribal Executive Board on the charges. A member proposed to be removed shall be given an opportunity to answer by written and oral presentation before the Tribal Executive Board, to have the charges proven only by sworn testimony of witnesses and documentary evidence, to have the right to cross-examine witnesses and to present his/her own witnesses, and to have the right to be represented by counsel at his/her own expense at the hearing. After hearing, or default, a member may be removed for specific misconduct in office by a vote of two-thirds (2/3) of those voting at a meeting of the Tribal Executive Board at which a quorum is present. The decision of the Tribal Executive Board shall be final.

**Sec. 307. Disqualification of Commission member in particular cases.**

A member of the Commission shall disqualify himself/herself in any proceeding in which his/her impartiality might reasonably be questioned, in which he/she has any personal bias or prejudice concerning any party, in which he/she or a member of his/her immediate family might be a witness or has any personal knowledge of disputed evidentiary facts concerning the proceeding, in which he/she or any member of his/her immediate family is a party or has any financial or other interest in the proceeding, has acted or is acting as an attorney in the proceeding,

or in which he/she might otherwise appear to be biased or prejudiced.

**Sec. 308. Rules and regulations.**

The Commission is authorized to adopt such rules and regulations as it deems necessary to implement the objectives and purposes of this Water Code. Such rules and regulations shall be submitted to the Tribal Executive Board and may be approved, modified or disapproved by the Executive Board within ninety (90) days of submission to it by the Commission.

**Chapter 4. Applications for Water Permits**

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**Sec. 401. Permits required.**

Beginning on October 1, 1987, no use of the Tribal Water Right within the Reservation shall be made without a permit issued by the Commission except for any use of water by an Indian for domestic purposes or for stock watering purposes not in excess of twenty (20) acre-feet per year.

**Sec. 402. Applications for permits.**

The following persons must file an application to divert or use water within the Reservation:

- (a) The Tribes;
- (b) Any individual Indian;
- (c) Any non-Indian successor-in-interest to any allottee actually using water within the Reservation by virtue of a water right arising under the laws of the United States, which water right was acquired directly or indirectly from an Indian predecessor-in-interest; and
- (d) Any other person or entity wishing to use water within the Reservation under an agreement with the Tribes pursuant to the terms of Article 3, Section K of the Compact.

**Sec. 403. Contents of permit applications.**

(a) Information in applications for permits shall be verified by the applicant under oath on forms provided by the Commission and shall include the following information, in addition to any other information deemed necessary by the Commission:

- (1) The name and mailing address of the applicant;
- (2) The name of or a description of the source or sources from which water is or will be diverted or withdrawn;
- (3) The quantity of water which is or will be used during the year and the period or periods during which water will be used;
- (4) A legal description, or other description reasonably setting forth the point or points of diversion or withdrawal and the place of use;
- (5) A description of the method or methods of diversion or withdrawal;
- (6) The purpose or purposes for which water is or will be used;
- (7) A description of how water is or will be diverted and consumed, including acreage and crop if the water is for irrigation and the kind and number of stock if water is for stock watering; and a description of the changes, if any, in quality;
- (8) The date on which the use or uses were commenced or will be commenced;
- (9) If a use is an existing use, the history of the use, including the length of continuous use;
- (10) For existing uses, an indication whether problems of water levels and supply or problems of declining quality have been encountered;
- (11) The water user's plan for future development and his/her water use or uses and related activities, including the date by which all water sought to be appropriated will be put to full use;
- (12) For applications for the right to store water, the location and design of the dam, evidence that the dam was designed by a licensed engineer; the design, location and capacity of the reservoir; the amount of water sought to be diverted and stored, and the periods during the year when water will be diverted, impounded or withdrawn;

(13) For proposed uses undertaken pursuant to a transfer by the Tribes of a portion of the right to use the Tribal Water Right under Chapter 11 of this Code, proof that the Tribal Executive Board has approved such a transfer;

(b) An application by any non-Indian successor-in-interest to any allottee actually using water within the Reservation by virtue of a water right arising under the laws of the United States, which right was acquired directly or indirectly from an Indian predecessor-in-interest, shall include the following additional information:

(1) The name of the original allottee of the lands to be permitted;

(2) The date of the issuance of the trust patent to the allottee and the number of the trust patent;

(3) The date the land left trust status, and the number or other designation of the fee patent;

(4) The date the land was first owned by a non-Indian;

(5) The names of each non-Indian owner, and the dates of ownership;

(6) The acreage and legal description of lands beneficially irrigated and the quantity of water beneficially used annually by the Indian owner on the date the land left trust status;

(7) The acreage and legal description of lands diligently developed and beneficially irrigated and the quantity of water beneficially used annually by the first owner subsequent to the land leaving trust status, and the date or dates on which irrigation of all such lands actually commenced;

(8) Proof that all lands for which a permit is sought are practicably irrigable and have been continuously beneficially irrigated by each owner since the land left trust status until the date of the permit application;

(9) Such other information as the Commission shall require.

**Sec. 404. Application not required for protected use.**

(a) Inventory of existing diversion and uses by Indian. The Commission shall cause an inventory of all existing diversions and uses of the Tribal Water Right by Indians protected pursuant to Article 4, Section A, paragraph 1 of the Compact.

The inventory shall be made within six (6) months of the enactment of this Code. For each such diversion and use, the inventory shall identify the person making the diversion and use, the water source, the point of diversion, the period of use, the place of use, the amount of water being diverted or used annually, and the use for which it is diverted. The Commission shall thereafter issue a permit to each person so identified.

(b) No application for a permit shall be required for any protected use listed on the existing diversions and uses inventory.

**Sec. 405. Fees.**

Each application for a permit shall be accompanied by a fifty dollar (\$50.00) filing fee, except that any person who applies for or holds permits to use more than 1,000 acre feet of water per year shall pay a filing fee of one hundred dollars (\$100.00) for each additional application.

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**Sec. 501. Scheduling of hearing on application.**

As soon as practicable after receiving an application for permit, the Commission shall review the application for adequacy and completeness. If



additional information is required, the Commission shall so inform the applicant in writing. As soon as the application is adequate and complete, a copy shall be forwarded to the Administrator. The Commission shall then schedule a hearing on that application which hearing shall determine the amount of water authorized to be diverted and used and establish the terms and conditions of diversion and use. The Commission shall notify the applicant of the hearing date, which shall be at least one hundred eighty (180) days but not more than two hundred seventy (270) days from the date of the notice.

**Sec. 502. Public notice of permit hearing.**

After a hearing is scheduled as provided in Section 501, the applicant shall then cause to be published a copy of the application for permit in one regularly published newspaper on the Reservation at least once each week for three (3) successive weeks, and shall submit satisfactory proof of publication to the Commission. The cost of such publication shall be borne by the applicant. The Commission shall also post a public notice of all scheduled hearings at the Tribal Office and such other public places on the Reservation as it shall deem appropriate. The notice shall state the date by which objections are due.

**Sec. 503. Objections to applications for permits.**

(a) Any person or entity, including the Tribes, whose interests are or may be affected by a water use applied for may, within sixty (60) days of the date of the third (3rd) publication of the notice, file a formal objection to the issuance of the permit applied for.

(b) Objections may be on forms prepared and made available by the Commission and shall include the name and mailing address of the party objecting, the name of the applicant whose application is objected to, a description of the water use objected to, a short and plain statement of reasons why a permit should not be issued or should issue in a form different from that applied for, and any suggested conditions or other provisions which should be included in any permit granted.

(c) Any person making an objection shall file it with the Commission and serve it personally or by mail upon all persons on the service list provided for in Section 505, and proof of such service shall be made in a manner satisfactory to the Commission.

(d) Any applicant for a permit whose use is objected to must reply in writing in the same manner as provided for objections, serving the reply upon all persons on the service list provided for in Section 505 in the manner provided by subsection (c) above, within ninety (90) days of the third (3rd) publication of the notice pursuant to Section 502.

(e) The Administrator may request a field examination of the proposed permit area with the applicant and objectors. In addition, the Administrator shall file with the Commission a report summarizing his/her investigation and recommendations regarding the permit application at least thirty (30) days before the hearing.

**Sec. 504. Comments on applications.**

Any person or entity may comment to the Commission in writing upon any application for a permit under this Code, and shall serve any written comment on all persons on the service list provided for in Section 505, in the manner provided in subsection 503 (c).

**Sec. 505. Service list.**

The Commission shall establish a service list for each permit application, which includes the applicant, the Administrator, all objectors and all commenters to the application.

**Sec. 506. Interim authorization to use water.**

The Commission may grant a temporary, revocable authorization to the use while the application is pending for a project not to exceed one (1) year.

**Sec. 507. Public hearing on permit applications.**

(a) A public hearing shall be held on each application unless there has been no objection to or comment upon the application by the Tribes or any other person and the Commission determines

to grant it with conditions accepted by the applicant. At least two (2) members of the Commission shall be present and shall preside over the hearing. The applicant and all objectors shall have the right to participate as parties, to present oral and written testimony of witnesses under oath, and to be represented by counsel at their own expense. The Commission shall have power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel the attendance of witnesses or for the production of books, records, documents and other evidence. The Fort Peck Tribal Court shall enforce any subpoena issued by the Commission in the same manner as the Court enforces its own subpoenas. The ordinary rules of evidence shall not apply in any hearing, but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfair if admitted, shall be excluded or may be admitted by the Commission only under special conditions or stipulations.

(b) The Tribes may participate in any hearing as a party and may present oral or written testimony of witnesses under oath.

(c) The Commission may, in addition to the evidence of record at the hearing, rely in its decision upon such public information and such of its own expertise as it deems necessary to assist it in making the determination to grant or deny any application for a permit.

(d) The Commission member or members present at the hearing may, in their discretion, request or permit the parties to submit additional materials or briefs after the hearing.

#### **Sec. 508. Consolidation of hearing.**

Hearings concerning applications in a particular basin or area may be consolidated to promote efficiency, minimize expense or hardship, and prevent duplication unless the applicant, and objector or the Tribes file timely objection.

#### **Sec. 509. Standards for granting permits.**

(a) The applicant for a permit shall be required

(1) To prove, by a preponderance of the evidence, that all the data required in the permit application has been provided and is correct, and

(2) To respond, to the satisfaction of the Commission, to all objections or comments raised by any person and to all concerns expressed by the Commission regarding any permit application. If these requirements are meant, and if the Commission in its discretion determines that issuance of the permit is in the best interest of the Reservation community, the permit shall be granted.

(b) In addition to the above, any applicant for a permit who is a non-Indian successor-in-interest to any allottee seeking to use water within the Reservation by virtue of a water right arising under the laws of the United States must prove, by a preponderance of the evidence, for the lands for which a permit is sought:

(1) That the Indian owner was beneficially irrigating such lands on the date the lands left trust ownership, and that those lands are practicably irrigable and have been continuously beneficially irrigated by the Indian owner and each successor-in-interest from that time until the date of the application; or

(2) For lands not in irrigation at the time of the lands left trust ownership, that the first owner after the lands left trust ownership diligently developed the lands, and that those lands are practicably irrigable and have been continuously beneficially irrigated by the first nontrust owner and each successor-in-interest from the date of such development until the date of the application.

#### **Sec. 510. Decision.**

The members of the Commission present at the hearing shall issue a written decision setting forth pertinent findings of fact and an ultimate determination as to whether the application shall be granted with specific conditions or denied. This decision shall be adopted by a majority vote of the members of the Commission present at the hearing and delivered to all parties by registered mail, return receipt requested.

#### **Sec. 511. Petitions for reconsideration.**

(a) Within fourteen (14) days after the decision, any party may request the Commission to reconsider the decision. A petition for reconsideration

shall be writing and state concisely the errors in the decision the petitioner claims should be re-considered.

(b) A petition for reconsideration shall be served on all other parties to the proceeding by registered mail, return receipt requested, and any party who wishes to respond must do so within fourteen (14) days of the service of the petition, serving a copy of his/her response on all other parties to the proceeding by registered mail, return receipt requested.

(c) The Commission will not grant any petition for reconsideration without scheduling an additional hearing with proper notice to all parties. At least two (2) members of the Commission must be present at the hearing. After this hearing, the Commission may affirm, nullify or revise its earlier decision by a majority vote of the Commission members present at the hearing. Any revised decision shall comply with Section 509 and shall be a final Commission decision for purposes of appeal.

**Sec. 512. Finality of decision.**

The decisions of the Commission shall become final and take effect unless stayed on appeal when

- (1) The time for filing a petition for reconsideration has passed and no such petition has been filed, or
- (2) The Commission has ruled on a petition for reconsideration.

**Sec. 513. Appeal.**

The decisions of the Commission pursuant to this Chapter and Chapters 7 and 8 shall be appealable as provided in Chapter 9 of this Code exclusively to the Fort Peck Court of Appeals.

**Chapter 6. Water Permits**

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**Sec. 601. Form.**

Water permit issued in accordance with this Code shall be on a form standardized by the Commission. The Commission shall serially number each permit in a uniform classification system by water source.

**Sec. 602. Information contained:**

Each permit shall include:

- (a) The name and mailing address of the permittee;
- (b) The name, or a description of, the source or sources from which water is or will be diverted or withdrawn;
- (c) The quantity of water which may be used annually, and the period or periods of use;
- (d) The legal description or other description reasonably describing the point or points of diversion or withdrawal and the place of use;
- (e) A description of the method or methods of diversion or withdrawal;
- (f) The purpose or purposes for which water is authorized to be used and the category of use under Section 801;
- (g) A description of how water is to be applied or consumed, including acreage and crop if the water is for irrigation, and the kind and number of stock if water is for stock watering;
- (h) The approximate date upon which the use (or uses) permitted has been or will be commenced by the permitted, and for existing uses, the date on which continuous use was begun by the predecessors-in-interest of the permittee;
- (i) A provision prohibiting the waste of water by any permittee shall be included in all permits;
- (j) A provision stating that "this permit constitutes authorization by the Tribes to use a portion of the Tribal Water Right in conformity with the terms and conditions of the permit, the Compact, and this Code. This permit shall not be deemed to be a property right or any other interest other than limited permission as described in this provision";

**(AMENDED AS PER RESOLUTION NO. 1552-86-9, DATED 09/22/86.)**

(k) The water permit may contain such other information as is deemed necessary and appropriate by the Commission.

**Sec. 603. Conditions.**

Each water permit issued pursuant to this Code shall contain whatever conditions are necessary to insure adequate quality and quantities of water, to otherwise further the purposes, policies and guidelines contained within this Code, and to assist in the effective administration of this Code. These may include, among other things, conditions concerning:

- (a) The quantity of water which may be withdrawn during any particular time;
- (b) The method of application;
- (c) The location and purpose of application, including acreage for crops and number of stock for stockwatering;
- (d) The quantity and quality of return flow;
- (e) The time period in which water may be used;
- (f) Schedules for withdrawal or diversion, including optional rotation schedules;
- (g) Provisions for surface storage of surplus flows;
- (h) Provisions for increasing the efficiency of a diversion or withdrawal and application;
- (i) Provisions for maintaining minimal levels or otherwise providing protection for fish, wildlife, recreational and aesthetic values;
- (j) Provisions designed to prevent or reduce obstruction or impairment of fish runs;
- (k) Provisions designed to minimize pollution and thermal degradation;
- (l) Provisions designed to insure optimum recharge of aquifers;
- (m) Provisions designed to define and control interbasin transfers;
- (n) Provisions for some degree of overdraft from aquifers when short term recharge is not available or appropriate;
- (o) Provisions designed to prevent or reduce interference between competing users or water sources whether above or below ground;

(p) Provisions to insure long term development;

(q) Provisions to prevent interference with Tribal administration of water;

(r) Other provisions necessary to insure conformity with this code and actions taken hereunder, including limitations on the length of the permit;

(s) Payment of a reasonable annual charge for the permit, provided however that Indians of the Reservation shall be permitted to use not to exceed 300 acre-feet per year of the Tribal Water Right on allotments in which they hold an interest, without charge;

(t) Provisions to require suitable water gauging devices to be installed, maintained and operated at the expense of the permittee.

**Sec. 604. Materials open to public inspection.**

All permits issued by the Commission, all decisions of the Commission, all applications and all protests, comments and responses made for a water permit shall be maintained by the Water Resources Control Commission in files that shall be open for public inspection.

**Sec. 605. Entry on land.**

Every permittee shall consent to reasonable entry on permittee's land and access to the diversion works by Tribal officers engaged in the administration of this Code, and each permit shall so state.

**Sec. 606. Effect of permit.**

A Tribal water use permit issued under this Code constitutes authorization by the Tribes to use a portion of the Tribal Water Right in conformity with the terms and conditions of the permit, the Compact, and this Code. No Tribal water use permit shall be deemed to be any property right or any other interest other than the limited permission described in this Section.

**(AMENDED AS PER RESOLUTION NO. 1552-86-9, DATED 09/22/86.)**

**Sec. 607. Changes in use.**

(a) Conveyance of permitted lands. The right to use water pursuant to a Tribal permit shall pass by operation of law with the conveyance or transfer of the permitted lands.

(b) Changes in use.

(1) Commission approval required. A permittee shall not change the point of diversion, place of use, or purpose of use without the prior written approval of the Commission.

(2) Procedures. Any permittee proposing a change in point of diversion, place of use or purpose of use shall apply to the Commission on a form furnished by the Commission. No permittee will be allowed to change the place of use of any agricultural water use to a different, noncontiguous piece of land. The application shall include:

- (1) The type of change proposed,
- (2) The legal description of the changed point of diversion or place of use,
- (3) A description of the proposed diversion and service works,
- (4) The reason for the proposed change, and
- (5) Any adverse impacts, including those affecting uses of water under the Tribal Water Right. The applicant shall provide notice of the proposed change of use, and hearings shall be held by the Commission the proposed change in use, in the manner provided in Chapter 5 of this Code, provided that the Commission may waive the hearing if the proposal will not adversely affect any other Tribal water use, no objections were filed and the Commission, in its discretion, deems it appropriate to proceed without a hearing.

(3) Standard for granting change of use applications. A change of use application shall be granted if the Commission, in its discretion, determines that the change of use is in the best interests of the Reservation community.

**Chapter 7. Revocation of Water Use Permits**

**Sections:**

Sec. 701. Reasons for revocation. .... 11

Sec. 702. Procedure for revocation hearing. 11

**Sec. 701. Reasons for revocation.**

A permit may be totally or partially revoked for the following causes:

- (a) Failure to comply with any terms and conditions of the permit, a provision of this Code or with any order or decision of the Commission;
- (b) Nonuse of water;
- (c) In the case of a permit issued for a specified period, the ending of that period;
- (d) Any misrepresentation of a material fact in an application for permit, or in any other statement made as part of the application process;
- (e) Voluntary relinquishment by any affirmative action manifesting an intention to relinquish a permit.

**Sec. 702. Procedure for revocation hearing.**

(a) The Commission, on its own motion or upon request of the Administrator or any person holding or applying for a Tribal permit, may commence revocation proceedings against any permittee by serving upon such permittee, by registered mail, return receipt requested at his/her last known address, a notice scheduling a revocation hearing at least forty-five (45) days from the date of the notice. Such notice shall be published by the Commission in the manner required by Section 502, and any affected person may participate in the revocation hearing.

(b) A public hearing shall be held on the proposed revocation in the manner provided in Chapter 5 of this Code. The decision of the Commission shall be appealable as provided in Chapter 9 of this Code.

**Chapter 8. Priority of Tribal Uses in Times of Shortage and Resolution of Disputes Among Users of Tribal Water Right**  
**Sections:**

Sec. 801. Preference of uses by purpose of use..... 12

Sec. 802. Reduction of use in times of shortage..... 12

Sec. 803. Proceedings to determine that a reduction in use is necessary. .... 12

Sec. 804. Resolution of disputes among Tribal water users. .... 12

**Sec. 801. Preference of uses by purpose of use.**

(a) The following categories of uses of the Tribal Water Right shall be given preference in the order listed below:

- (1) Domestic and municipal uses and uses for stockwatering purposes not in excess of twenty (20) acre-feet per year;
- (2) Uses protected by Article 4, Section A, paragraph 1 of the Compact and established pursuant to Section 404 of this Code;
- (3) Instream flows for fish and wildlife purposes;
- (4) Agricultural uses;
- (5) Stockwatering uses in excess of twenty (20) acre-feet per year;
- (6) Industrial uses;
- (7) Power uses;
- (8) Other uses.

(b) The Tribal Executive Board reserves the right to change by a duly enacted amendment to this Code the order of categories established in subsection (a), provided that no uses shall be given preference over any uses in Section 801 (a) (1) and (2).

**Sec. 802. Reduction of use in times of shortage.**

Whenever the Commission, in its discretion, determines that water is not or will not be available during a particular period from any surface or ground water source, the Commission may order a permittee to reduce or cease entirely his/her use of water. Any such order of the Commission shall be enforced by the Administrator and by the Fort Peck Tribal Court as a matter of the highest importance and without delay on the motion of the Administrator or any water user.

(a) In issuing any order to reduce or cease water use, the Commission shall, except as provided in subsection (b), give preference to the categories of uses in the order established pursuant to Section 801. Uses pursuant to Section 801 (a)

(1) shall all be treated as having the same priority. Within each of the other categories of use, the Commission shall give priority to permits in the order in which they were issued, the earliest having the highest priority.

(b) The Commission, in its discretion, may determine that only a portion of the uses in a particular category (other than uses in Section 801 (a) (1)) shall be satisfied so as to allow some uses in a lower category to be satisfied; provided that any reduction of water use under this subsection shall require that the percentage of total uses to be satisfied for each category must be at least ten percent (10%) greater than the percentage of the total uses to be satisfied for the next highest category.

**Sec. 803. Proceedings to determine that a reduction in use is necessary.**

(a) If the Commission determines in its discretion that it is practicable to do so, it shall give prior notice of its intent to order a reduction in use of water for a particular period by publication in one regularly published newspaper on the Reservation and posting at the Tribal Office and such other public places on the Reservation as the Commission shall deem appropriate. The Commission may in that notice invite written comments to the Commission and may announce a date for a public hearing to hear oral comments and consider any relevant evidence or information offered by the Administrator or any interested person or entity.

(b) The Commission's order for a reduction in use shall be published in the same manner as the notice provided in subsection (a) and shall be final for the Commission. The decision may be appealed as provided in Chapter 9 but shall be enforced by the Administrator and by the Fort Peck Tribal Court unless it is modified or set aside by a final decision on appeal.

**Sec. 804. Resolution of disputes among Tribal water users.**

Any person permitted to use a portion of the Tribal Water Right may file a petition with the Commission challenging another person or entity

for using water in a manner that infringes upon the petitioner's permitted use. If the challenged person or entity claims the right to use water under state law or as part of the Fort Peck Irrigation Project, the Commission shall proceed no further but shall forward the petition to the Administrator for submission to the Fort Peck-Montana Compact Board or the Bureau of Indian Affairs, as the case may be. Otherwise, the Commission shall serve a copy of the petition upon any person or entity named in it and upon the Administrator and shall hold a public hearing on the petition in the manner provided in Sections 506, 507, 509, and 510, after reasonable notice to all parties. In any proceeding before it, the Commission may enter an order after a hearing granting the Tribes or any party to the dispute before it temporary or preliminary injunctive relief, or any other relief it deems appropriate, including revocation of the water permit. The Fort Peck Tribal Court shall enforce orders of the Commission, including orders granting temporary or preliminary injunctive relief, in the same manner in which the Court enforces its own orders and on such terms as to bond or otherwise as it deems proper for the security of the rights of the enjoined party, except that in no event shall the Tribes be required to post any bond. Final decisions of the Commission may be appealed as provided in Chapter 9 of this Code, but shall remain in effect and shall be enforced by the Administrator and by the Fort Peck Tribal Court unless the decision is modified or set aside by a final decision on appeal.

**Chapter 9. Appeals**

**Sections:**

Sec. 901. Jurisdiction. .... 13  
 Sec. 902. Notice of appeal. .... 13  
 Sec. 903. Appeal procedures. .... 13  
 Sec. 904. Costs and attorneys fees. .... 13

**Sec. 901. Jurisdiction.**

The Court of Appeals of the Fort Peck Tribal Court shall have exclusive jurisdiction to hear appeals from final decisions of the Commission.

**Sec. 902. Notice of appeal.**

Any party may appeal any final decision of the Commission by filing a notice of appeal with the Commission within thirty (30) days after the decision becomes final. The Commission shall thereafter serve the notice of appeal on all parties to the proceeding by registered mail, return receipt requested and shall promptly file the full record of the proceeding with the Fort Peck Tribal Court of Appeals.

**Sec. 903. Appeal procedures.**

The appeal shall thereafter proceed in the same manner as appeals of civil cases from the Fort Peck Tribal Court. In all appeals, the Court shall give proper deference to the administrative expertise of the Commission. The Court of Appeals shall not set aside, modify or remand any determination by the Commission unless it finds that the determination is arbitrary and capricious, unsupported by substantial evidence or contrary to law. The Court of Appeals shall issue a written decision on all appeals, which decision shall be final.

**Sec. 904. Costs and attorneys fees.**

The Court of Appeals may, in its discretion, award costs and attorneys fees to the Commission against any appellant whose appeal was frivolous, malicious, or in bad faith.

**Chapter 10. Water Administrator**

**Sections:**

Sec. 1001. Water Administrator; appointment. .... 13  
 Sec. 1002. Qualifications. .... 14  
 Sec. 1003. Compensation. .... 14  
 Sec. 1004. Oath of office. .... 14  
 Sec. 1005. Duties. .... 14  
 Sec. 1006. Staff. .... 14  
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**Sec. 1001. Water Administrator; appointment.**

A Water Administrator shall be appointed by a majority vote of those voting at a meeting of the

Tribal Executive Board at which a quorum is present.

### **Sec. 1002. Qualifications.**

To be eligible to serve as Administrator, a person

- (1) Must be at least twenty-five (25) years of age;
- (2) Must be of high moral character and integrity;
- (3) Must have a high school education or its equivalent;
- (4) Must have never been convicted of a criminal offense other than a traffic offense; and
- (5) Must be physically able to carry out the duties of the office.

### **Sec. 1003. Compensation.**

The Tribal Executive Board shall establish rates of compensation for the Administrator.

### **Sec. 1004. Oath of office.**

Before entering upon the duties of office, the Administrator shall take the following oath or affirmation:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will truly, faithfully and impartially discharge all duties of my office as Tribal Water Administrator to the best of my abilities and understanding. So help me God."

### **Sec. 1005. Duties.**

The Administrator shall be responsible for the enforcement and administration of the policies and water permits issued under this Code. He/she shall assure compliance with this Code, and with the conditions of all permits, determinations, orders, regulations, plans and other actions taken by the Commission under this Code. To this end the Administrator may:

- (a) Remove, render inoperative, shut down, close, seal, cap, modify or otherwise control methods of diversion, impoundment and withdrawal, obstructions to the flow of water, and activities adversely affecting water quantity or quality;

- (b) Enter upon land, inspect methods of diversion and withdrawal, inspect other activities affecting water quality and quantity, install and monitor measuring and recording devices when he/she deems it necessary, and elicit testimony and data concerning actions affecting the quality or quantity of the waters administered under this Code;

- (c) Participate on behalf of the Tribes in proceedings before the Commission;

- (d) Initiate proceedings for violations of this Code, and the orders, regulations and permits issued by the Commission;

- (e) Collect, organize and catalog existing information and studies available from all sources, both public and private, pertaining to the waters of the Reservation;

- (f) Develop such additional data and studies pertaining to water and water resources as are necessary to accomplish the objectives of this Code, including studies of the scope, characteristics and method for managing water shortages;

- (g) Solicit public comment and obtain expert advice when appropriate;

- (h) Investigate water uses and other activities affecting the waters of the Reservation to determine whether they are in compliance with this Code and with applicable regulations, orders, determinations, permits and water quality standards issued under this Code;

- (i) Investigate water quality whenever appropriate;

- (j) Make recommendations to the Commission concerning distribution of water in times of shortage according to the policies of this Code and the priorities established in water permits issued by the Commission.

### **Sec. 1006. Staff.**

The Administrator may, from time to time, propose to the Tribal Executive Board the employment of additional persons to serve as members of his/her staff. The appointment, salaries and terms of employment of any assistants to the Administrator shall be set by the Tribal Executive Board.



**Sec. 1007. Term of office and removal.**

The Administrator shall serve until he/she resigns, until a successor is appointed, or until he/she is terminated for any reason upon a majority vote of the Tribal Executive Board at a meeting at which a quorum is present.

**Chapter 11. Transfer of Rights to Use Water**

**Sections:**

Sec. 1101. Transfer of the right to use the Tribal Water Right. .... 15  
Sec. 1102. Applications for transfer of Tribal Water Right. .... 15  
Sec. 1103. Reservation of rights. .... 15

**Sec. 1101. Transfer of the right to use the Tribal Water Right.**

The Tribes may transfer the right to use a portion of the Tribal Water Right within the Reservation, as authorized by the Compact and federal law, but may not permanently alienate any part of the Tribal Water Right. Any right so transferred shall be subject to the priority of uses as set forth in Chapter 8 of this Code. No person other than the Tribes shall have any authority to transfer any portion of the Tribal Water Right, except as allowed under Section 607 (a) of this Code. Any other action by any person other than the Tribes attempting to transfer any portion of the Tribal Water Right shall be null and void.

**Sec. 1102. Applications for transfer of Tribal Water Right.**

Applications for the transfer of any portion of the Tribal Water Right shall be made in writing to the Fort Peck Tribal Executive Board, and the Board shall send a copy to the Commission. The Tribal Executive Board has exclusive authority to accept or reject proposals to transfer the Tribal Water Right and decisions of this Tribal Executive Board in this regard shall be final.

**Sec. 1103. Reservation of rights.**

Nothing in this Code shall diminish or limit the authority of the Tribes to divert, use or transfer

any portion of the Tribal Water Right outside of the Reservation, as provided in the Compact and by law.

**Chapter 12. Miscellaneous Provisions**

**Sections:**

Sec. 1201. Severability. .... 15  
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**Sec. 1201. Severability.**

If any provision of this Code or the application thereof to any person or circumstance is held invalid, the Code shall be given effect without the invalid provision or application; and to this end the provisions of this Code are declared to be severable.

**Sec. 1202. Construction.**

This Code shall be liberally construed to effectuate its policies and purposes.

**(THIS TITLE ADOPTED AS PER RESOLUTION NO. 993-86-5, DATED 05/15/86.)**

**Chapter 13. Assiniboine and Sioux Tribes Municipal, Rural & Industrial (MR&I) Water Commission**

**Sections:**

Sec. 1301. Establishing the MR&I Water Commission. .... 16  
Sec. 1302. Quorum and Voting By MR&I Water Commissioners. .... 16  
Sec. 1303. Recusal of MR&I Water Commissioners. .... 16  
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**Sec. 1301. Establishing the MR&I Water Commission.**

1. The MR&I Water Commission shall consist of five (5) Commissioners, one of whom shall be designated by the Tribal Executive Board as Chair of the MR&I Water Commission.

2. The MR&I Water Commissioners shall be appointed by the Tribal Executive Board.

3. To be eligible to hold the office of MR&I Water Commissioner, a person must

- (1) Be at least twenty-five years of age;
- (2) Have at least a high school education or its equivalent;
- (3) Be of high moral character and integrity;
- (4) Never have been convicted of a felony criminal offense or an offense involving fraud or theft; and
- (5) Be physically able to carry out the duties of the office.

4. Initial appointments to the MR&I Water Commission shall be made for the following terms:

Chair of the MR&I Water Commission - three years; two (2) MR&I Water Commissioners - two years; and two (2) MR&I Water Commissioners - one year. Thereafter, all appointments shall be for three year terms, provided that if a permanent vacancy occurs because of removal, resignation or other reason, the Tribal Executive Board will appoint a replacement Commissioner for the remainder of the term of the member being replaced.

5. MR&I Water Commissioners are not Tribal employees by virtue of their office and shall not be subject to the Tribes' personnel policies and procedures, other than as specified in this Code or as a result of other tribal employment.

6. On taking office, each Commissioner shall take an oath as follows:

I, \_\_\_\_\_, do solemnly swear (or affirm) that I will administer justice and do equal right without respect to persons and will truly, faithfully and impartially discharge and perform all

the duties incumbent upon me as a MR&I Water Commissioner according to the best of my abilities and understanding. So help me God.

**Sec. 1302. Quorum and Voting By MR&I Water Commissioners.**

1. A quorum of the MR&I Water Commission shall consist of three (3) of the Commissioners.

2. Whenever the Chair of the MR&I Water Commission is unavailable for a meeting because of recusal or for another reason, the Commissioners present shall appoint an Acting Chair of the Commission to serve during the period of the Chair's unavailability.

3. The Chair or Acting Chair of the MR&I Water Commission shall be entitled to vote and shall preside over all meetings.

4. Action by the MR&I Water Commission shall be by consensus whenever possible, but if consensus cannot be achieved, final action shall be by majority vote of all Commissioners present with a quorum established.

**Sec. 1303. Recusal of MR&I Water Commissioners.**

1. No MR&I Water Commissioner shall participate in any action or decision of the Commission directly involving matters which primarily benefit the Commissioner, or a member of his or her immediate family, or which primarily benefit a business or other entity of which the Commissioner or an immediate family member holds any ownership interest or with whom the Commissioner or immediate family has a contractual relationship.

2. Nothing in this Section shall preclude a MR&I Water Commissioner from participating in any action by the Commission which generally affects Tribal members, a Tribal enterprise, or a person or entity in a contractual relationship with the Tribes, regardless whether the Commissioner or a member of his or her immediate family indirectly benefits by the action or decision.

3. A MR&I Water Commissioner may voluntarily recuse himself or herself and decline to participate in any Commission action or decision

when the Commissioner, in his or her own discretion, believes:

(a) He or she cannot act fairly or without bias; or

(b) There is created the appearance that he or she could not act fairly or without bias.

4. As used in this Code, “immediate family relative” shall include spouses, children, parents, brothers and sisters, grandparents, grandchildren and in-laws.

#### **Sec. 1304. Rules of the MR&I Water Commission.**

1. From time to time, the MR&I Water Commission may promulgate and enforce such written rules and regulations as it deems necessary to carry out the orderly performance of its duties, including but not limited to, rules and regulations relating to:

(a) Internal operating procedures of the MR&I Water Commission;

(b) Administrative interpretations and applications of this Code;

(c) Development and amendment of short and long range plans to plan, design, construct, administer, operate and maintain the Assiniboine and Sioux Rural Water Supply System;

(d) Development and amendment of quality controls for improving the planning, design, construction, administration, operation and maintenance of the Assiniboine and Sioux Rural Water Supply System

(e) The conduct of inspections, investigations, public hearings, and other powers of the MR&I Water Commission as authorized by this Code.

2. No rule or regulation of the MR&I Water Commission shall be of any force or effect until and unless copies of the rule or regulation have been filed in the office of the Secretary-Accountant of the Tribes for at least fifteen (15) days. The copy shall bear the signatures of a majority of the MR&I Water Commissioners, certifying that the rule or regulation was duly adopted by the MR&I Water Commission pursuant to this Code. If the Tribal Executive Board takes no action to modify or repeal the rule or regulation within the fifteen

(15) day time period, the rule or regulation shall go into effect at the conclusion of this time period; provided however, that the Tribal Executive Board retains the authority to modify or repeal the rule or regulation at any time.

3. The Tribal Court shall take judicial notice of all rules and regulations of the MR&I Water Commission promulgated pursuant to this Code.

#### **Sec. 1305. Powers of the MR&I Water Commission.**

The MR&I Water Commission is a subordinate administrative body of the Assiniboine and Sioux Tribes. As such, all final actions of the MR&I Water Commission are subject to review, modification or repeal by official action of the Tribal Executive Board. Subject to this right of review by the Tribal Executive Board, the MR&I Water Commission shall have the following powers:

1. Oversee and develop policies to guide the administrative operations of the Assiniboine and Sioux Rural Water Supply System, including overseeing and directing the duties of the MR&I Project Manager.

2. Provide technical advice to the Tribal Executive Board on matters relating to the planning, design, construction, administration operation and maintenance of the Assiniboine and Sioux Water Supply System, including preparing and soliciting and making recommendations to the Tribal Executive Board of all Project bid packages.

3. Review, comment and make recommendations to the Tribal Executive Board on Tribal design, construction, operation and maintenance standards, contract documents, budgets, and other materials prepared by Tribal employees and consultants to ensure that the Tribes’ operating procedures for the Assiniboine and Sioux Rural Water Supply System comply with applicable laws and regulations, as well as the requirements of the Tribes’ Indian Self- Determination agreements with the U.S. Department of Interior, Bureau of Reclamation and Bureau of Indian Affairs.

4. Coordinate with other Tribal Commissions and Administrative bodies whose jurisdiction

may affect or overlap with the duties of the MR&I Water Commission.

5. Coordinate with Federal, State and local governments on matters relating to the planning, design, construction, administration, operation and maintenance of the Assiniboine and Sioux Rural Water Supply System.

6. Oversee the development for Tribal Executive Board review and approval, of budgets, contract documents, annual funding agreements, amendments and renewals of the Tribes' Indian Self-Determination agreements with the Bureau of Reclamation and the Bureau of Indian Affairs and such other project-related documents as the MR&I Water Commission deems appropriate.

7. Consult with Tribal attorneys, accountants, engineers and other advisors regarding matters affecting the administrative operations of the Assiniboine and Sioux Rural Water Supply System.

8. Develop and make recommendations to the Tribal Executive Board regarding methods for improving the Assiniboine and Sioux Rural Water Supply System, and regarding the amendment of this Code.

9. Delegate to individual MR&I Water Commissioners, such of its functions as may be necessary to administer this Code efficiently, provided that the Commission may not delegate its power to promulgate rules and regulations.

10. Delegate to the MR&I Project Manager and staff sufficient responsibility to assist the Commission in exercising its duties and responsibilities as set out in this Code.

11. Exercise all other authority delegated to it by the Tribal Executive Board, or as may be reasonably necessary for the implementation of this Code.

### **Sec. 1306. Public Notice and Hearings.**

1. For all proposed construction projects related to the development of the Assiniboine and Sioux Rural Water Supply System, the Commission shall:

(a) Give adequate notice to the public prior to the commencement of construction activities;

(b) Include in the notice the project name and location, type of improvement planned, the date

the activity is scheduled to commence, the name and address where more information can be obtained, and procedures for requesting a public hearing by the MR&I Water Commission.

2. The MR&I Water Commission may determine from time to time, in its sole and complete discretion, to hold a public hearing on matters relating to the planning, design, construction, administration, operation and maintenance of the Assiniboine and Sioux Rural Water Supply System. Matters appropriate for a public hearing may include matters that:

(a) Would significantly change the layout, function or services provided by Assiniboine and Sioux Rural Water Supply System;

(c) Would cause a substantial adverse impact on adjacent real property;

(d) Would be a significant or controversial undertaking.

3. When a public hearing is scheduled by the MR&I Water Commission, the Commission shall notify the public by publishing a notice setting forth the following:

(a) Date, time, and place of hearing;

(b) The topics to be considered, including planning activities or project locations; and

(c) How and where to obtain more information.

4. The MR&I Water Commission shall maintain records of all public hearings it holds. The public may request and receive a copy of any public, non-privileged hearing record provided that the requesting person agrees to pay all copying costs.

5. All public hearings serve a purely advisory function to assist the MR&I Water Commission in developing final recommendations and decisions. No Tribal member or member of the general public shall have the right to appeal final recommendations and decisions of the MR&I Water Commission.

### **Sec. 1307. MR&I Water Commission Expenses and Budget.**

1. To the greatest extent permitted by law, the MR&I Water Commission's expenses and incidental costs shall be budgeted and paid for from

the funds received under the Tribes' Indian Self-Determination agreements with the Bureau of Reclamation and the Bureau of Indian Affairs. Any additional funds required by the MR&I Water Commission shall be set by the Tribal Executive Board.

2. The MR&I Water Commission shall submit to the Tribal Executive Board a line item proposed budget for the next fiscal year not later than May 15th of each year and shall indicate whether any of the funds requested are to be general funds of the Tribes. Unless the Tribal Executive Board otherwise directs, the MR&I Water Commission's fiscal year shall be set to correspond with the annual funding agreements included in the Tribes' Indian Self Determination agreements with the Bureau of Reclamation and the Bureau of Indian Affairs.

**Sec. 1308. Records of the MR&I Water Commission.**

1. When not in executive session, the MR&I Water Commission shall keep and maintain accurate and complete records to the greatest extent practicable, including minutes of all public meetings of the Commission.

2. Such records shall be maintained at the MR&I Water Commission's offices and shall not be removed from that location without the consent of the MR&I Water Commission by formal resolution.

3. Such records shall be subject to audit at any time upon the direction of the Tribal Executive Board, or as required by the terms of the Tribes' Indian Self-Determination agreements with the Bureau of Reclamation and the Bureau of Indian Affairs.

**Sec. 1309. Temporary or Permanent Removal from Office - Replacement.**

1. Any MR&I Water Commissioner may be removed from office under the rules and procedures established by the Commission, subject the right of review by the Tribal Executive Board.

2. A MR&I Water Commissioner shall automatically be removed from office if the Commissioner is convicted of a criminal offense other

than a traffic offense or fails to attend three consecutive scheduled meetings of the MR&I Water Commission. The absence of a MR&I Water Commissioner from a scheduled meeting shall not count against the Commissioner if the absence is authorized or excused by a majority of the remaining Commissioners.

3. Upon the removal of a Commissioner or upon the Commissioner's voluntary resignation, the Tribal Executive Board shall appoint a replacement for the remainder of the official's term of office, as provided in Section 1301 of this Code.

**Sec. 1310. Decisions of the MR&I Water Commission.**

Unless reviewed, modified, amended or repealed by the Tribal Executive Board, all decisions of the MR&I Water Commission are final and unappealable.

**Sec. 1311. Sovereign Immunity.**

The Tribes and all of its constituent parts, subordinate organizations, boards, committees or commissions, including the MR&I Water Commission established pursuant to this Code, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived by the Tribes or the United States. Nothing in this Code shall be construed as waiving the sovereign immunity of the Tribes or any of its constituent parts, including the MR&I Water Commission.

**(THIS CHAPTER ADOPTED AS PER RESOLUTION NO. 437-2004-03, DATED 03/22/04.)**

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 21 – Floodplain and Floodway Management Ordinance**

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**Intent**

This (Resolution/Ordinance) is passed in order to comply with the Montana Floodplain and Floodway Management Act (Title 76, Chapter 5, MCA) and to ensure compliance with the requirements for the continued participation by Fort Peck Indian Reservation in the National Flood Insurance Program. Land-use regulations which are hereby adopted are to be applied to all identified 100-year floodplains within local jurisdiction and are attached as Appendix A.

**Statutory Authority**

Municipalities have authority to adopt ordinances as provided for in §7-1-4123, MCA to promote the general public health and welfare. Other authority for municipalities and counties to adopt floodplain management regulations appears in §76-5-101 through 406, MCA.

**Adoption**

This (Resolution/Ordinance) adopts the set of comprehensive land-use regulations attached as Appendix A for identified 100-year floodplains within Fort Peck Indian Reservation.

Identification of 100-year floodplains is based on the: Water-surface profile and flood boundaries for the computed 100-year flood, Poplar river, Fort Peck Indian Reservation, Montana - U.S. Department of Interior, U.S. Geological Survey, dated December 1990.

Flood hazard report, existing conditions, Missouri river - Fort Peck Dam to Garrison Dam river miles 1389.9 to 1770.90, dated August 1986. U.S. Army Corps of Engineers Omaha District.

Box Elder Creek watershed project - SCS office, dated 8-24-87.

Flood Hazard boundary map, Roosevelt County, Montana unincorporated area, U.S. Department of Housing and Urban development, dated December 4, 1979.

Roosevelt County Potential Flood Hazard Boundary Maps, dated April 1994. All other (resolutions/ordinances) are hereby repealed to the extent of any inconsistencies.

**APPENDIX A**

**Chapter 1. Title and Purpose.**

**Sections:**

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**Sec. 101. Title**

These regulations shall be known and cited as Fort Peck Tribal Floodplain Regulations.

These regulations are in accordance with exercising the authority of the laws of the State of Montana.

**Sec. 102. Purpose**

To promote the public health, safety, and general welfare, to minimize flood losses in areas subject to flood hazards, and to promote wise use of the floodplain. These regulations have been established with the following purposes intended:

(A) To guide development of the 100-year floodplain within local jurisdiction consistent with the enumerated findings by:

(1) Recognizing the right and need of water courses to periodically carry more than the normal flow of water;

(2) Participating in coordinated efforts of federal, state, and local management activities for 100-year floodplains; and

(3) Ensuring the regulations and minimum standards adopted, insofar as possible, balance the greatest public good with the least private injury.

(B) Specifically it is the purpose of these regulations to:

(1) Restrict or prohibit uses that are dangerous to health, safety, and property in times of flood, or that cause increased flood heights and velocities;

(2) Require that uses vulnerable to floods, including public facilities, be provided with flood protection at the time of initial construction;

(3) Identify lands unsuitable for certain development purposes because of flood hazards;

(4) Minimize the need for rescue and relief efforts associated with flooding undertaken at the expense of the general public;

(5) Ensure potential buyers are notified that property is within a 100-year floodplain and subject to the provisions of these regulations; and

(6) Ensure that those who occupy 100-year floodplains assume responsibility for their actions.

## **Chapter 2. Definitions**

### **Sections:**

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### **Sec. 201. Definitions**

Unless specifically defined below, words or phrases used in these regulations shall be interpreted to give them the meaning they have in common usage and to give these regulations the most reasonable application.

Act - Montana Floodplain and Floodway Management Act §76-5-101 through 405, MCA.

Alteration - Any change or addition to a structure that either increases its external dimensions or increases its potential flood hazard.

Appeal - A request for a review of the Floodplain Administrator's interpretation of any provisions of these regulations or a request for a variance.

Area of Special Flood Hazard - The land in the floodplain within the community subject to inundation by a one percent (1%) or greater chance of flooding in any given year, i.e., the 100-year floodplain.

Artificial Obstruction - Development - Any obstruction which is not natural and includes any dam, diversion, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any 100-year floodplain which may impede, retard, or alter the pattern of flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of water would carry the same downstream to the damage or detriment of either life or property.

Base Flood - A flood have a one percent (1%) chance of being equaled or exceeded in any given year. A base flood is the same as a 100-year flood.

Base Flood Elevation - The elevation above sea level of the base flood in relation to National Geodetic Vertical Datum of 1929 unless otherwise specified in the flood hazard study.

Channelization Project - The excavation and/or construction of an artificial channel for the purpose of diverting the entire flow of a stream from its established course.

Establish - To construct, place, insert, or excavate.

Existing Manufactured Home Park or Subdivision - A manufactured home part or subdivision where the construction of facilities for servicing the manufactured homes lots is completed before the effective date of the floodplain management regulations. This includes, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

FEMA - The Federal Emergency Management Agency

Flood or Flooding - A general and temporary condition of partial or complete inundation of normally dry lands from the overflow of a stream, or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood Insurance Rate Map - The map on which FEMA has delineated both the 100 year floodplains and the risk premium zones.

Flood Insurance Study - The reports in which FEMA has provided flood profiles, as well as the Flood Boundary/Floodway Map and the water surface profiles.

Floodplain - The areas subject to these regulations, generally adjoining a stream that would be covered by floodwater of a base flood except for designated shallow flooding areas that receive less than one foot of water per occurrence. The floodplain consists of a floodway and floodway fringe.

Floodway- The channel of a stream and the adjacent overbank areas that must be reserved in or-



der to discharge a base flood without cumulatively increasing the water surface elevation more than one-half (1/2) foot.

Floodway Fringe - The portion of the floodplain outside the limits of the floodway.

Levee - A man-made embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water to provide protection from temporary flooding.

Levee System - A flood protection system that consists of a levee, or levees, and associated structures, such as drainage and closure devices, which are constructed and operated in accordance with sound engineering practices.

Lowest Floor - Any floor used for living purposes, storage, or recreation. This includes any floor that could be converted to such a use.

Manufactured Home - A structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. This does not include "recreational vehicles."

Manufactured Home Park or Subdivision - A parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale.

Mean Sea Level - The National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations are referenced.

New Construction - Structures for which construction, substantial improvement, or alteration commences on or after the effective date of these regulations.

Official Floodplain Maps - The Flood Insurance Rate Maps and Flood Boundary/Floodway Maps provided by FEMA for: Water-surface profile and flood boundaries for the computed 100-year flood, Poplar River, Fort Peck Indian Reservation, Montana - U.S. Department of Interior, U.S. Geological Survey, dated December 1990.

Flood hazard report, existing conditions, Missouri river - Fort Peck Dam to Garrison Dam river miles 1389.9 to 1770.90, dated August 1986. U.S. Army Corps of Engineers Omaha District.

Box Elder Creek watershed project - SCS office, dated 8-24-87.

Flood Hazard boundary map, Roosevelt County, Montana unincorporated area, U.S. Department of Housing and Urban Development, dated December 4, 1979.

Roosevelt County Potential Flood Hazard Boundary Maps, dated April 1994.

All other (resolutions/ordinances) are hereby repealed to the extent of any inconsistencies.

Permit Issuing Authority - Fort Peck Tribal Council.

Floodplain Permit Review Committee - Roosevelt County and Fort Peck Indian Reservation, Floodplain Administrators and other designated personnel to review all permit applications and perform general duties of the Roosevelt County and Fort Peck Tribal Floodplain Administrators.

Recreational Vehicle - A vehicle which is

(1) Built on a single chassis;

(2) 400 square feet or less when measured at the largest horizontal projections;

(3) Designed to be self-propelled or permanently towable by a light duty truck; and

(4) Designed primarily for use as temporary living quarters for recreation, camping, travel, or seasonal use, not for use as a permanent dwelling.

Riprap - Stone, rocks, concrete blocks or analogous material that is placed along the banks or bed of a stream to alleviate erosion.

Start of Construction - Commencement of clearing, grading, filling, or excavating to prepare a site for construction.

Structure - A walled and roofed building, manufactured home, a gas or liquid storage tank, bridge, culvert, dam, diversion, wall revetment, dike, or other projection that may impede, retard, or alter the pattern of flow of water.

Substantial Damage - Damage sustained by a structure where the cost of restoring the structure to its condition before damage would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement - Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either:

(a) Before the improvement or repair is started, or

(b) If the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition, substantial improvement is considered to occur when the first construction to any wall, ceiling, floor, or other structural part of the building commences. This term does not include:

(i) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or

(ii) Any alteration of a structure listed on the national register of historic places or state inventory of historic places.

Suitable Fill - Fill material which is stable, compacted, well graded, pervious, generally unaffected by water and frost, devoid of trash or similar foreign matter, devoid of tree stumps or other organic material, and is fitting for the purpose of supporting the intended use and/or permanent structure.

Utility Lines - Facilities for the conveyance, transmission, distribution or delivery of resources or byproducts providing water, sewer, heat, light, power, and telecommunication services suspended above or buried below the ground.

Variance - A grant of relief from the requirements of these regulations that would permit construction in a manner otherwise prohibited by these regulations.

Violation - The failure of a structure or other development to be fully compliant with these regulations. A structure or other development without elevation certificate, certification by a licensed engineer or architect of compliance with these regulations, or other evidence of compliance is presumed to be in violation until such time as documentation is provided.

100-Year Flood - A flood has a one percent (1%) chance of being equaled or exceeded in any given year. A 100-year flood has nearly a 23 percent chance of occurring in a 25 year period. A 100-year flood is the same as a base flood.

### Chapter 3. General Provisions

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#### Sec. 301. Jurisdictional Area

These regulations shall apply to all lands within the jurisdiction of Fort Peck Indian Reservation, State of Montana, shown on the Official Floodplain Maps as being located within a 100-year floodplain district.

#### Sec. 302. Floodplain District Establishment

The floodplain districts established are defined by the base flood elevations and 100-year floodplains as delineated in the Flood Hazard Study. The basis for the Potential Flood Hazard Boundary Maps is a scientific, engineering and approximated report entitled, Water-surface profile and flood boundaries for the computed 100-year flood, Poplar River, Fort Peck Indian Reservation, Montana - U.S. Department of Interior, U.S. Geological Survey, dated December 1990.

Flood hazard report, existing conditions, Missouri River - Fort Peck Dam to Garrison Dam river miles 1389.9 to 1770.90, dated August 1986. U.S. Army Corps of Engineers Omaha District.

Box Elder Creek watershed project - SCS office, dated 8-24-87.

Flood Hazard boundary map, Roosevelt County, Montana unincorporated area, U.S. Department of Housing and Urban development, dated December 4, 1979.

Roosevelt County Potential Hazard Boundary Maps, dated April 1994. The Official Floodplain Maps and Study are on file in the office of the Floodplain Administrator.

### **Sec. 303. Floodplain Administrator**

The Fort Peck Tribal Flood Plain Administrator has been designated to be the Assiniboine and Sioux Water Supply System Manager and the Deputy Flood Plain Administrator, to assume the duties of Administrator in his absence, has been designated to be the . The responsibilities of this position are outlined in Chapter 5 of these regulations as a member of the Floodplain Permit Review Committee.

### **Sec. 304. Floodplain Permit Review Committee**

The Roosevelt County/Fort Peck Indian Reservation, Floodplain Permit Review Committee has been designated to be the; Roosevelt County Floodplain Administrator, The two Fort Peck Indian Reservation Floodplain Administrators, Tri-County Sanitarian, and a representative from the Roosevelt County Conservation District. The responsibilities of this committee will be to review the findings of the Floodplain Administrator and make a final determination. The committee will meet as needed, at a minimum of twice per year.

### **Sec. 305. Rule for Interpretation of Floodplain District Boundaries**

The boundaries of the 100-year floodway shall be determined by scaling distances on the official floodplain maps and using the floodway data table contained in the flood insurance study report. The maps may be used as a guide for determining the 100-year floodplain boundary, but the exact location of the floodplain boundary shall be determined where the base flood elevation intersects the natural ground. For unnumbered A Zones and AO Zone floodplains, where there is a conflict between a mapped floodplain boundary

and actual field conditions, the Floodplain Administrator may interpret the location of the 100-year floodplain boundary based on field conditions or available historical flood information.

### **Sec. 306. Compliance**

No structure or land use shall be located, extended, converted, or structurally altered without full compliance with the provisions of these regulations and other applicable regulations. These regulations meet the minimum floodplain development requirements as set forth by the Montana Board of Natural Resources and Conservation and the National Flood Insurance Program.

### **Sec. 307. Abrogation and Greater Responsibility**

It is not intended by these regulations to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, or underlying zoning. However, where these regulations impose greater restrictions, the provisions of these regulations shall prevail.

### **Sec. 308. Regulation Interpretation**

The interpretation and application of the provisions of these regulations shall be considered minimum requirements and liberally construed in favor of the governing body and not deemed a limitation or repeal of any other powers granted by State statute.

### **Sec. 309. Warning and Disclaimer of Liability**

These regulations do not imply that areas outside the delineated floodplain boundaries or permitted land uses will always be totally free from flooding or flood damages. These regulations shall not create a liability or cause of action against Fort Peck Tribes or any officer or employee thereof for flood damages that may result from reliance upon these regulations.

### **Sec. 310. Severability**

If any section, clause, provision, or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the

remainder of these regulations shall not be affected thereby.

**Sec. 311. Disclosure Provision**

All owners of property in an identified 100-year floodplain as indicated on the Official Floodplain Maps must notify potential buyers or their agents that such property is subject to the provisions of these regulations.

**Chapter 4. Administration**

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**Sec. 401. Administration**

(A) As provided in Section 3.03 of these regulations, the Floodplain Administrator has been designated by the Fort Peck Tribal Council, and has the responsibility of such position as outlined in these regulations.

(B) The Floodplain Administrator, Deputy Floodplain Administrator and the Floodplain Permit Review Committee are hereby appointed with the authority to review floodplain development permit applications, proposed uses, and construction to determine compliance with these regulations. The Floodplain Administrator is required to assure all necessary permits have been received from those governmental agencies from which approval is required by federal and state law and local codes, including Section 404 of the Federal Water Pollution Control Act of 1972, 33 U.S.C. 1334, and under the provisions of the Natural Streambed and Land Preservation Act.

(1) Additional Factors - Floodplain development permits shall be granted or denied by the Floodplain Permit Review Committee on the ba-

sis of whether the proposed establishment, alterations, or substantial improvement of an artificial obstruction meets the requirements of these regulations. Additional factors that shall be considered for every permits application are:

(a) The danger to life and property due to increased flood heights, increased flood water velocities, or alterations in the pattern of flood flow caused by encroachments;

(b) The danger that materials may be swept onto other lands or downstream to the injury of others;

(c) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions;

(d) The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owner;

(e) The importance of the services provided by the facility to the community;

(f) The requirement of the facility for a waterfront location;

(g) The availability of alternative locations not subject to flooding for the proposed use;

(h) The compatibility of the proposed use with existing development and anticipated development in the foreseeable future;

(i) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area;

(j) The safety of access to property in times of flooding for ordinary and emergency services; and

(k) Such other factors as are in harmony with the purposes of these regulations, the Montana Floodplain and Floodway Management Act, and the National Flood Insurance Program.

(C) A floodplain development permit application is considered to have been automatically granted 60 days after the date of receipt of the application by the Floodplain Permit Review Committee unless the applicant has been notified that the permit is denied, conditionally approved, or additional information pertinent to the permit review process is required.

(D) The Floodplain Permit Review Committee shall adopt such administrative procedures as may be necessary to efficiently administer the provision of these regulations.

(E) The Floodplain Permit Review Committee shall maintain such files and records as may be necessary to document nonconforming uses, base flood elevations, flood proofing and elevation certifications, fee receipts, the issuance of permits, agenda, minutes, records of public meetings, and any other matters related to floodplain management in Roosevelt County/Fort Peck Indian Reservation. Such files and records shall be open for public inspection. In matters of litigation, the Roosevelt County/Fort Peck Tribal attorney may restrict access to specific records.

(F) The Floodplain Permit Review Committee may require whatever additional information is necessary to determine whether the proposed activity meets the requirements of these regulations. Additional information may include hydraulic calculations assessing the impact on base flood elevations or velocities; level survey; or certification by a registered land surveyor, professional engineer, or licensed architect that the requirements of these regulations are satisfied.

(G) Upon Receipt of an application for a permit or a variance, the Floodplain Permit Review Committee shall prepare a notice containing the facts pertinent to the application and shall publish the notice at least once in a newspaper of general circulation in the area. Notice shall also be served by first-class mail upon adjacent property owners and the DNRC Floodplain Management Section. The notice shall provide a reasonable period of time, not less than 15 days, for interested parties to submit comments on the proposed activity.

(H) Copies of all permits granted must be sent to the Department of Natural Resources and Conservation in Helena, Montana.

(I) In riverine situations, notification by the Floodplain Permit Review Committee must be made to adjacent communities, the Floodplain Management Section (DNRC), and FEMA prior to any alteration or relocation of a stream. The flood-carrying capacity within the altered or relocated portion of any stream must be maintained.

Erosion control measures shall be incorporated to ensure stability of altered channels and stream banks.

#### **Sec. 402. Permit Applications**

(A) Activities or uses that require the issuance of a permit, including the expansion or alteration of such uses, shall not be initiated, established, or undertaken until a permit has been issued by the Floodplain Permit Review Committee.

(B) Permit applicants shall be required to furnish the following information as deemed necessary by the Floodplain Permit Review Committee for determining the suitability of the particular site for the proposed use.

(1) Plans in duplicate drawn to scale (including dimensions) showing the nature, locations, and elevation of the lot; existing and proposed structure locations; fill, storage, or materials site; flood-proofing measures; mean sea level elevation of first floor of proposed structures; and location of the channel.

(2) A plan view of the proposed development indicating external dimensions of structures, street or road finished grade elevations, well locations, individual sewage treatment and disposal sites, excavation and/or fill quantity estimates, and site plan and/or construction plans.

(3) Specifications for flood-proofing, filling, excavating, grading, riprapping, storage of materials, and location of utilities.

(4) A professional engineer's or registered architect's design calculations and certification that the proposed activity has been designed to be in compliance with these regulations.

(5) Certification of flood-proofing and/or elevation shall be provided on a standard form available from the floodplain administrator or Floodplain Permit Review Committee.

(C) To determine that the permit specifications and conditions have been completed, applicants who have received permits are required to furnish the following at the time of an on-site conformance inspection.

(1) Certification by a registered professional engineer or licensed land surveyor of the actual

mean sea level elevation of the lowest floor (including basement) of all new, altered, or substantially improved buildings.

(2) If flood-proofing techniques were used for buildings, the mean sea level elevation to which the flood proofing was accomplished must be certified by a structural engineer or licensed architect in the same manner.

(3) Certification shall also be required, for artificial obstructions other than buildings that the activity was accomplished in accordance with these regulations and the design plans submitted with the application for the permit activity. This certification may be waived by the Floodplain Permit Review Committee if it can be clearly ascertained by a site inspection that the activity was accomplished in accordance with these regulations.

(4) Certification of flood-proofing and/or elevation shall be provided on a standard form available from the floodplain administrator or Floodplain Permit Review Committee.

#### **Sec. 403. Emergency Waiver**

(A) Emergency repair and replacement of severely damaged public transportation facilities, public water and sewer facilities, facilities that provide heat, light, power, and telecommunications services, and flood control works may be authorized. Floodplain development permit requirements may be waived if:

(1) Upon notification and prior to the emergency repair and/or replacement, the Floodplain Administrator determines that an emergency condition exists warranting immediate action; and

(2) The Floodplain Administrator agrees upon the nature and type of proposed emergency repair and/or replacement.

(B) Authorization to undertake emergency repair and replacement work may be given verbally if the Floodplain Permit Review Committee feels that such a written authorization would unduly delay the emergency works. Such verbal authorization must be followed by a written authorization describing the emergency condition, and the type of emergency work agreed upon, and stating

that a verbal authorization had been previously given.

#### **Sec. 404. Review-Variances-Appeals**

(A) There is hereby created a local Floodplain Management Board of Adjustment, the membership, administration, and rules of procedure of which are identical to a zoning board of adjustment.

(B) The Board of Adjustment may, by variance, grant a permit that is not in compliance with the minimum standards contained in these regulations according to the following procedures:

(1) Variances shall not be issued for areas within a floodway if any additional increase in flood elevations or velocities after allowable encroachments into the floodway fringe would result;

(2) Variances shall only be issued upon:

(a) A showing of good and sufficient cause;

(b) A determination that refusal of a permit due to exceptional circumstances would cause a unique or undue hardship on the applicant or community involved;

(c) A determination that the granting of a variance will not result in increased flood hazards, present additional threats to public safety, be an extraordinary public expense, create nuisances, cause fraud, victimize the public, or conflict with existing Federal, State and local laws;

(d) A determination that the proposed use would be adequately flood-proofed;

(e) A determination that a reasonable alternate location outside the floodplain is not available;

(f) A determination that the variance requested is the minimum necessary to afford relief, considering the flood hazard; and

(g) Approval of the Montana Department of Natural Resources and Conservation, upon request from the Permit Issuing Authority, prior to formally approving any permit application that is in variance to these regulations.

(3) Variances shall be issued in writing from the Permit Issuing Authority and shall notify the applicant that:

(a) A specific variance is granted, and certain conditions may be attached;

(b) The issuance of a variance to construct a building below the 100- year floodplain elevation will result in increased premium rates; and

(c) Such construction below the 100-year flood elevation increases risks to life and property. The Floodplain Permit Review Committee shall maintain records of the variance notification and actions, including justification for their issuance, and forward copies of all variance actions to the Montana Department of Natural Resources and Conservation and the Federal Emergency Management Agency.

(C) Appeal of any decision of the Permit Issuing Authority, its officers, or agencies may be taken by an aggrieved person or persons, jointly or separately, to a court of record.

**Sec. 405. Fees**

A processing fee of \$25.00 shall be submitted with each permit application.

**Sec. 406. Violation Notice**

The Floodplain Administrator shall bring any violation of these regulations to the attention of the local governing body; its legal council; and the Montana Department of Natural resources and Conservation.

**Sec. 407. Compliance**

Any use, arrangement, or construction not in compliance as authorized by permit, shall be deemed a violation of these regulations and punishable as provided in Section 4.08. An applicant is required to submit certification by a registered professional engineer, architect, land surveyor, or other qualified person designated by the Floodplain Permit Review Committee that finished fill and lowest building floor elevations, flood proofing, hydraulic design, or other flood protection measures were accomplished in compliance with these regulation.

**Sec. 408. Penalties**

Violation of the provisions of these regulations or failure to comply with any of the requirements,

including permit approval prior to development of flood prone lands and conditions and safeguards established shall constitute a misdemeanor. Any person who violates these regulations or fails to comply with any of its requirements shall, upon conviction, be fined not more than \$100 or imprisoned in jail for not more than 10 days or both. Each day's continuance of a violation shall be deemed a separate and distinct offense.

**Sec. 409. Emergency Preparedness Planning**

In formulating community development goals, the community shall consider the development of a plan for evacuating residents of all manufactured home parks or subdivisions located within flood prone areas. This plan should be developed, filed with, and approved by appropriate community emergency management authorities.

**Chapter 5. Specific Standards**

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**Sec. 501. Applications**

The minimum floodplain development standards listed in this chapter apply to the floodway and floodway fringe portions of the 100-year floodplain as delineated on the Flood Hazard Area Maps.

**Sec. 502. Floodway**

(A) Uses Allowed Without Permits. The following open-space uses shall be allowed without a permit within the floodway, provided that such uses conform to the provisions of Chapter 7 of these regulations; are not prohibited by any other ordinance, resolution, or statute; and do not require fill, excavation, permanent storage of materials, or equipment or structures other than portable structures:

- (1) Agricultural uses;
- (2) Accessory uses such as loading and parking areas, or emergency landing strips associated with industrial and commercial facilities;
- (3) Private and public recreational uses such as golf courses, driving ranges, archery ranges, picnic grounds, boat-launching ramps, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking or horseback riding trails;
- (4) Forestry, including processing of forest products with portable equipment;
- (5) Residential uses such as lawns, gardens, parking areas, and play areas;
- (6) Irrigation and livestock supply wells, provided that they are located at least 500 feet from domestic water supply wells;
- (7) Fences, except permanent fences crossing channels; and
- (8) Recreational vehicles provided that they be on the site for fewer than 180 consecutive days, or be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system with wheels intact, is attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions.

(B) Uses Requiring Permits. The following artificial obstructions may be permitted in the floodway subject to the issuance of a permit by the Floodplain Permit Review Committee:

- (1) Excavation of material from pits and pools provided that:
  - (a) A buffer strip of undisturbed land is left between the edge of the channel and the edge of the excavation. This buffer strip must be of sufficient width to prevent flood flows from channeling into the excavation;
  - (b) The excavation meets all applicable laws and regulations of other federal, local and state agencies; and
  - (c) Excavated material is disposed of or stockpiled outside the floodway.
- (2) Railroad, highway, and street stream crossings, provided the crossings are designed to offer minimal obstruction to flood flow. Stream

crossings shall not increase the elevation of the 100-year flood more than one-half foot nor cause a significant increase in flood velocities.

(3) Limited filling for highway, street, and railroad embankments not associated with stream crossings, provided that:

(a) Reasonable alternate transportation routes outside the designated floodway are not available; and

(b) Such floodway encroachment is located as far from the stream channel as possible and shall not result in a cumulative increase in base flood elevations, after allowable encroachments into the floodway fringe, exceeding one-half foot.

(4) Buried or suspended utility lines, provided that:

(a) Suspended utility lines are designed so the lowest point of the suspended line is at least 6 feet higher than the base flood elevation;

(b) Towers and other appurtenant structures are designed and placed to withstand and minimally obstruct flood flows; and

(c) Utility lines carrying toxic or flammable materials are buried to a depth of at least twice the calculated maximum depth of scour for a 100-year flood. The maximum depth of scour shall be determined by hydraulic engineering methods acceptable to the Floodplain Administrator.

(5) Storage of materials and equipment, provided that:

(a) The material or equipment is not subject to major damage by flooding and is properly anchored to prevent floatation or downstream movement; or

(b) The material or equipment is readily movable within the limited time available after flood warning. Storage of flammable, toxic, hazardous, or explosive materials shall not be permitted.

(6) Domestic water supply wells, provided that:

(a) They are driven or drilled wells located on ground higher than the surrounding ground to assure positive drainage from the well;

(b) Well casings are water tight to a distance of at least 25 feet below the ground surface;



(c) Water supply and electrical lines have a watertight seal where the lines enter the casing;

(d) All pumps, electrical lines, and equipment are either submersible or adequately flood-proofed; and

(e) Check valves are installed on main water lines at wells and at all building entry locations.

(7) Buried and sealed vaults for sewage disposal in recreational areas, provided they meet applicable laws and standards administered by the Montana Department of Health and Environmental Sciences.

(8) Public or private campgrounds, provided that:

(a) Access roads require only limited fill and do not obstruct or divert flood waters; and

(b) Recreational vehicles and travel trailers are licensed and ready for highway use. They are ready for highway use if on wheels or jacking system with wheels intact, are attached to the site with only quick disconnect type utilities and securing devices, and have no permanently attached additions.

(9) Structures accessory to the uses permitted in this section such as boat docks, marinas, sheds, picnic shelters, tables, and toilets provided that:

(a) The structures are not intended for human habitation;

(b) The structures will have a low flood damage potential;

(c) The structures will, insofar as possible, be located on ground higher than the surrounding ground and as far from the channel as possible;

(d) The flood-proofing standards of Chapter 7 are met; and

(e) The structures will be constructed and placed so as to offer minimal obstruction to flood flows and are anchored to prevent floatation.

(10) Substantial improvements to any structure provided that the provisions of Section 5.03-B.3, 5.03-B.4, or 5.03-B.5 of these regulations are met. In the Floodway the structure must be flood-proofed or elevated on a permanent foundation rather than on fill.

(11) All other artificial obstructions, substantial improvements, or nonconforming uses not

specifically listed or prohibited by these regulations.

(C) Permits for Flood Control Works. Flood control works shall be allowed within floodways subject to the issuance of a permit by the Floodplain Permit Review Committee with the following conditions:

(1) Levees and floodwalls are permitted if:

(a) The proposed levee or floodwall is designed and constructed to safely convey a 100-year flood; and

(b) The cumulative effect of the levee or floodwall combined with allowable floodway fringe encroachments does not increase the unobstructed base flood elevation more than .05 foot. The Floodplain Permit Review Committee may establish either a lower or higher permissible increase in the base flood elevation for individual levee projects only with concurrence from the Montana Department of Natural Resources and Conservation and the Federal Emergency Management Agency based upon consideration of the following criteria:

(1) The estimated cumulative effect of any anticipated future permissible uses; and

(2) The type and amount of existing flood-prone development in the affected area.

(c) The proposed levee or floodwall, except those to protect agricultural land, are constructed at least 3 feet higher than the base flood elevation.

(2) Riprap, except that which is hand-placed, if:

(a) The riprap is designed to withstand a 100-year flood;

(b) The riprap does not increase the base flood elevation; and

(c) The riprap will not increase erosion upstream, downstream, or adjacent to the riprap site.

(3) Channelization projects if they do not significantly increase the magnitude, velocity, or base flood elevation in the proximity of the project.

(4) Dams, provided that:

(a) They are designed and constructed in accordance with the Montana Dam Safety Act and applicable safety standards; and

(b) They will not increase flood hazards downstream, either through operational procedures or improper hydrologic/hydraulic design.

(D) Permits for Water Diversions. Permits for the establishment of a water diversion or change in place of diversion shall not be issued if, in the judgement of the Floodplain Permit Review Committee.

(1) The proposed diversion will significantly increase the upstream base flood elevation to the detriment of neighboring property;

(2) The proposed diversion is not designed and constructed to minimize potential erosion from a 100-year flood; and

(3) Any permanent diversion structure crossing the full width of the stream channel is not designed and constructed to safely withstand a 100-year flood.

(E) Prohibited Uses. The following artificial obstructions and non-conforming uses are prohibited within the floodway:

(1) New construction of any residential, commercial, or industrial structure;

(2) Encroachments including fill, new construction, alterations, substantial improvements, and other development within the adopted regulatory floodway that would result in erosion of the embankment, obstruction of the natural flow of waters, or increase in flood levels within the community during the occurrence of the 100-year flood;

(3) The construction or permanent storage of an object subject to floatation or movement during flooding;

(4) Solid and hazardous waste disposal, sewage treatment, and sewage disposal systems;

(5) Storage of toxic, flammable, hazardous, or explosive materials; and

(6) Alterations of structures unless it can be shown the alteration won't raise flood heights;

(7) Manufactured homes.

### **Sec. 503. Floodway Fringe**

(A) Uses Allowed Without Permits. All uses allowed in the floodway, according to the provisions of Section 5.02-A of these regulations, shall also be allowed without a permit in the floodway

fringe. In addition, individual or multiple family subsurface sewage disposal systems are allowed only when they are reviewed and approved under laws and regulations administered by the Montana Department of Health and Environmental Sciences or the local health board.

(B) Uses Requiring Permits. All uses allowed in the floodway subject to the issuance of a permit, according to the provisions of Section 5.02 B, C, and D of these regulations, shall also be allowed by permit within the floodway fringe. In addition, new construction, substantial improvements, and alterations to structures are allowed by permit. This includes but is not limited to residential, commercial, and industrial construction and suitable fill to be allowed by permit from the Floodplain Permit Review Committee, subject to the following conditions:

(1) Such structures or fill must not be prohibited by any other statute, regulation, ordinance, or resolution;

(2) Such structures or fill must be compatible with local comprehensive plans;

(3) The new construction, alterations, and substantial improvements of residential structures including manufactured homes must be constructed on suitable fill such that the lowest floor elevation (including basement) is two feet or more above the base flood elevation. The suitable fill shall be at an elevation no lower than the base flood elevation and shall extend for at least fifteen feet, at that elevation, beyond the structure(s) in all directions;

(4) The new construction, alterations, and substantial improvements of commercial and industrial structures can be constructed on suitable fill as specified in Section 5.03-B. 3 of these regulations. If not constructed on fill, commercial and industrial structures must be adequately flood-proofed to an elevation no lower than two feet above the base flood elevation. Flood-proofing must be certified by a registered professional engineer or architect that the flood-proofing methods are adequate to withstand the flood depths, hydrodynamic and hydrostatic pressures, velocities, impact, buoyancy, and uplift forces associated with the 100-year flood.

(a) If the structure is designed to allow internal flooding of areas below the lowest floor, use of this space shall be limited to parking, loading areas, building access, and storage of equipment or materials not appreciably affected by flood waters. The floors and walls shall be designed and constructed of materials resistant to flooding to an elevation no lower than two feet above the base flood elevation. Walls shall be designed to automatically equalize hydrostatic forces by allowing for entry and exit of floodwaters. Openings may be equipped with screens, louvers, valves, other coverings, or devices which permit the automatic entry and exit of floodwaters.

(b) Structures whose lowest floors are used for a purpose other than parking, loading, or storage of materials resistant to flooding shall be flood-proofed to an elevation no lower than two feet above the base flood elevation. Flood-proofing shall include impermeable membranes or materials for floors and walls and watertight enclosures for all windows, doors, and other openings. These structures shall also be designed to withstand the hydrostatic, hydrodynamic, and buoyancy effects of a 100-year flood.

(c) Flood-proofing of electrical, heating, and plumbing systems shall be accomplished in accordance with Chapter 7 of these regulations.

(5) All manufactured homes placed in the floodway fringe must have the chassis securely anchored to a foundation system that will resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, over-the-top or frame ties to ground anchors. The following conditions also apply;

(a) When a manufactured home is 1) altered, 2) replaced because of substantial damage as a result of a flood, or 3) replaced on an individual site, the lowest floor must be elevated two feet above the base flood elevation. The home can be elevated on fill or raised on a permanent foundation of reinforced concrete, reinforced mortared block, reinforced piers, or other foundation elements of at least equivalent strength.

(b) Replacement or substantial improvement of manufactured homes in an existing manufactured home park or subdivision must be raised on a permanent foundation. The lowest floor must be two feet above the base flood elevation. The foundation must consist of reinforced concrete, reinforced mortared block, reinforced piers, or other foundation elements of at least equivalent strength.

(c) Manufactured homes proposed for use as commercial or industrial structures must be elevated and anchored, rather than flood-proofed.

(6) Fill material placed in the floodway fringe must be stable, compacted, well graded, pervious, generally unaffected by water and frost, devoid of trash or similar foreign matter, devoid of tree stumps or other organic material, and appropriate for the purpose of supporting the intended use and/or permanent structure.

(7) Roads, streets, highways, and rail lines shall be designed to minimize increase in flood heights. Where failure or interruption of transportation facilities would result in danger to the public health or safety, the facility shall be located two feet above the base flood elevation;

(8) Agricultural structures that have a low damage potential, such as sheds, barns, shelters, and hay or grain storage structures must be adequately anchored to prevent floatation or collapse and all electrical facilities shall be placed above the base flood elevation; and

(9) Recreational vehicles, if they are on the site for more than 180 consecutive days or are not ready for highway use, must meet the elevation requirements of section 5.03-B.3.

(C) Prohibited Uses. The following artificial obstructions and non-conforming uses are prohibited within the floodway fringe.

(1) Solid and hazardous waste disposal; and  
(2) Storage of highly toxic, flammable, hazardous, or explosive materials. Storage of petroleum products may be allowed by permit if stored on compacted fill at least two feet above the base flood elevation and anchored to a permanent foundation to prevent downstream movement.

**Sec. 504. Floodplain Areas with Flood Elevations and No Delineated Floodway**

(A) A development proposed for a 100-year floodplain, where water surface elevations are available but no floodway is delineated, may not significantly increase flood velocities or depths or generally alter patterns of flood flow. The provisions of Section 5.03, Flood Fringe, shall apply to these areas. The Floodplain Permit Review Committee may require a permit applicant to furnish additional hydraulic data before acting on a permit application for such a floodplain. The data may include, but are not limited to, any of the following:

- (1) A hydraulic study documenting probable effect on upstream, downstream, or adjacent property owners caused by the proposed development; or
- (2) The calculated increase in the 100-year flood water surface profile caused by the proposed development.

(B) Permits for such proposed development may be modified or denied if the additional information shows that the proposed use would cause an additional flood hazard to adjacent property or significantly increase flood heights. A significant increase in flood heights is one-half foot unless existing or anticipated development in the area dictates a lesser amount of allowable increase.

**Sec. 505. Shallow Flooding (AO Zones)**

(A) Shallow flooding areas are delineated as AO Zone floodplains on the Flood Insurance Rate Maps. The provisions of Section 5.03, Floodway Fringe, of these regulations shall apply to any AO Zone floodplains. The depth of the 100-year flood is indicated as the depth number on the Flood Insurance Rate Maps. The 100-year flood depth shall be referenced to the highest adjacent grade or stream flow line in determining which fill or flood-proofing heights to use in applying the provisions of Section 5.03- B.3 and Section 5.03-B.4 of these regulations. In the absence of depth or elevation information, a minimum 2 foot flood depth shall be used.

(B) Floodplain Boundary Interpretation. The Floodplain Permit Review Committee shall make

interpretations where needed as to the exact location of an AO zone floodplain boundary when there is a conflict between a mapped boundary and actual field conditions.

**Chapter 6. General Standards**

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**Sec. 601. Applications**

The minimum floodplain development standards listed in this chapter apply to the 100-year floodplains delineated by the approximate methods and identified as unnumbered A Zones on the Flood Insurance Rate Maps.

(A) Uses Allowed Without Permits. All uses allowed in a floodway, according to the provisions of Section 5.02-A of these regulations, shall also be allowed without a permit in unnumbered A-Zone floodplains.

(B) Uses Requiring Permits. All uses allowed in the floodway and floodway fringe subject to the issuance of a permit, according to the provisions of Section 5.03-B, shall require permits from the Floodplain Permit Review Committee for unnumbered A-Zone floodplains. also, the provision of Section 5.03-B apply to the A-Zone floodplains with no floodway delineated or water surface profile computed. Since there are no 100-year flood water surface profiles computed for A-Zone floodplains, the following conditions also apply:

(1) Elevation data on the 100-year flood shall be provided for subdivision proposals according to the definitions and rules of the Montana Sanitation in Subdivisions Act, MCA 76-4 Part 1 and the rules adopted by DHES under this act. These data shall be used in applying Sections 5.03-B.3, 5.03-B.4 and 5.03-B.5 of these regulations. Subdivision proposals shall also provide for adequate drainage to minimize potential flood hazards.

(2) The Floodplain Permit Review Committee may obtain, review, and reasonably use any base flood elevation and floodway data available from federal, state, or other sources, until

such data has been provided by FEMA, to enforce Section 5.04-B.3 and 5.03-B.4 of these regulations; and

(3) The Floodplain Permit Review Committee may use historical flood elevations to determine suitable fill or flood-proofing elevations as required by Sections 5.03-B.3 and 5.03-B.4 of these regulations;

(4) If historical flood evidence is not available, then the Floodplain Permit Review Committee shall determine, from a field review at the proposed development site, an appropriate fill of flood-proofing elevation to use in applying Sections 5.03-B.3 and 5.03-B.4 of these regulations. In the absence of depth or elevation information, a minimum two-foot flood depth shall be used; and

(5) Proposed structures must be anchored to prevent floatation or collapse and must be located as far from stream channels as practicable.

(C) Prohibited Uses. Those uses prohibited in the floodway fringe, in accordance with Section 5.03-C of these regulations, shall also be prohibited within the A-Zone floodplain boundaries.

(D) Floodplain Boundary Interpretation. The Floodplain Permit Review Committee shall make interpretations where needed as to the exact location of the unnumbered A-Zone floodplain boundary when there is a conflict between a mapped boundary and actual field conditions.

## **Chapter 7. Flood-Proofing Requirements**

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### **Sec. 701. Certification**

If the following flood-proofing requirements are to be applied to a proposed structure, as stipulated by the Floodplain Permit Review Committee in accordance with these regulations, the methods used must be certified as adequate by a registered professional engineer or architect.

### **Sec. 702. Conformance**

Permitted flood-proof systems shall conform to the conditions listed below-and the flood-proofing standards listed in Section 5.03-B.4 of these regulations for commercial and industrial structures.

#### **(A) Electrical Systems**

(1) All incoming power service equipment, including all metering equipment, control centers, transformers, distribution and lighting panels and all other stationary equipment must be located at least two feet above the base flood elevation;

(2) Portable or movable electrical equipment may be placed below the base flood elevation, if the equipment can be disconnected by a single submersible plug-and socket assembly;

(3) The main power service line shall have automatic or manually operated electrical disconnect equipment located at an accessible location outside the 100-year floodplain and above the base flood elevation; and

(4) All electrical wiring systems installed at or below the elevation of the 100- year flood shall be suitable for continuous submergence and may not contain fibrous components.

#### **(B) Heating Systems**

(1) Float operated automatic control valves must be installed in gas furnace supply lines so that the fuel supply is automatically shut off when flood waters reach the flood level where the furnace is located;

(2) Manually operated gate valves must be installed in gas supply lines. The gate valves must be operable from a location above the elevation of the 100-year flood.

(3) Electric heating systems must be installed in accordance with the provisions of Section 7.02-A.

#### **(C) Plumbing Systems**

(1) Sewer lines, except those to be buried and sealed in vaults, must have check valves installed to prevent sewage backup into permitted structures; and

(2) All toilet stools, sinks, urinals, and drains must be located so the lowest point of possible water entry is at least two feet above the elevation of the 100-year flood.

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**Title 22 – Protection of the Environment**

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## Chapter 1. Fort Peck Underground Storage Tank Code

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### Sec. 101. Short title.

This title shall be known as the "Fort Peck Underground Storage Tank Code."

### Sec. 102. Findings and purpose.

Leaking underground storage tanks containing petroleum products and hazardous substances are a significant source of underground contamination and a potential hazard for fire and explosion. The federal Resource Conservation and Recovery Act of 1976, as amended, creates a regulatory program for the tanks. The purpose of this code is to authorize the Fort Peck Office of Environment Protection to establish, administer, and enforce an underground storage tank leak prevention program on the Reservation and to provide for the proper installation or closure of underground storage tanks by qualified persons.

### Sec. 103. Definitions.

(1) "Accidental release" means a sudden or non-sudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third party bodily injury or property damage.

(2) "Board" means the Montana Petroleum Tank Release Compensation Board.

(3) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death, that results from the physical injury, sickness or disease at any time.

(4) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(5) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

(6) "Corrective action plan" means a plan or set of plans designed to define the nature, extent, and magnitude of contamination from a release and identify threats to public health, welfare and the environment; and also to describe the work necessary to investigate, monitor, clean up, restore, abate, mitigate, remove or otherwise respond to and remediate a release. The term "corrective action plan" refers to either or both of two types of



plans for responding to a release: a remedial investigation phase work plan or a cleanup phase work plan.

(7) "Double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet standards and regulations of the OEP and the BIA. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.

(8) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the Reservation or under the jurisdiction of the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

(9) "Fund" means the Montana Petroleum Tank Release Cleanup Fund.

(10) "Indian" means any person who

(a) Is an enrolled member of the Assiniboine and Sioux Tribes of the Fort Peck Reservation;

(b) Holds, or is recognized by the Secretary of the Interior as eligible to hold, trust or restricted property on the Fort Peck Indian Reservation; or

(c) Is a member of a tribe that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(11) "Installation" or "to install" means

(a) the placement of an underground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation also includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents or in-tank liquid-level monitoring systems. Installation also means repair or modification of a leak detection device

that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system.

(b) It does not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

(12) "Installer" means an individual who installs or closes underground storage tank systems.

(13) "License" means a license issued by the OEP under Sec. 112 to conduct the installation or closure of underground storage tank systems or under Sec. 114 to inspect underground storage tank systems and the installation of leak detection devices or cathodic protection systems.

(14) "Licensed installer" means an individual who holds a valid underground storage tank system installer license.

(15) "Non-Indian" means any person not an Indian.

(16) "OEP" means the Fort Peck Office of Environmental Protection.

(17) "Operator" means a person in control of or having responsibility for the operation, maintenance, or management of an underground storage tank system.

(18) "Owner" means a person who owns an underground storage tank system used for the storage, use, or dispensing or regulated substances. "Owner" also means a person who holds title to, controls, or possesses an interest in a petroleum storage tank. It does not include a person who holds an interest in a petroleum storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(19) "Person" means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), joint venture, sole proprietorship, or governmental or private entity.

(20) "Petroleum" or "petroleum product" includes gasoline, crude oil, fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7

pounds per square inch absolute), or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

(21) "Petroleum storage tank" or PST means a tank that contains or contained petroleum or petroleum products and that is:

(a) An underground storage tank as defined in this Section;

(b) A storage tank that is situated in an underground area such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) An above ground storage tank with a capacity less than 30,000 gallons; or

(d) Above ground or underground pipes associated with tanks under subsections (b) and (c), except that pipelines regulated under the following laws are excluded:

(i) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.); or

(ii) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.).

(22) "Property damage" means:

(a) Physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) Loss of use of tangible property that is not physically injured.

(23) "Regulated substance" means

(a) A "hazardous substance" which means

(i) Any substance designated pursuant to section 311(b)(2)(A) of the federal Water Pollution Control Act;

(ii) Any element, compound, mixture, solution, or substance designated a hazardous substance by regulations promulgated by the administrator of the federal Environmental Protection Agency pursuant to section 102 of CERCLA;

(iii) Any toxic pollutant listed under section 307(a) of the federal Water Pollution Control Act;

(iv) Any hazardous air pollutant listed under section 112 of the federal Clean Air Act; and

(v) Any imminently hazardous chemical substance or mixture with respect to which the administrator of the Environmental Protection

Agency has taken action pursuant to section 7 of the federal Toxic Substances Control Act.

The term "hazardous substance" does not include petroleum (including crude oil or any fraction thereof that is not specifically listed or designated as a hazardous substance as provided herein) or natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of natural gas and such synthetic gas; or (b) petroleum, or petroleum product.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Reservation" means the Fort Peck Indian Reservation as established in the Agreement of December 28 and December 31, 1886 and confirmed by the Act of May 1, 1888, 25 Stat. 113.

(26) "Storage" means the actual or intended containment of regulated substances either on a temporary basis or for a period of years.

(27) "Underground storage tank", "UST" or "underground storage tank system" means

(a) Any one or combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; and

(b) Any underground pipes used to contain or transport a regulated substance and are connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely underground.

(c) It includes a leak detection device that is external to and not attached to an underground storage tank system.

(d) It does not include:

(i) A septic tank;

(ii) A pipeline facility, including gathering lines regulated under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.) or the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.);

(iii) A surface impoundment, pit, pond, or lagoon;

(iv) A storm water or wastewater collection system;

- (v) A flow-through process tank;
- (vi) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
- (vii) A storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or
- (viii) Any pipe connected to a tank described in (d)(i) through (d)(vi) of this section.

**Sec. 104. Applicability.**

This title shall apply to all Indian persons who own, operate, install or remove underground storage tank systems (UST) and petroleum storage tanks (PSTs) within the Reservation and to all non- Indian persons who own, operate, install or remove UST systems and PSTs on trust and/or restricted property on the Reservation, except for criminal penalties. It does not apply to non-Indian persons who own, operate, install or remove UST systems and PSTs which are located within the Reservation but are not located on trust or restricted property.

**Sec. 105. Powers of Office of Environmental Protection.**

The OEP may:

- (1) Administer and enforce the provisions of this code, any rules implementing it and orders and permits issued pursuant to it;
- (2) Enter and inspect the premises or any appurtenant property on the Reservation of an owner or operator at any time to insure compliance with laws or rules pertaining to underground storage tank systems. The OEP may also have access to and copy any records relating to regulated substances for the purposes of developing rules under this code or enforcing this code, rules adopted under it, or a permit or an order issued under this code.
- (3) Accept and administer grants from the federal government and other sources; and
- (4) Abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling of any regulated substance.

**Sec. 106. Administrative rules.**

The OEP may adopt rules implementing this code. Such rules shall be at least as stringent as federal requirements, and shall include:

- (1) Reporting by owners and operators;
- (2) Financial responsibility;
- (3) Release detection, prevention and corrective action;
- (4) Standards for design, construction, installation, and closure;
- (5) Standards for upgrading existing underground storage tank systems, general operating requirements and maintenance;
- (6) Requirements for issuance, denial, renewal, modification, suspension and revocation of permits for the installation and closure of underground storage tank systems, on the Reservation and licenses for installers and inspectors;
- (7) Requirements for examination and training of inspectors and installers;
- (8) Requirements for qualifications of inspectors, use of inspectors and methods for conducting an inspection;
- (9) Development of a schedule of fees, including fees for licenses, license renewals, permits, and inspections;
- (10) Requirements for approval of corrective action plans;
- (11) The time between filing of a permit application with the OEP and the installation or closure of a tank;
- (12) Procedures, terms and conditions by which owners and operators may seek reimbursement from Montana Petroleum Tank Release Cleanup Fund;
- (13) A penalty schedule and a system for assessing administrative penalties, notice, and appeals.

**Sec. 107. Inventory; compliance monitoring.**

- (1) The OEP may conduct an inventory of sites and locations on the Reservation where owners and operators have stored regulated substances in underground storage tanks.
- (2) The OEP may, as a condition of a permit, require the owner or operator of an underground

storage tank system to install equipment, collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with this code, rules adopted under this code, any order of the OEP, and permit conditions.

(3) The OEP may require the owner or operator of an underground storage tank system to submit reports on such compliance monitoring activities, including notice to the OEP of any noncompliance with permit conditions, rules adopted under this code, the provisions of this code, or any orders of the OEP.

**Sec. 108. Unauthorized underground storage tanks prohibited.**

A person shall not own or operate an underground storage tank system on the Reservation unless he or she complies with the requirements of this code and any rules adopted by the OEP for the installation, operation and closure of underground storage tank systems.

**Sec. 109. Permits: Requirement for licensed installer.**

(1) A person may not install or close, or cause to be installed or closed, an underground storage tank system on the Reservation without a permit issued by the OEP as provided in this code.

(2) In addition, an owner or operator on the Reservation must obtain the services of a licensed installer for the installation or closure of an underground storage tank system, unless the installation or closure is:

- (a) Inspected by the OEP as provided in Sec. 114, Inspections; or
- (b) Exempt as provided in Sec. 110, Exemptions.

**Sec. 110. Exemptions.**

The owner or operator of a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes or a tank used for storing heating oil for consumptive use on the premises where stored shall obtain a permit for the installation or closure of the tank but is not required to obtain the services of a licensed installer.

**Sec. 111. Permits: applications.**

(1) Before the installation or closure of an underground storage tank system on the Reservation, the owner or operator or the owner's or operator's designated licensed installer or remover shall file a permit application with the OEP on forms provided by the OEP. The OEP may provide by rule for emergency permits to apply to emergency conditions pertaining to the installation or closure of underground storage tank system.

(2) The permit application must, at a minimum, require the owner or operator to provide information concerning:

- (a) The date of the underground storage tank system installation or closure;
- (b) The location of the underground storage tank system installation or closure;
- (c) The type of construction of the underground storage tank system;
- (d) The contents of the underground storage tank system being closed or the anticipated contents of the tank being installed; and
- (e) The name of the licensed installer who will be installing or closing the underground storage tank system or the estimated date for OEP inspection if no licensed installer will be installing or closing the underground storage tank system.

(3) After receipt of a completed application that meets the requirements of this code and any rules adopted, the OEP shall issue the permit. The decision of the OEP shall be final and may be appealed as provided in Sec. 129, Appeals of this code.

**Sec. 112. Licensing of installers.**

(1) An installer may not install or close an underground storage tank system on the Reservation unless he or she has a valid license issued by the OEP.

(2) The OEP shall grant an installer a license if the installer demonstrates competency and experience in the installation and closure of underground storage tank systems, passes a written examination conducted by the OEP (or by the State of Montana) and pays the license fee established by OEP rule.

(3) The OEP may conduct written examinations to qualify individuals for installer licenses and provide public notice of the examinations.

(4) An underground storage tank system installer license is valid for up to three years and is subject to periodic renewal as prescribed by OEP rule.

(5) As a condition of renewal, the OEP may require that an installer demonstrate continuing competency in the installation and closure of tank systems.

(6) An installer need not be an Indian to qualify for a license.

### **Sec. 113. Grounds for denying, modifying, suspending or revoking an installer license.**

(1) The OEP may deny, modify, condition, suspend or revoke a license if the installer:

(a) Fails to achieve a passing grade on a written examination;

(b) Fails to pay a license fee;

(c) Commits fraud or deceit in the license application;

(d) Has had a similar license suspended or revoked by another jurisdiction; or

(e) Violates any tribal, state or federal law, rule, permit or order relating to the installation or closure of an underground storage tank system.

(2) If the OEP modifies, conditions, suspends or revokes a license, it shall inform the applicant or license holder in writing of the reason for the action. The installer may appeal any such action of the OEP to the Tribal Court of Appeals as provided in Sec. 129, Appeals.

### **Sec. 114. Inspections.**

(1) Compliance inspections.

(a) The OEP or any person designated by it, at any reasonable time and upon presentation of credentials, may enter and inspect the property, premises, place or any appurtenant property on the Reservation of an owner or operator at any time to insure compliance with tribal and federal laws or rules, permits or orders pertaining to underground storage tank systems. The OEP shall also have access to and copies of any records relating to the underground storage tank system.

(b) In the course of an inspection under this section, the employee or person designated by OEP may take samples of any substances, including samples from any soil or ground water or samples of any containers or labeling for the substances. If the employee or person designated by the OEP takes a sample of any regulated substance, he shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis must be furnished to the owner, operator, or agent in charge.

(2) Installation or closure inspections.

(a) After being issued a permit, an owner or operator may obtain an inspection by the OEP or any person designated by it instead of obtaining the services of a licensed installer. The owner or operator shall provide timely notice to the OEP of the date and location of the underground storage tank system installation or closure and shall establish with the OEP the time when an inspection may be conducted.

(b) An owner or operator may conduct an installation or closure under this section only if an inspector is present.

(c) The owner or operator must pay an inspection fee to the OEP to cover the costs associated with an inspection. The inspection is not considered complete until the owner or operator pays the fee.

(d) An owner or operator must keep a copy of an installation inspection report on file for as long as the OEP requires by rule. An owner or operator must keep a copy of a closure inspection report for three years after the date of closure.

(e) Tribal or federal officials, such as health officers, sanitarians, fire officials or other persons designated or hired by the OEP, may conduct inspections on behalf of the OEP.

(3) The Tribes may contract with the EPA and the Montana Department of Health and Environmental Sciences (Department) to obtain the services of inspection officials licensed by the Department to conduct the Tribes' inspections. State

inspection officials acting in this capacity shall act as contractors of the Tribes, not as officials of the State, and the OEP shall issue a tribal inspector's license to each such inspector. Any rights responsibilities, or conditions of tribal inspectors licenses shall be contained in the contract.

**Sec. 115. Underground storage tank release report.**

If an owner or operator of an underground storage tank system on the Reservation discovers or is provided with evidence that the tank may have released a regulated substance, he or she must immediately notify the OEP that a release may exist.

**Sec. 116. Administrative enforcement.**

(1) When the OEP believes that a person has violated this code, a rule adopted under it, or a permit provision, it may serve written notice of the violation on the person or the person's agent. The notice must specify the provision of this code, rule or permit alleged to have been violated and the facts which constitute the violation. The notice may include an order to provide information pertaining to installation or closure or an order to take necessary corrective action within a reasonable period of time as stated in the order. The notice and order must be signed by the Director of OEP and may be served by certified mail or in person by a member of the OEP upon the person or the person's agent. The order becomes final unless, within 30 days after the notice is served, the person requests in writing a hearing before the OEP. On receipt of the request, the OEP shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing, the OEP finds that a violation has occurred, it shall either affirm or modify the order previously issued. An order issued by the OEP may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the OEP finds a violation has not occurred, it shall rescind the order. Decisions of the OEP shall be final and may be appealed to the Tribal Court of Appeals as provided in Sec. 129, Appeals.

(3) In addition to or instead of issuing an order under subsection (1), the OEP may either:

(a) Require the alleged violator to appear before the OEP by subpoena for a hearing at a specified time and place to answer the charges or to provide information regarding the violation or its impact on public health and welfare or the environment;

(b) Initiate action under Sec. 117. Injunctions, Sec. 118. Imminent hazard, Sec. 120. Civil Penalties, or Sec. 121, Criminal Penalties; or

(c) Assess administrative penalties under Sec. 122 and issue corrective action orders.

(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a hearing or investigation before the OEP, the OEP may apply to the Tribal Court for an order to compel compliance with the subpoena or the giving of testimony. The Court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the Court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in the Tribal Court.

(5) This section does not prevent the OEP from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

**Sec. 117. Injunctions.**

The OEP may institute and maintain actions in the Tribal Court for injunctive relief as provided in the Fort Peck Code of Justice, Title 8, Sec. 301 and Secs. 401-403, to:

(1) Immediately restrain any person from engaging in any unauthorized activity which is endangering public health or causing damage to the environment;

(2) Enjoin a violation of this code, or rule adopted under this code, or order of the OEP, or a permit provision; or

(3) Require compliance with this code, a rule adopted under this code, an order of the OEP or a permit provision.

**Sec. 118. Imminent hazard.**

Upon receipt of evidence that the installation, closure or operation of an underground storage tank system may present an imminent and substantial danger to public health or the environment, the OEP may commence legal or administrative proceedings to immediately abate the danger or to restrain, order or enjoin any person from causing the danger. The OEP may take any other appropriate action as necessary, including issuing orders to protect the public health and environment.

**Sec. 119. Cleanup orders.**

The OEP may issue a cleanup order to any person who has released or deposited any regulated substance into or onto any land or water in an unlawful or unapproved manner, or so as to result in unlawful or unapproved disposal of a regulated substance. The order shall direct the person to clean up and remove the regulated substance, treat the regulated substance so as to render it nonhazardous or to take such other actions as may be considered reasonable by the OEP.

**Sec. 120. Civil penalties**

(1) Any person who violates any provision of this code, a rule adopted under it, an order of the OEP or a permit is subject to a civil penalty not to exceed \$5,000 per violation. If an installer who is an employee is in violation, the employer of that installer is the entity that is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act of the employee. Each day of violation constitutes a separate violation.

(2) The OEP may institute and maintain in the name of the Tribes any enforcement proceedings under this section in the Tribal Court.

(3) Action under this section does not bar enforcement of this code, rules adopted under it orders or permits, injunctions, or action under Sec. 121, Criminal Penalties.

(4) Money collected under this section shall be deposited in the tribal treasury.

**Sec. 121. Criminal penalties.**

(1) Any Indian person who knowingly installs or closes an underground storage tank system without a permit and either an inspection or the use of the services of a licensed installer as required in Sec. 109, Permits; any Indian installer who knowingly installs or closes an underground storage tank system without being licensed; or any Indian person who knowingly makes any false statements or representations in any application, permit, report, licensing form or other document filed or maintained as required by this code or required by rules adopted under this code is guilty of a Class A Misdemeanor. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this code, rules adopted under it, orders or terms of a license or permit by injunction or other appropriate remedy.

(3) An Indian person who knowingly misrepresents the date of discovery of a release from a petroleum storage tank, submits or causes to be submitted a fraudulent claim or document, or makes a false statement or representation in seeking or assisting a person to seek reimbursement under this code is guilty of a Class A Misdemeanor.

**Sec. 122. Administrative penalties.**

(1) A person who violates any of the provisions of this code or any rules adopted under it or a permit provision may be assessed and ordered by the OEP to pay an administrative penalty not to exceed \$500 per violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation of each day it remains uncorrected constitutes a separate violation. The OEP may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may be made in conjunction with any order or other administrative action authorized by this code.

(2) When the OEP assesses an administrative penalty under this section it must have written notice served personally or by certified mail on the alleged violator or the violator's agent. For purposes of this Chapter, service by mail is complete on the day of mailing. The notice must state:

(a) The provision alleged to be violated;

(b) The facts alleged to constitute the violation;

(c) The amount of the administrative penalty assessed under this section;

(d) The amount, if any, of the penalty to be suspended upon correction the condition that caused the assessment of the penalty;

(e) The nature of any corrective action the OEP requires, whether or not a portion of the penalty is to be suspended;

(f) As applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid;

(g) The right to a hearing before OEP to mitigate the penalty assessed and the time, place, and nature of any hearing, and the right to appeal the final decision of the OEP to the Tribal Court of Appeals; and

(h) That a formal proceeding may be waived.

(3) The OEP shall provide each person assessed a penalty under this section an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. This subsection does not apply until the OEP gives written notice of the hearing, served personally or by certified mail, to the alleged violator or the violator's agent. For the purposes of this code service by mail is complete on the day of mailing. The hearing notice must state:

(a) The provision allegedly violated;

(b) The facts that constitute the alleged violation;

(c) The specific nature of any corrective action the OEP requires, estimated costs of compliance with the action, and where to receive help to correct the alleged violation; and (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged violations.

(4) The OEP shall publish a schedule of maximum and minimum penalties for specific violations. In determining appropriate penalties for violations, the OEP shall consider the gravity of the violations and the potential for significant harm to public health or the environment. In determining the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the penalty assessment, the OEP shall consider the cooperation and the degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

(5) If the OEP is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any portion of an administrative penalty assessed under this section, the OEP may take action in the Tribal Court to recover the penalty amount and any additional amounts assessed or sought under this code.

(6) Action under this section does not bar other action under this code, or any other remedy available to the OEP for violations of underground storage tank laws or rules promulgated under those laws.

(7) Administrative penalties collected under this section must be deposited in the tribal treasury.

### **Sec. 123. Procedures for obtaining reimbursement of eligible expenses caused by a release from a petroleum storage tank.**

(1) An owner or operator may submit a claim to the OEP for reimbursement by the Montana Petroleum Tank Release Compensation Board from the Montana Petroleum Tank Release Cleanup Fund for all eligible expenses, provided that:

(a) the State of Montana and the Tribes have in force a state tribal agreement to establish the procedures, terms and conditions by which such reimbursement will be available; and

(b) The release was discovered on or after March 3, 1994;



(c) The OEP is notified of the release in the manner and within the time provided by law or rule;

(d) The OEP has been notified of the existence of the tank in the manner required by OEP rule or has waived the requirement for notification;

(e) The release was an accidental release;

(f) With the exception of the release, the operation and management of the tank complied with applicable tribal and federal laws and rules when the release occurred and remained in compliance following detection of the release;

(g) The owner or operator complies with the provisions of this section and the applicable sections of state law.

(2) The owner or operator submitting a claim to OEP for reimbursement for eligible costs shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner or operator's petroleum storage tank, the owner or operator shall immediately notify the OEP of the release and conduct an initial response to the release in accordance with tribal and federal laws and rules to protect public health and safety and the environment.

(b) The owner or operator shall conduct a thorough investigation of the release, report the findings to the OEP, and, as determined necessary by the OEP, prepare and submit for approval by the OEP a corrective action plan that conforms with tribal and federal corrective action requirements.

(c) The OEP shall review the corrective action plan and either approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan so approved by the OEP is the proposed corrective action plan of the OEP.

(d) The OEP shall notify the owner or operator and the Underground Storage Tank Program Office of the State Department of Health and Environmental Service of its proposed approval of a corrective action plan.

(e) The OEP shall approve the correction action plan, as provided in the state-tribal agreement and any joint implementing regulations or memorandum of understanding.

(f) The owner or operator shall implement the approved plan. The OEP may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under this code and other applicable law and rules.

#### **Sec. 124. Other authorities unaffected.**

Payment of reimbursement, approval of a corrective action plan, or other action of the OEP under this code does not affect the authority of the OEP or any other tribal agency to pursue an action authorized by this code, or any other law or rule that applies to releases from petroleum storage tanks.

#### **Sec. 125. Construction in event of conflict; remedies cumulative.**

(1) The provisions of this code and rules promulgated under it govern if they conflict with other provisions of tribal law or any action taken by the OEP under such provisions.

(2) The remedies provided for in this code are cumulative with other remedies provided by law.

#### **Sec. 126. Compliance with other laws.**

Nothing in this code limits or alters the responsibility of an owner, operator, or installer to comply with all other tribal laws or rules.

#### **Sec. 127. Underground storage tank account.**

All revenues from underground storage tank permits, licenses and fees shall be deposited in a special revenue fund for underground storage tanks. The fund shall also receive corrective action costs, damages, and penalties recovered under Section 9003 of the federal Resource Conservation and Recovery Act of 1976, as amended. Funds shall be used for implementing the underground storage tank program.

**Sec. 128. Cooperative agreements.**

The Tribes may enter cooperative agreements or contracts with the federal government and the State of Montana to coordinate the regulation of underground storage tanks and to obtain any services necessary to implement this code.

**Sec. 129. Appeals.**

(1) Any party aggrieved by an final decision of the OEP may appeal to the Fort Peck Court of Appeals pursuant to Title 2 (Courts), Sections 113 and 202 of the Comprehensive Code of Justice.

(2) Copies of the appeal shall be served on the Tribal Chairman and the Director of the OEP. Upon receipt of the complaint the Director of the OEP shall certify to the court the entire record of the proceedings, including all testimony and evidence taken by the OEP.

(3) The Court shall decide the case upon the record certified. The decision of the OEP shall be affirmed unless it is in excess of its authority, arbitrary and capricious, or not supported by substantial evidence.

**Sec. 130. Public hearings.**

(1) The OEP shall schedule a hearing as soon as practicable after receiving a request for a hearing pursuant to the code, and notify the person requesting the hearing. Notice of the hearing shall be posted prior to the hearing in a prominent public place and published at least once in a local newspaper on the Reservation.

(2) The OEP shall compile the administrative record to that date and provide the aggrieved party and any interested party the right to examine and respond to the record prior to the hearing. Thereafter, the Director shall maintain the administrative record and shall include all evidence, written statements, correspondence, hearing record and any other relevant matter. Hearings proceedings shall be recorded.

(3) The Director of the OEP shall preside over any hearing held under this code. The aggrieved party and any interested person shall have the right to participate as parties, to present oral and written testimony of witnesses under oath, and to be represented by counsel at their own expense.

The Director shall have the power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel attendance of witnesses or for the production of books, records, documents and other evidence. The Fort Peck Tribal Court shall enforce any subpoena issued by the OEP in the same manner as the Court enforces its own subpoenas. The ordinary rules of evidence shall not apply in any hearing, but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfair if admitted, shall be excluded or may be admitted by the OEP only under special conditions or stipulations.

(4) The Tribes may participate in any hearing as a party and may present oral or written testimony of witnesses under oath.

(5) The OEP may, in addition to the administrative record and the evidence of record at the hearing, rely in its decision upon such Public Information and such of its own expertise as it deems necessary to assist it in making a decision.

(6) The OEP Director may, in his or her discretion, request or permit the parties to submit additional materials or briefs after the hearing.

(7) The OEP Director shall issue a written decision setting forth pertinent findings of fact and an ultimate determination on the subject of the hearing. The decision shall be delivered to all parties by registered mail, return receipt requested.

(8) Petitions for reconsideration.

(a) Within fourteen (14) days after the decision, any party may request the OEP to reconsider the decision. A petition for reconsideration shall be in writing and state concisely the errors in the decision the petitioner claims should be reconsidered.

(b) A petition for reconsideration shall be served on all other parties to the proceeding by registered mail, return receipt requested, and any party who wishes to respond must do so within fourteen (14) days of the service of the petition, serving a copy of his/her response on all other parties to the proceeding by registered mail, return receipt requested.

(c) The OEP will not grant any petition for reconsideration without scheduling an additional

hearing with proper notice to all parties. After the hearing, the OEP may affirm, nullify or revise its earlier decision. Any revised decision shall be a final OEP decision for, and may be appealed to the Tribal Court of Appeals as provided in Sec. 129, Appeals of this code.

**(ADOPTED AS PER RESOLUTION NO. 2644-95-2, DATED 02/13/95.)**

**Chapter 2. Underground Injection Control**

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**Subchapter 1. General Provisions**

**Sec. 201. Purposes.**

The purposes of this Title are:

(a) To protect the quality of the underground sources of drinking water of the Fort Peck Reservation, so as to protect and enhance human health, welfare and safety;

(b) To regulate the underground injection of fluids into Class 2 wells and prohibit the underground injection of fluids into Class 1, 3 and 4 wells;

(c) To provide for the Fort Peck Tribes' Office of Environmental Protection (OEP) to assume primary enforcement responsibility for that portion of the Underground Injection Control program administered by the U.S. Environmental Protection Agency (EPA), pertaining to Class 2 wells;

(d) To prohibit any underground injection activity within the external boundaries of the Reservation that may endanger underground sources of drinking water, irrespective of whether such activity is prohibited by any other provision of this Title. Underground injection endangers underground drinking water if the injection may result in the presence of any contaminant in underground water which supplies or can reasonably be expected to supply any public water system and if the presence of the contaminant may result in noncompliance with any national or tribal primary drinking water regulation or otherwise adversely affect the health of persons;

(e) To authorize the OEP to take action to protect the health of persons when a contaminant which is present in or may enter a public water system or underground source of drinking water may present an imminent and substantial endangerment to the health of persons;

(f) To authorize the Fort Peck Tribes' OEP to promulgate regulations for such recordkeeping, reporting, monitoring and operating requirements as may reasonably be required to implement this Title, and a right of entry and inspection to determine compliance with this Title, including for this purpose, inspection, at a reasonable time, of records, files, papers, processes, controls, and facilities; and

(g) To authorize the OEP to identify and protect those aquifers or parts of aquifers on the Reservation which qualify as underground sources of

drinking water, and to exempt those it determines do not currently serve as a source of drinking water and will not in the future serve as a source of drinking water.

#### **Sec. 202. Administration.**

(a) The OEP shall administer and enforce this Title and any applicable regulations, as well as any orders or permits issued pursuant to this Title.

(b) The OEP shall adopt a schedule of permit application fees and other fees related to underground injection on the Reservation. To the extent feasible, fees shall cover all costs associated with the processing of applications for permits or variances.

(c) The OEP may accept and administer grants from the federal government and other sources. Funding to implement or enforce this Title or for purposes relating to groundwater quality, including appropriated tribal funds, funds collected under this Title, and grant or contract funds from the United States or other entities, shall be deposited in a tribal account earmarked as the underground injection control account.

(d) The OEP is authorized to issue permits allowing injection in Class 2 wells under any conditions the OEP determines necessary or appropriate to protect underground sources of drinking water. Unless OEP otherwise notifies the owner or operator of any Class 2 well, any permit that EPA has issued for that well will be considered a permit issued pursuant to this Title and may be enforced as if issued by the OEP.

#### **Sec. 203. Regulations, Criteria, and Standards.**

(a) The provisions of the EPA program regulations for protecting underground drinking water sources adopted by the United States are adopted as provided and/or modified in this Title and incorporated into the Fort Peck Comprehensive Code of Justice. The regulations at Title 40 of the Code of Federal Regulations so incorporated include the Sections of Parts 124, 144, and 146 which apply to the regulation of Class 2 (Oil and Gas related) injection wells. In any provision incorporated herein, a reference to the "State" shall

mean the Fort Peck OEP, and a reference to the "Director" shall mean the Director of the Fort Peck OEP, unless expressly provided otherwise or unless EPA has specifically retained authority over certain activities. If EPA has retained authority, any reference to "Director" shall mean the Regional Administrator of EPA, or his or her authorized representative, as provided in 40 CFR 144.3 and 146.3. All regulations shall be incorporated in the form promulgated by the United States on the effective date of this Title.

(b) The OEP, with the concurrence of the Executive Board, may adopt such other regulations as it deems necessary to implement this code, so long as they are at least as stringent as federal requirements.

(c) Where there is a conflict between provisions of federal and tribal regulations, the tribal provisions shall prevail, so long as the tribal provisions are at least as stringent as the federal provisions.

#### **Sec. 204. Definitions.**

(a) "Class 1 wells" are injection wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing an underground source of drinking water within one quarter mile of the well bore. They are also other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing an underground source of drinking water within one quarter mile of the well bore.

(b) "Class 2 wells" are wells which inject fluids:

(1) Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

(2) For enhanced recovery of oil or natural gas; and

(3) For storage of hydrocarbons which are liquid at standard temperature and pressure.

(c) "Class 3 wells" are wells which inject for extracting minerals, including

(1) Mining of sulfur by the Frasch process;

(2) In situ production of uranium or other metals; this category includes only in situ production from ore bodies which have not been conventionally mined.

(3) Solution mining of salts or potash.

(d) "Class 4 wells" are injection wells

(1) Used by generators of hazardous or radioactive waste, or by owners or operators of hazardous waste management facilities or radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into a formation which contains an underground source of drinking water within one quarter mile of the well.

(2) Used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one quarter (¼) mile of the well contains an underground source of drinking water.

(3) used by generators of hazardous waste or owners or operators of hazardous waste management facilities to dispose of hazardous waste, which cannot be classified under paragraph (a) or (d)(1) and (2) of this section (e.g. wells used to dispose of hazardous waste into or above a formation which contains an aquifer which has been exempted pursuant to Section 502 of this Code.)

(e) "Class 5 Wells" are wells not included in Classes 1, 2, 3 and 4.

(f) "Director" means the Director of the Fort Peck Office of Environmental Protection.

(g) "EPA" means the United States Environmental Protection Agency.

(h) "Executive Board" means the Executive Board of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation.

(i) "Indian" means any individual who

(a) Is an enrolled member of the Assiniboine or Sioux Tribes of the Fort Peck Reservation;

(b) Holds, or is recognized by the Secretary of the Interior as eligible to hold, trust or restricted property on the Fort Peck Indian Reservation; or

(c) Is a member of or is eligible for membership in a tribe that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(j) "New injection well" means an injection well that begins injection after the effective date of this Title.

(k) "Non-Indian" means any individual not an Indian.

(l) "OEP" means the Fort Peck Office of Environmental Protection.

(m) "Person" means an individual, association, partnership, corporation, municipality, State, Federal or Tribal agency, or an agency or employee thereof or its portion.

(n) "Reservation" means the Fort Peck Indian Reservation as established in the Agreement of December 28 and December 31, 1886 and confirmed by the Act of May 1, 1888, 25 Stat. 113.

(o) Additional terms not defined in this Section but defined in 40 CFR Sections 124.2, 144.3, 144.6, 146.3 and 146.5 are hereby adopted and incorporated.

## **Sec. 205. Application.**

This Title shall apply throughout the Fort Peck Indian Reservation to all persons who own or operate Class 2 injection wells.

## **Subchapter 2. General Underground Injection Control Program Requirements.**

### **Sec. 210. Introduction.**

The provisions of federal regulations incorporated into tribal law under this Chapter prohibit any person from performing any underground injection activity within the Reservation boundaries except as authorized by a permit issued by the OEP. In addition, this Chapter prohibits construction of a new injection well or the conversion of any production well to an injection well before a permit is obtained. This Chapter requires the OEP

to identify and protect all aquifers or parts of aquifers on the Reservation as underground sources of drinking water, and determine exempted aquifers or parts of aquifers. Under this Chapter, Class 3 and 4 injection wells are prohibited within the Reservation's boundaries. This Chapter also incorporates federal requirements on reporting by the OEP and authorization for waivers granted by the Director.

### **Sec. 211. Requirements.**

(a) Any underground injection into a Class 1, 3 or 4 well is prohibited. Any underground injection into a Class 2 well, except as authorized by permit issued pursuant to this Title, is prohibited. The construction of any well required to have a permit or the conversion of any production well to an injection well is prohibited until a permit has been issued.

(b) The following sections of 40 CFR, are hereby adopted and incorporated, except as provided in this Title:

(1) Purpose and scope at 40 CFR 144.1(g)(1)(ii) and 144.1(g)(2)(iv and v),

(2) Confidentiality of information at 40 CFR 144.5,

(3) Classification of wells at 40 CFR 144.6,

(4) Identification of underground sources of drinking water and exempted aquifers at 40 CFR 144.7(a), (b), and (c)(2),

(5) Noncompliance and program reporting by the Director at 40 CFR 144.8,

(6) Prohibition of the movement of fluid into underground sources of drinking water for Class 2 wells at 40 CFR 144.12 (a), (b), and (e), and

(7) Waiver of requirement by the Director at 40 CFR 144.16.

(c) Subpart C of 40 CFR 144 is not adopted and there shall be no authorization by rule. Any provisions regarding authorization by rule in any provisions of 40 CFR which are adopted and incorporated by this Title, shall have no effect.

### **Subchapter 3. Underground Injection Control Permit Requirements.**

### **Sec. 220. Introduction.**

The provisions of federal regulations incorporated into tribal law under this Chapter require permits for all injection wells and before construction begins on new injection wells. This Chapter incorporates federal requirements applicable to permits for Class 2 wells, and provides that permit applications are available from the OEP. In addition, the OEP is responsible for establishing permit terms and conditions, conducting public participation activities, verifying financial responsibility for closure, terminating or modifying permits, and approving the transfer of permits. The OEP shall also be authorized to require corrective action if any information indicates movement or the potential for movement of injection or formation fluids into underground sources of drinking water.

### **Sec. 221. Requirements.**

(a) All Class 2 underground injection wells are prohibited unless authorized by permit. Regulations concerning applications for permits, as provided in 40 CFR 144.31 (a), (b), (c)(2), (d), (e)(1-8 and 10), and (f), are adopted and incorporated, except that the Director shall also require each application to include a surety bond to demonstrate financial responsibility, a list of the owners of surface and mineral rights and the owners and operators of other injection wells within a ¼ mile radius, and, if the application is for conversion of an existing production well to an injection well, a cement bond log test to demonstrate proper well construction.

(b) The following Sections of 40 CFR, are hereby adopted and incorporated, except as provided in this Title:

(1) Signatories to permit applications and reports at 40 CFR 144.32.

(2) Area permits at 40 CFR 144.33.

(3) Emergency permits at 40 CFR 144.34;

(4) Effect of a permit at 40 CFR 144.35.

(5) Duration of permits at 40 CFR 144.36.

(6) Continuation of expiring permits at 40 CFR 144.37(d). The Director may continue either EPA or OEP-issued permits until the effective date of the new permits.

(7) Transfer of permits at 40 CFR 144.38, except that no permit may be transferred without the Director's express approval and the new permittee has obtained a surety bond to satisfy the financial responsibility requirements.

(8) Conditions applicable to all permits at 40 CFR 144.51. Any reference to EPA in subsections (o) and (p) shall mean the OEP and any reference to the Regional Administrator shall mean the Director. In addition to the requirements of 40 CFR 144.51, the Director shall also require owners or operators to perform a cement bond log as an express permit condition.

(9) Establishing permit conditions at 40 CFR 144.52. Any reference to the EPA therein shall mean the OEP, and any reference to the Regional Administrator shall mean the Director of the OEP.

(10) Schedule of compliance at 40 CFR 144.53.

(11) Requirements for recording and reporting of monitoring results at 40 CFR 144.54, with monitoring to be at least as frequent as required by 40 CFR 146.23(b). In addition, the monitoring of injected fluids required by 40 CFR 146.23(b)(1) shall be conducted at least every year or whenever the source(s) of injected fluids changes or the owner/operator has reason to believe that the quality or content of the injected fluids may change or may have changed, whichever is more frequent. Each observation required under 40 CFR 146.23(b)(2) shall be recorded. For produced fluid operations, there shall be a daily record of the volume disposed, hours in service, maximum pressure, average operating pressure and tubing/casing annulus pressure.

(12) Corrective action at 40 CFR 144.55 (a), (b)(1-3), and

(13) Corrective action at 40 CFR 146.7.

(14) The OEP must be notified at least 24 hours before any corrective action work is begun.

#### **Subchapter 4. UIC Permitting Procedures.**

##### **Sec. 230. Introduction.**

The provisions of federal regulations incorporated into tribal law under this Chapter specify

tribal procedures for processing permit applications and permit modifications, revocations and terminations. This Chapter also incorporates federal requirements for public notice and participation.

##### **Sec. 231. Requirements.**

The following Sections of 40 CFR are hereby adopted and incorporated, except as provided in this Title and except for the provisions related to the Resource Conservation and Recovery Act, Section 404 of the Clean Water Act, and the National Pollutant Discharge Elimination System, which are not adopted and shall have no effect. Any reference to EPA or the Regional Office therein shall mean the OEP and any reference to the Regional Administrator shall mean the Director of the OEP, unless expressly provided otherwise:

(a) Criteria for establishing permitting priorities at 40 CFR 146.9;

(b) Application for a permit at 40 CFR 124.3(a);

(c) Modification or revocation and reissuance of permits at 40 CFR 144.39;

(d) Termination of permits at 40 CFR 144.40;

(e) Minor modifications of permits at 40 CFR 144.41;

(f) Modification, revocation and reissuance or termination of permits at 40 CFR 124.5;

(g) Draft permits at 40 CFR 124.6;

(h) Statement of basis at 40 CFR 124.7;

(i) Fact sheet at 40 CFR 124.8;

(j) Public notice of permit actions and public comment period at 40 CFR 124.10, except that the applicant shall also mail a copy of a notice to all the owners of surface and mineral rights and owners and operators of other injection wells within a 1/4 mile radius of the well(s) subject to pending permit actions, as identified by the applicant under Section 302(a);

(k) Public comments and requests for public hearings at 40 CFR 124.11;

(l) Public hearings at 40 CFR 124.12;

(m) Obligation to raise issues and provide information during public comment period at 40 CFR 124.13;

- (n) Information to be considered by the Director at 40 CFR 146.24;
- (o) Reopening public comment period at 40 CFR 124.14;
- (p) Issuance and effective date of permit at 40 CFR 124.15;
- (q) Response to comments at 40 CFR 124.17;
- (r) Administrative record for a final permit at 40 CFR 124.18; and
- (s) Computation of time at 40 CFR 124.

**Subchapter 5. UIC Technical Criteria and Standard.**

**Sec. 240. Introduction.**

The provisions of federal regulations incorporated into tribal law in this Chapter require compliance with technical criteria and standards to ensure proper construction, operating, monitoring and testing of Class 2 Underground Injection Wells. The Executive Board of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation finds that no Class 1 and 3 wells exist on the Reservation on the effective date of this code, and Class 1, 3, and 4 wells are prohibited by this code.

**Sec. 241. Requirements.**

The following Sections of 40 CFR Part 146 are hereby adopted and incorporated, except as provided in this Title:

- (a) Criteria for exempted aquifers at 40 CFR 146.4;
- (b) Area of review at 40 CFR 146.6;
- (c) Mechanical Integrity at 40 CFR 146.8;
- (d) Plugging and abandoning Class 1- 3 wells at 40 CFR 146.10 (a), (b), and (c), except that the provisions concerning Class 1 and 3 wells shall not apply;
- (e) Construction requirements at 40 CFR 146.22; and
- (f) Operating, monitoring and reporting requirements at 40 CFR 146.23.

**Sec. 242. Additional Requirements.**

(a) All wells must maintain a pressure gauge, as approved by the OEP, on the tubing and annulus for instantaneous monitoring purposes.

(b) All operators must provide the OEP with at least 24 hours notification of any workover or when any well loses integrity.

(c) The OEP shall inspect any temporarily abandoned well at least annually. Owners and operators of temporarily abandoned wells must demonstrate to the Director's satisfaction that the well will not endanger an underground source of drinking water during the period of abandonment. This shall include compliance with the requirements applicable to active wells, unless the Director waives the requirements. The owner or operator of the temporarily abandoned well shall obtain written approval from the Director prior to resuming injection. A "temporarily abandoned well" is defined as any well in which no fluid has been placed for at least three consecutive months.

(d) Injection may not begin in any well unless the OEP has received results of a cement bond log test for that well and notified the permittee for that well that the test results are satisfactory.

**Subchapter 6. Enforcement**

**Sec. 250. Requirements for compliance evaluation programs.**

Requirements for compliance evaluation programs at 40 CFR 145.12 are hereby adopted and incorporated and the Director shall be authorized to conduct all activities therein.

**Sec. 251. Administrative enforcement.**

(a) Whenever the OEP finds that any person who is subject to a requirement of the Fort Peck Underground Injection Control program is violating the requirement, the OEP may serve written notice of violation on the person or the person's agent. The notice must specify the permit condition, standard, regulation or provision of this Title violated, and the facts which constitute the violation, measures which are reasonably necessary to correct the violation, and the time within which such measures are to be completed. The notice must be signed by the Director and served on the person or the person's agent in person by a member of the OEP or sent by certified mail. Service by mail is complete on the day of mailing.



(b) Whenever the OEP finds that any person who is subject to a requirement of the Fort Peck Underground Injection Control program is violating the requirement, the OEP may issue an order assessing an administrative penalty, or requiring compliance, or both.

(c) Before issuing an order under this Section, the OEP shall serve written notice of the proposed order on the alleged violator or the violator's agents and provide an opportunity for a hearing. The notice must include a copy of the proposed order and must be signed by the Director and served on the person or the person's agent in person by a member of the OEP or sent by certified mail. Service by mail is complete on the day of mailing. The notice of the proposed order must state:

- (1) The provision alleged to be violated;
- (2) The facts alleged to constitute the violation;
- (3) The amount of the administrative penalty assessed under this Section, if any;
- (4) The amount, if any, of the penalty to be suspended upon specified conditions;
- (5) The nature of any corrective action the OEP requires;
- (6) As applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid;
- (7) The right to a hearing;
- (8) That a formal hearing may be waived and an informal conference conducted instead; and
- (9) The right to appeal a final administrative order within 30 days of the final order, as provided in Section 701 of this Title.

(d) The OEP shall provide each person served written notice of a proposed order an opportunity for a hearing, if requested within 30 days of receiving notice. The request must specify the factual and legal issues in dispute and the factual and legal grounds for the defense. At the hearing, the person may contest the alleged violation, and/or the appropriateness of the proposed penalty or corrective action. The OEP will notify the person of the time, date and place of the hearing. Public

notice shall be given and the hearing shall be conducted as provided in Section 801 of this Title.

(e) The Director shall issue a final administrative order following final judgement or if a person has been served written notice of a proposed order and takes no action. The order shall be effective in 30 days unless appealed, pursuant to Section 701 of this Title.

(f) Instead of assessing administrative penalties under this Section and Sec. 603. Administrative Penalties, the OEP may initiate action under Sec. 604. Civil Penalties. In addition to or instead of issuing an order under this Section, the OEP may take any of the following actions:

(1) require the alleged violator to appear before the OEP by subpoena for a hearing at a specified time and place to answer the charges or to provide information regarding the violation or its impact on public health and welfare or the environment; or

(2) initiate action under Sec. 605. Criminal Penalties and/or Sec. 606. Judicial Relief.

(g) In the case of disobedience of any subpoena issued and served under this Section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a hearing or investigation before the OEP, the OEP may apply to the Tribal Court for an order to compel compliance with the subpoena or the giving of testimony. The Court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the Court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in the Tribal Court.

(h) This section does not prevent the OEP from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

#### **Sec. 252. Administrative penalties.**

(a) Administrative penalties shall be at least \$1,000 but not more than \$5,000 per day of violation. Maximum penalties shall be \$125,000 for

all violations. This limitation on administrative penalties applies only to penalties assessed under this Section. The OEP may suspend such portion of the administrative penalty assessed under this Section, as provided in subsection (b). Assessment of an administrative penalty under this Section may be made in conjunction with any order or other administrative action authorized by this Title.

(b) In determining appropriate penalties for violations, the OEP shall consider (1) the seriousness of the violation; (2) the economic benefit (if any) to the violator resulting from the violation; (3) any history of such violations; (4) any good-faith efforts to comply with the applicable requirements; (5) the economic impact of the penalty on the violator; and (6) such other matters as justice may require. In determining the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the penalty assessment, the OEP shall consider the cooperation and the degree of care exercised by the person assessed the penalty, and how expeditiously the violation was corrected, as well as the preceding six factors in this subsection.

(c) If the OEP is unable to collect an administrative penalty assessed under this Section or if a person fails to pay all or any portion of an administrative penalty assessed under this Section, the OEP may take action in the Tribal Court to recover the penalty amount and any additional amounts assessed or sought under this Title.

(d) Administrative penalties collected under this Section must be deposited in the tribal treasury.

#### **Sec. 253. Civil Penalties.**

(a) Failure to timely comply with any program requirement including any permit condition, regulation or order related to a Class 2 well, shall subject the violator to civil penalties of at least \$1,000 but not more than \$25,000 per day. The maximum civil penalty shall be assessable for each instance of violation and if the violation is continuous, shall be assessable up to the maximum for each day of violation.

(b) Failure by a non-Indian to timely comply with a notice of violation or any order of the OEP shall subject the violator to suspension or revocation of the privilege of doing business on the Reservation for a period set by OEP.

(c) Tribal courts shall have jurisdiction over actions by OEP under this Section pursuant to Title 1 (Courts), Section 109 of the Comprehensive Code of Justice.

(d) A civil penalty shall be appropriate to the violation.

#### **Sec. 254. Criminal violations.**

(a) Any Indian person who willfully violates any provisions of this Title or its regulations, or permit or OEP notice or order is guilty of a Class A Misdemeanor. Each day of violation constitutes a separate violation.

(b) If the OEP finds that any violation of program requirements by a non-Indian was willful, the OEP may refer the matter to the EPA for enforcement in a timely manner.

(c) Action under this Section does not bar enforcement of this Title, rules adopted under it, orders or terms of a permit by injunction or other appropriate remedy.

#### **Sec. 255. Judicial relief.**

(a) The OEP may file suit in the name of the Tribes in Tribal Court pursuant to Title 1 (Courts), Section 109 of the Comprehensive Code of Justice, or any other court with jurisdiction to:

- (1) Collect civil or administrative penalties;
- (2) Immediately restrain any person from engaging in any unauthorized activity which is endangering or may endanger or causing or may cause damage to public health or environment;
- (3) Enjoin any person from threatened or continuing violation of any provision of this Title or regulation adopted hereunder, including permit conditions;
- (4) Order compliance with any provision of this Title or regulation adopted hereunder, including permit conditions and OEP orders; or
- (5) Order the closure of a well.

It shall not be necessary for the OEP to revoke the permit before seeking a court order.

(b) The burden of proof and degree of knowledge or intent required to establish violations in any proceeding shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the Safe Drinking Water Act.

(c) In any such suit, if judgment is rendered for the Tribes, the Court shall award the Tribes court costs and reasonable attorney fees, and may award the costs of investigation, inspection or monitoring surveys which led to establishing the violations.

#### **Sec. 256. Public Participation in OEP Enforcement Process.**

(a) The OEP shall investigate and respond in writing to all citizen complaints submitted pursuant to Sec. 601.

(b) The OEP shall not oppose intervention by any citizen when such intervention is authorized by a federal statute, rule or regulation.

(c) The OEP shall publish and provide at least 30 days for public comment on any proposed settlement of an OEP enforcement action. Notice shall be posted prior to the hearing in a prominent public place and published at least once in a local newspaper on the Reservation.

#### **Subchapter 7. Appeals**

##### **Sec. 260. Judicial review.**

(a) Any party aggrieved by any final decision of the OEP may appeal to Fort Peck Court of Appeals pursuant to Section 113 and Section 202 of the Comprehensive Code of Justice.

(b) Copies of the appeal shall be served on the Tribal Chairman and the OEP. Upon receipt of the complaint the OEP shall certify to the court the entire record of the proceedings, including all testimony and evidence taken before the OEP.

(c) The Court shall decide the case upon the record certified. The decision of the OEP shall be affirmed unless it is in excess of its authority, arbitrary and capricious or not supported by substantial evidence.

#### **Subchapter 8. Public Hearings**

##### **Sec. 270. Public hearings.**

(a) The provisions of this Chapter shall apply to all hearings conducted by the OEP, unless otherwise provided in 40 CFR 124.10 or 124.12 regarding permit actions. Those provisions shall apply in case of any conflict with the provisions of this Chapter.

(b) The OEP shall schedule a hearing as soon as practicable after receiving a request for a hearing pursuant to the code, and notify the person requesting the hearing. Notice of the hearing shall be posted prior to the hearing in a prominent public place and published at least once in a local newspaper on the Reservation.

(c) The OEP shall compile the administrative record to that date and provide any party the right to examine the record prior to the hearing. The aggrieved party and any interested party shall have the right to respond to the record prior to the hearing. Thereafter, the Director shall maintain the administrative record and shall include all evidence, written statements, correspondence, hearing record and any other relevant matter. Hearings proceedings shall be recorded.

(d) The Director of the OEP shall preside over any hearing held under this code. The aggrieved party and any interested person shall have the right to participate as parties, to present oral and written testimony of witnesses under oath, and to be represented by counsel at their own expense. The Director shall have the power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel attendance of witnesses or for the production of books, records, documents and other evidence. The Fort Peck Tribal Court shall enforce any subpoena issued by the OEP in the same manner as the Court enforces its own subpoenas. The ordinary rules of evidence shall not apply in any hearing, but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfair if admitted, shall be excluded or may be admitted by the OEP only under special conditions or stipulations.

(e) The Tribes may participate in any hearing as a party and may present oral or written testimony of witnesses under oath.

(f) The OEP may, in addition to the administrative record and the evidence of record at the hearing, rely in its decision upon such Public Information and such of its own expertise as it deems necessary to assist it in making a decision.

(g) The OEP Director may, in his or her discretion, request or permit the parties to submit additional materials or briefs after the hearing.

(h) The OEP Director shall issue a written decision setting forth pertinent findings of fact and an ultimate determination on the subject of the hearing. The decision shall be delivered to all parties by registered mail, return receipt requested.

(i) Petitions for reconsideration.

(1) Within fourteen (14) days after the decision, any party may request the OEP to reconsider the decision. A petition for reconsideration shall be in writing and state concisely the errors in the decision the petitioner claims should be reconsidered.

(2) A petition for reconsideration shall be served on all other parties to the proceeding by registered mail, return receipt requested, and any party who wishes to respond must do so within fourteen (14) days of the service of the petition, serving a copy of his/her response on all other parties to the proceeding by registered mail, return receipt requested.

(3) The OEP will not grant any petition for reconsideration without scheduling an additional hearing with proper notice to all parties. After the hearing, the OEP may affirm, nullify or revise its earlier decision. Any revised decision shall be a final OEP decision and may be appealed to the Tribal Court of Appeals as provided in Sec. 701, Appeals of this code.

### **Subchapter 9. Miscellaneous**

#### **Sec. 280. Savings.**

Nothing in this Title shall:

(a) Supersede or limit the applicability of any law relating to sanitation, industrial health or safety.

(b) Abridge, limit or impair the right of any person to damages or other relief on account of injury to persons or property.

(c) Abridge or alter a right of action or remedy granted to any person by tribal or federal law.

(d) Convey any property rights or any exclusive privilege.

#### **Sec. 281. Effective Date.**

This Title shall be effective on the day before the date the United States Environmental Protection Agency publishes its approval of the Fort Peck Underground Injection Control program in the Federal Register.

### **Chapter 3. Solid Waste Code**

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**Subchapter 1. General Provisions.**

**Sec. 101. Purpose.**

The purpose of this Title is to provide for the establishment of a comprehensive solid waste collection and disposal system, and to regulate the storage, collection, disposal, treatment, and

management of solid waste on the Fort Peck Reservation (hereafter referred to as the Reservation) in order to protect the environment, public health, safety, and well-being of the members of the Tribes and the residents of the Reservation.

**Sec. 102. Findings.**

The Tribal Executive Board makes the following findings and declarations:

(a) The Executive Board, has the authority to protect the general welfare of members of the Tribes, the residents of the Reservation and the environment of the Reservation;

(b) The increasing volume and variety of solid waste and hazardous waste being generated on the Reservation and often inadequate existing methods of managing solid waste and hazardous waste contribute to land, air and water pollution and thereby threaten the economy, public health, safety, welfare and well being of the Reservation and its residents;

(c) The adoption of this Title by the Executive Board is in the best interest of ensuring, promoting, and protecting members of the Tribes, residents of the Reservation and the character of the Reservation and is consistent with policy and is enacted for the protection of the Reservation's natural environment.

**Sec. 103. This Solid Waste Code will supersede any conflicting laws or codes found in the Tribe's Code or laws; and.**

(a) Authority. This Title is adopted pursuant to authority vested in the Executive Board in the Constitution and By-Laws of the Tribes, Article 7 sec. 5, (c), to protect and preserve the wildlife and Natural Resources of the Reservation, and Article 7 sec. 4, to promote public health, education, security, charity, and other services as may contribute to the social advancement of the members of the Tribes.

(b) Severability. If any provision of this Code or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provisions or applications of this Code that can be given effect without the invalid provision or application thereof, and to this end the provisions of this Code are severable.

(c) Citation or Use of Language from Other Laws. Citation to statutory or administrative language, definitions, procedure, or provisions of Federal or State law in this Code does not establish jurisdiction, which otherwise does not exist, in such Federal or State government. Nothing in this Code may be deemed a waiver of the Fort Peck Tribes sovereign immunity, and if any Court of competent jurisdiction construes this provision as conflicting with any other provision in this Code, then this express retention of sovereign immunity shall control and prevail.

(d) Sovereignty The Fort Peck Tribes possess the inherent sovereign authority to enact this Code and no part of this Code constitutes a waiver of the sovereign immunity of the Tribes.

**Sec. 104. Scope.**

This Title shall apply to all persons and entities, including but not limited to households, commercial businesses, schools, governmental facilities, farmers, ranchers, private contractors, and any entities or facilities engaged in the storage, collection, disposal, and treatment of solid waste within the Reservation.

**Sec. 105. Jurisdiction.**

The Tribes have inherent authority to exercise civil authority and jurisdiction under this Title over the conduct of Tribal members and all other persons on all lands within the exterior boundaries of the Reservation to maintain the environment, natural resources, public health, safety, welfare, political integrity and economic well-being of the Tribes. Because any violation of this Title or any rules or regulations adopted hereunder will have a demonstrable and serious impact on the environment, natural resources, public health, safety, welfare, political integrity, and economic security of the Tribes, this Title, and any rules and regulations adopted hereunder, shall apply to:

(a) all persons within the exterior boundaries of the Reservation, without exception, including but not limited to, all tribal members, and all other persons on the Reservation, including any Indians who are members of other Indian tribes, all non-

Indians, and any other person as defined under this Title; and

(b) all places and lands located anywhere within the exterior boundaries of the Reservation, including all trust and non-trust land, notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, or any real property interest of any kind, held by any person.

#### **Sec. 106. Definitions.**

As used in this Title and any regulations adopted pursuant to or in accordance with this Title, the words and terms below shall have the following meanings:

(a) “Agency” means Any board, bureau, commission, department, or officer of the Tribes, whether or not the agency or person is subject to review of another Tribal agency, which is authorized by the law to confer or deny a benefit, to exact a penalty or sanction, to determine contested cases, or to enter into contracts, provided that the provisions of this ordinance do not apply to the Executive Board, the Fort Peck Tribal Court, the Fort Peck Court of Appeals, the supervision and administration of the custody, care, control, or treatment of youths, patients, or prisoners, the Tribes’ Personnel or Human Resources Department or Tribal personnel matters, any school, college, or training institution authorized, operated, managed, regulated, funded, or chartered by the Tribal government or any agency thereof, or any function of the Tribal government exercised in connection with the enforcement and regulation of conservation of fish and wildlife.

(b) “Agent” means an employee or duly authorized representative of the Tribes.

(c) “Agricultural waste” means waste generated from agricultural activities.

(d) “Approved site” means a disposal site or solid waste facility within the Reservation which has met all the requirements of this Title and any other applicable regulations and is approved by the Office of Environmental Protection and the Executive Board as the place for final depositing of solid waste.

(e) “Bulky wastes” means large items of solid waste, such as car bodies, appliances, furniture, trees, stumps and other oversized wastes.

(f) “Carcass” means any deceased animal or portion of any deceased animal.

(g) “Closure” means the termination of the receiving, handling, recycling, treatment or disposal of solid waste at an approved site, and includes all operations necessary to prepare the solid waste facility for post-closure maintenance. Any closure that occurs on the Reservation shall adhere to the regulations set forth under 40 CFR, Ch.1, Part 264.

(h) “Collection” means the gathering of solid waste at the place of generation by an approved collection agent, and transfer to a solid waste facility, roll-off site or other approved site.

(i) “Collection agent” means any person or entity engaged in collection of solid waste.

(j) “Collection vehicle” means a solid waste commercial compactor or other conveyance that is easily cleanable and capable of transporting solid waste without spillage or littering.

(k) “Commercial solid waste” means all types of solid waste generated by stores, offices, restaurants, businesses, warehouses and other entities engaged in non-manufacturing, commercial activities on the Reservation. Commercial solid waste does not include household waste and industrial solid waste.

(l) “Construction and demolition wastes” means solid waste associated with the construction or dismantling of such objects as roads, buildings or similar structures, including private homes, and individual dwellings.

(m) “Container” means any receptacle intended for the temporary storage of waste, that is durable, leak proof, nonabsorbent, water tight, corrosion resistant, rodent and insect resistant, easily cleanable, has close-fitting covers and adequate handles to facilitate handling, and is in good condition. Containers are further limited to the following:

(1) Individual household containers must be at least 95-gallon capacity.

(2) Business and drop box containers must be compatible with the collection vehicle used by

Operation and Maintenance, or any collection agent or contractor thereof.

(n) "Disposal" means the approved or unapproved discharge, abandonment, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any soil, air, water, or determined Tribal natural resource whether intentional or otherwise.

(o) "Franchised service" means any solid waste collection service operating within the Reservation pursuant to a contract or other consensual relationship with the Tribes, or any entity of agency thereof.

(p) "Garbage" means putrescible material, including but not limited to, animal and vegetable wastes resulting for the handling, preparation, cooking and consumption of food.

(q) "Hazardous Substance" means:

(1) Any substance designated pursuant to section 311(b)(2)(A) of the CWA; any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA;

(2) Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

(3) Any toxic pollutant listed under section 307(a) of the CWA;

(4) Any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. 7521 et seq.);

(5) And any imminently hazardous chemical substance or mixture with respect to which the U. S. EPA Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

(r) "Hazardous Wastes" Shall mean solid waste or combination of solid wastes which, because of its quantity, concentration or physical, chemical or infectious characteristics may:

(1) Pose a substantial present or future hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise mismanaged; or

(2) Meet the specifications, description or listing as a hazardous waste in 40 CFR Parts 260

and 261 pursuant to 3001 of the Solid Waste Disposal Act (U.S.C. 6901 et seq.), as amended by the Resource Conservation and Recovery Act (RCRA) of 1980 and any subsequent amendments.

(s) "Hearings examiner" means the person designated by the Executive Board to hear appeals from the Office of Environmental Protection or the Public Works Board arising under this Title.

(t) "Household waste" means any solid waste derived from households, including single and multiple residences, hotels, motels, campgrounds and other recreation and land management facilities.

(u) "Incineration" means to reduce to ashes through combustion using a containment device that provides for control of combustion parameters.

(v) "Industrial solid waste" means any solid waste generated by industrial processes or manufacturing.

(w) "Infectious waste" means any equipment, instruments, utensils, and formites of a disposable nature from the rooms of patients who are suspected to have or have been diagnosed as having a communicable disease and must, therefore, be isolated as required by the any health agency; any laboratory wastes, such as pathological specimens (e.g., all tissues, specimens of blood elements, excreta, and secretions obtained from patients or laboratory animals) and disposable formites (any substance that may harbor or transmit pathogenic organisms) attended thereto; or any surgical operating room pathologic specimens and disposable formites attendant thereto, and similar disposable materials from outpatient areas and emergency rooms.

(x) "Landfill" means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR, Ch. 1, § 257.2. A landfill also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, non-hazardous sludge, conditionally ex-



empt small quantity generator waste and industrial solid waste. A landfill may be publicly or privately owned or operated. A landfill may be a new landfill, an existing landfill or a lateral expansion.

(y) "Leachate" means a liquid which has contacted, passed through, or emerged from solid waste and contains soluble, suspended, or miscible materials removed from the waste.

(z) "Liquid" means a substance in a condition in which it flows, that is a fluid at room temperature and atmospheric pressure, and whose shape but not volume can be changed.

(aa) "Litter" means solid waste that is scattered intentionally or in a careless or negligent manner.

(bb) "Nuisance" means any act or condition created by any person or persons, which results in an inconvenience to or affects the health of the public.

(cc) "Occupant" means a person having possessory rights, who can control what goes upon the premises.

(dd) "Office of Environmental Protection" means the Tribes' Office of Environmental Protection.

(ee) "Operation and Maintenance" means the Tribes' Office of Operation and Maintenance.

(ff) "Open Burning" means the burning of solid waste in an open area, pile, barrel or in any other uncontrolled manner.

(gg) "Permit" means an entitlement to commence and continue operation of a solid waste facility as long as both procedural and performance standards are met. The term "permit" includes any functional equivalent such as a registration or license.

(hh) "Person" means any individual person, firm, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever, whether one or more.

(ii) "Pollutant or contaminant" shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment

and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term pollutant or contaminant shall also include a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) and petroleum or petroleum product.

(jj) "Pollution" means the condition caused by the presence of or on soil, air, or water of any solid waste, hazardous waste, or substance derived therefrom in such quantity, of such nature and duration, or under such condition that the quality appearance or usefulness of the soil, air, or water is significantly degraded or adversely altered.

(kk) "Premise" means a tract or parcel of land with or without habitable buildings.

(ll) "Property damage" means any physical injury to tangible property, including loss of use of that property caused by the injury, or any loss of use of tangible property that is not physically injured.

(mm) "Putrescible" means any organic matter capable of being decomposed by microorganisms and that can result in the formation of foul smelling products.

(nn) "Public Works Board" means the Tribes' Public Works Board.

(oo) "Public Works System" means the component of Tribal government, operated by the Office of Operation and Maintenance, subject to the authority of the Executive Board and the Public Works Board, which provides services to the public such as water delivery, and sewage and solid waste collection and disposal.

(pp) "Petroleum" or "petroleum product" includes gasoline, crude oil, fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7

pounds per square inch absolute), or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

(qq) "Regulated substance" means any hazardous substance, petroleum or petroleum product.

(rr) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of all hazardous substances, pollutants and contaminants or petroleum or petroleum products into air, ground water, surface water, surface soils, or subsurface soils.

(ss) "Roll-off site" means a solid waste management facility that is generally open to the public for the collection of solid waste that is generated by more than one household or firm that is collected in a refuse container with a total capacity of not more than 50 cubic yards; or

(1) Receives waste from waste collection vehicles and:

(a) Receives no more than 3,000 tons of waste each year;

(b) Has control measures in place, including on-site staffing, to adequately contain solid waste and blowing litter in the site and to minimize spills and leakage of liquid wastes; and

(c) Is a site at which a local government unit requires commercial waste haulers to deposit wastes at the site only during the hours that the site is staffed.

(tt) "Rubbish" means non-putrescible solid waste, including ashes, consisting of both combustible and non combustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, tires, or litter of any kind.

(uu) "Sanitary landfill" means a land disposal facility, at which solid waste is spread in thin layers, compacted to the smallest practical volume, and covered with soil at the end of each operating day in a manner that minimizes environmental hazards and is approved and permitted pursuant to this Code and meets the requirements of 40 CFR Part 258.

(vv) "Scavenging" means the uncontrolled removal of solid waste materials from any solid

waste container, solid waste collection vehicle, or approved disposal site.

(ww) "Solid waste" means all putrescible and non-putrescible solid, semisolid, and liquid waste, including but not limited to garbage, trash refuse, paper, rubbish, ashes, abandoned vehicles and parts thereof, discarded mobile homes and trailers, appliances, manure, vegetable and animal solid and semi-solid waste, septic pumpings and other discarded solid materials, materials, including solid waste materials resulting from industrial, commercial, construction, demolition and agricultural operations, and from community activities, but, unless disposed of at a solid waste management facility, does not include:

(1) Solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants;

(2) Liquids, solids, sludges or dissolved constituents which are collected or separated in process units for recycling, recovery or reuse including the recovery of energy, within a continuous or batch manufacturing or refining process; or

(3) Agricultural materials which are recycled in the production of agricultural commodities;

(4) Industrial discharges that are point sources subject to permits under 33 U.S.C. § 1342;

(5) Source, special nuclear, or byproducts material as defined by the Atomic Energy Act of 1954 as amended, 42 U.S.C. § 2011 et Seq.;

(xx) "Solid waste facility" means any system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a roll-off site is a component of a solid waste facility.

(yy) "Solid waste facility permit" means the permit required for any person or entity engaged in the commercial transport, collection or storage of solid waste or otherwise engaged in the operation of a solid waste facility, issued by the Office of Environmental Protection.

(zz) “Solid waste fee” means a monthly fee for solid waste transport as set by the Fort Peck Tribes Public Works Board.

(aaa) “Solid waste landfill” means any publicly or privately owned landfill or landfill unit that receives household waste, commercial waste, non-hazardous sludge, or solid waste.

(bbb) “Solid waste plan” means a document prepared by the Office of Environmental Protection and approved by the Executive Board which defines the objectives, procedures, responsibilities and management of solid waste on the Reservation.

(ccc) “Solid waste transportation permit” means the permit issued by the Office of Environmental Protection authorizing the transportation of solid waste.

(ddd) “Storage” means the confining, containing or stockpiling of solid waste for a limited period of time prior to collection, transportation, utilization, processing or final disposal

(eee) “Transfer station” means a site at which solid waste is concentrated for transport to a solid waste facility. A transfer station may be fixed or mobile.

(fff) “Transportation” means the movement of solid waste from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(ggg) “Transporter” means a person engaged in the transportation of solid waste by air, rail, highway, or water on or off the Reservation.

(hhh) “Treatment” means the modification of solid waste in such a manner as to cause it to be safe to dispose of in a solid waste facility.

## **Subchapter 2. Responsibilities of Persons owning or occupying dwellings, businesses or other property.**

### **Sec. 201 Owner.**

Any person who owns or occupies any dwelling, residence, premises, or business establishment shall be responsible for the sanitary condition of said dwelling, residence, premises, or business establishment. No person shall place, deposit or allow to be placed or deposited on his

premises or on any public street, road, alley, streams, springs, bodies of surface or ground water or wetlands any solid waste except in a manner described in this Title.

(a) Any person who owns or occupies any dwelling, residence, premises, or business establishment shall be responsible for the storage and stockpiling of all refuse accumulated for proper collection and disposal.

(b) It is the responsibility of each person owning or occupying any dwelling, residence, premises or business establishment to properly store hazardous waste.

(c) All dangerous materials and substances shall be rendered harmless prior to collection and disposal in accordance with all Tribal, state, and federal regulations.

(d) Any such person shall act in such a manner as to not permit his property or other private property to become dangerous or hazardous, or impair the safety, health or comfort of the public by the discarding of solid waste.

(e) It shall be unlawful for any such person to store within the communities any wrecked, junked or unserviceable vehicle or tires or any other unserviceable appliances or implements such as stoves, refrigerators, washing machines, or any other items discarded which disfigure the appearance of the premises, leak hazardous substances or present a health or safety hazard.

## **Subchapter 3. Office of Environmental Protection.**

### **Sec. 301. Office of Environmental Protection.**

The Office of Environmental Protection is hereby designated as the responsible party to ensure compliance with the provisions of this Title, to develop and establish a permitting system, to set fee provisions and set policy.

### **Sec. 302. Compliance Officer.**

The Compliance Officer shall be housed within the Office of Environmental Protection.

### **Sec. 303. Perform Inspections.**

The Office of Environmental Protection may perform inspections to establish that any person,

solid waste facility, vehicle, transfer station, approved container, roll-off site or approved site is in compliance with the Title.

**Sec. 304. Issue Permits.**

The Office of Environmental Protection shall issue all permits under this Title pertaining to:

- (a) The establishment of a solid waste facility within the Reservation;
- (b) The commercial storage and disposal of solid waste within the Reservation;
- (c) The treatment of solid waste within the Reservation; and
- (d) The commercial transportation of solid waste within the Reservation.

**Sec. 305. Procedures for Permitting and Inspection Program.**

The Office of Environmental Protection shall develop procedures for carrying out a permit and inspection program, including but not limited to requiring operators to file reports with the Compliance Officer in order to monitor the storage of solid waste, solid waste handling, treatment or disposal within the Reservation.

**Sec. 306. Adopt and Enforce Regulations.**

The Office of Environmental Protection shall adopt and enforce such regulations as are reasonably necessary to implement and carry out the policies, requirements, and duties described in this Title.

**Sec. 307. Non-compliance Fines.**

The Office of Environmental Protection may impose reasonable fines for permit violations, any wrongful dumping of solid waste, littering and any violations of this Title or any regulations adopted thereunder. The non-compliance fees collected shall be deposited in the Tribes General Fund.

**Sec. 308. Coordination and Cooperation with other Agencies.**

The Office of Environmental Protection may:

(a) Assist or receive assistance from other Tribal, state, and federal agencies in the development and maintenance of inspection, enforcement, training, and regulatory programs; and

(b) Request, as necessary, any Tribal, or federal, agency having jurisdiction to investigate and report on any questions or matters involving solid waste handling, treatment and disposal affecting the Reservation.

**Sec. 309 Public Information Program**

Office of Environmental Protection may implement a public information program to provide information to other governments, private industry, and the general public concerning environmental protection, effective reuse of solid waste, and other management matters as it deems appropriate.

**Subchapter 4. Public Works Board**

**Sec. 401. Responsibility.**

The Public Works Board shall:

- (a) Develop and maintain the Public Works System;
- (b) Implement the policy of this Title in its oversight of the Public Works System.
- (c) Act as an initial Appeals Board according to the Public Works System Handbook for decisions made by Operations and Maintenance.
- (d) Develop and maintain a permitting system for non-commercial dumping at solid waste facilities.
- (e) Determine appropriate fees for services of the Public Works System and Operation and Maintenance;
- (f) Annual Report. The Public Works Board shall prepare and file an annual report with the Executive Board no later than September 1 of each year, commencing September 1, 2004, describing progress achieved under the program as described herein and containing recommended additional administrative and legislative actions necessary to implement such policies and programs.

**Subchapter 5. Operation and Maintenance**

### **Sec. 501. Powers and Duties.**

Operation and Maintenance is hereby designated to:

(a) Operate the Public Works System subject to the authority of the Public Works Board and the Executive Board.

(b) Implement solid waste handling, treatment, and disposal within the Reservation;

(c) Provide for adequate solid waste handling services, including but not limited to the collection, treatment, and disposal within the Reservation,

(d) Prepare and recommend to the Public Works Board polices for the management of solid waste;

(e) Perform its duties in accordance with Solid Waste Plan;

(f) Implement management activities regarding solid waste handling, collection, treatment, and disposal within the Reservation; and

(g) Provide for off-Reservation disposal of solid waste under a plan approved by the Public Works Board and the Executive Board.

### **Sec. 502. Contracts.**

The Office of Operation and Maintenance may recommend to the Public Works Board such contracts as deemed necessary, for the accomplishment of essential services and for the planning, design and construction of solid waste projects, provided that the Public Works Board monitors all such contracts for the Tribes.

### **Sec. 503. Studies, Investigations and Information Systems.**

The Office of Operation and Maintenance may conduct studies and investigations regarding new or improved methods of solid waste handling, treatment, and disposal and prepare and implement a solid waste management information storage and retrieval system coordinated with other information systems.

### **Sec. 504. Studies of Municipal Solid Waste Stream.**

Operation and Maintenance may conduct studies of the nature, extent, and methods of reducing

and controlling litter problems on the Reservation including, but not limited to, methods of improving public education and incentives to reduce waste generation and littering, necessary additional legislation, and improved methods of implementing existing laws.

### **Sec. 505. Coordination and Cooperation with other Agencies.**

Operation and Maintenance may coordinate solid waste handling, treatment, and disposal with federal, state and local agencies and with persons in the solid waste industry. Operation and Maintenance may render or receive technical assistance to or from tribal, state, and local agencies and officials thereof and others involved in the planning and operation of a solid waste program and facilities.

## **Subchapter 6. Solid Waste Plan**

### **Sec. 601. Solid Waste Plan.**

(a) Office of Environmental Protection shall adopt a Tribal plan for the management of solid waste within the Reservation including, but not limited to, requirements and practices consistent with federal standards for solid waste handling, treatment, recycling, reuse and disposal for the protection of land, air, and water from pollution. During the process of formulating or revising the Tribal policy for the management of solid waste, Office of Environmental shall consult with and carefully evaluate the recommendations of all concerned public.

(b) Office of Environmental Protection may specify classifications of solid waste that may not be addressed by the Solid Waste Plan at this time provided that the nature of the exempt waste poses no significant threat to the public health, the public safety or the environment.

### **Sec. 602. Approval of Plan.**

The Solid Waste Plan, describing the location, design, operation, maintenance and ultimate use of solid waste facilities within the Reservation, shall be submitted for approval to the Executive Board.

**Sec. 603. Contents of Plan.**

- (a) The Solid Waste Plan shall, at a minimum:
- (1) Include an implementation schedule of recommended management actions;
  - (2) Estimate the volume and composition of solid waste generated on or illegally imported to the Reservation and explain the basis of the estimate;
  - (3) Identify the responsibilities of other Tribal agencies and entities in the implementation of the Solid Waste Plan, the distribution of funds to the authorities responsible for development and implementation of the Solid Waste Plan, and the means for coordinating all planning and implementation under the Solid Waste Plan;
  - (4) Prohibit the disposal of solid waste in open dumps within the Reservation;
  - (5) Provide for the closing of all existing open dumps within the Reservation pursuant to this Title and federal law;
  - (6) Provide that the Operation and Maintenance may negotiate and recommend to the Executive Board long term contracts for the removal of solid waste to solid waste facilities, the construction and operation of solid waste facilities, securing long-term markets for material and energy recovered from solid waste facilities, and conserving material or energy by reducing the volume of solid waste;
  - (7) Provide for resource conservation or recovery, for the disposal of solid waste in solid waste facilities, and for any combination of practices as may be necessary for the handling, treatment, or disposal of solid waste in a manner that is environmentally sound and in compliance with the Office of Environmental Protection, the Tribal Title and federal law;
  - (8) Establish and specify a goal of recycling the solid waste accepted by any recycling facility within the Reservation to the maximum extent possible;
  - (9) Adhere to the federal guidelines for the disposal of solid waste and incorporate the recommended procedures, design, and operations described in Title of Federal Regulations, Title 40 CFR §§ 257, 258 as amended;

(10) Identify and recommend to the Executive Board areas for the establishment or expansion of solid waste facilities.

(b) The Solid Waste Plan may recommend:

- (1) Prohibition of open burning of solid waste within the Reservation;
- (2) Prohibition of incineration within the Reservation;

**Sec. 604. Solid Waste Facility.**

In identifying and reserving areas for the establishment or expansion of solid waste facilities, the Office of Environmental Protection, to ensure that the land uses within a solid waste facility, adjacent to or near a solid waste facility meet the requirements set forth in this Title, shall consider the following:

- (a) 40 CFR §§ 257 and 258, as appropriate to the type of facility, is adopted into this Title by reference and all solid waste facilities shall be established and maintained according to the regulations set forth under 40 CFR §§ 257 and 258. 40 CFR § 258 does not apply to roll-off sites.
- (b) The varying geographic, geologic, hydrologic, climatic, and other circumstances under which different solid waste practices are required in order to prevent Leachate contamination of ground and surface waters, the protection of surface waters from surface runoff contamination, and the protection of ambient air quality;
- (c) Characteristics and conditions of solid waste handling, treatment, and disposal methods, techniques, and practices, and locations of solid waste facilities where such methods, techniques, and practices are conducted, taking into account the nature of the material to be handled;
- (d) Site Specific Flexibility Requests pursuant to 40 CFR § 258, for purposes of eliminating potential health hazards;
- (e) Population density, distribution, and projected growth;
- (f) The types and locations of solid waste collection facilities;
- (g) The profiles of industries;
- (h) The constituents and general rates of solid waste;

(i) The political, economic, organizational, financial, and management problems affecting comprehensive solid waste management on the Reservation;

(j) Types of resource recovery facilities and resource conservation system that are appropriate; and

(k) Available new and additional markets for recovered material and energy resources recovered from solid waste as well as methods for conserving such material and energy.

#### **Sec. 605. Guideline.**

The Solid Waste Plan shall serve as a guideline in the interpretation of this Title as it relates to the operation of solid waste facilities, solid waste collection, handling, treatment and disposal.

#### **Sec. 606. Periodic Review of Plan.**

Operation and Maintenance shall review and evaluate the Solid Waste Plan at least every five (5) years to obtain maximum consistency with Tribal and federal policy. After such review and evaluation, Operation Management shall propose appropriate amendments to the Solid Waste Program for consideration by the Public Works Board. OEP is to adopt and implement the amended Plan, upon amendment by the PWB.

### **Subchapter 7. Storage**

#### **Sec. 701. Containers.**

(a) Every dwelling, business establishment or other premises where solid waste accumulates:

(1) Within the Public Works System, shall be provided a sufficient number of suitable and approved containers for receiving and storing solid waste and shall keep all solid waste therein; or

(2) That is "NOT" a part of the Public Works System, "shall provide" a sufficient number of suitable and approved Containers for receiving and storing of solid waste and shall keep all solid waste therein.

(b) The Owner, Agent or Occupant of every dwelling, business establishment or other premises where solid waste accumulates, shall be responsible for the safe and sanitary storage of all

solid waste accumulated at that premise until it is removed.

(c) Approved containers shall be maintained in a manner consistent with this Title and acceptable to the Solid Waste Plan. Containers that are broken or otherwise fail to meet the requirements of the Title, shall be replaced.

(d) Drop-box containers shall be periodically disinfected, and shall be steam cleaned and painted as deemed necessary by the Solid Waste Plan.

(e) Approved individual containers shall be stored off the ground on racks or stands and easily accessible for collection by Operation and Maintenance or authorized representatives.

#### **Sec. 702. Storage of Solid Waste.**

Solid waste shall be stored as follows:

(a) Rubbish shall be stored in an approved container or in a manner that will confine the waste in one area, and not create a public nuisance. Bulky Rubbish such as tree trimming, newspaper, weeds and large cardboard boxes shall be handled as directed by the Operations and Maintenance. Where Garbage separation is not required, containers for the storage of mixed rubbish and garbage shall meet the requirements specified by this Chapter.

(b) Garbage shall be stored in an approved container.

(c) Hazardous Waste shall be appropriately labeled and stored in a manner not accessible to the public and in an area where the waste is not harmful to the public or the environment.

(d) Waste from medical and dental clinics, including infectious waste shall be stored in containers with disposable plastic liners with special identification and stored in a manner not accessible to the public and in an area not harmful to the environment.

(e) Agricultural waste and products shall be stored as to minimize nuisance, flies, rodents and odor, and shall not result in the contamination of ground or surface water sources and in accordance with this Title.

(f) Waste shall be stored as to minimize or eliminate the production of Leachate.

(g) Bulky waste shall not be allowed to accumulate on any premise.

## **Subchapter 8. Collection, Transport and Disposal**

### **Sec. 801. Collection Schedule.**

Operation and Maintenance shall establish a schedule and arrange for the collection of solid waste within the service area of the Public Works System on a timely basis but no less than once every seven days.

### **Sec. 802. Collection Service.**

All Reservation residents may subscribe to solid waste collection service operated by Operation and Maintenance or its franchisee if available. Reservation residents may take their own trash to a solid waste facility.

### **Sec. 803. Collection Vehicles.**

Only vehicles approved by the Compliance Officer shall be used for the collection and transport of solid waste. Vehicles used for the collection and transport of solid waste shall be kept cleaned and maintained.

### **Sec. 804. Collection Standards.**

Solid waste shall be disposed, stored and collected in a manner that prevents spillage and littering. Should spillage or littering occur, the solid waste shall be immediately collected by the person responsible for such spillage or littering and returned to the vehicle or appropriate solid waste facility.

### **Sec. 805. Pets and Animals.**

The owner of any pet or other animal shall control such pet or animal to provide for the safety of the collector of solid waste and prevent interference with collection services.

### **Sec. 806. Access.**

Access to storage containers should be kept clear to prevent interference with collection services.

### **Sec. 807. Permitted Vehicles.**

Permitted vehicles used for the collection and transport of solid waste shall have covered, watertight, metal bodies of easily cleanable construction shall be cleaned frequently to prevent a nuisance, and shall be maintained in good repair.

### **Sec. 808. Private Vehicles.**

Private vehicles used for collection and transport of solid waste shall be loaded and moved in such a manner that the contents, including ashes, will not fall, leak or spill from the vehicles. Where spillage does occur, it shall be collected immediately by the transporter and returned to the vehicle or container.

### **Sec. 809. Service Fees.**

Service Fees for transfer, recycling, or other special services shall be collected as prescribed by Public Works Board. Fees will be set by the Public Works Board based upon the cost of services supplied by Operation and Maintenance or from a competitive bid process for franchise.

### **Sec. 810. Non payment of Fees.**

Non-payment of transfer fees, after 30 thirty days, shall, be a violation of this Title and result in action being taken by the Public Works Board or other collection entity. Action may include the discontinuation of other utilities provided by the Public Works Board where appropriate.

### **Sec. 811. Load Rejection.**

Operation and Maintenance reserves the right to refuse any and all materials at a solid waste facility, Roll-off Site, or any other Collection site.

### **Sec. 812. Material Separation.**

Operation and Maintenance reserves the right to require separation of any materials deemed necessary prior to Collection or acceptance.

### **Sec. 813. Open Burning.**

There shall be no Open Burning of residential, commercial, institutional or industrial solid waste on the Reservation without a Permit from the Office of Environmental Protection. The Office of



Environmental Protection will coordinate the approval of burning permits with the Bureau of Indian Affairs, fire department, and county governments. This requirement does not apply to infrequent burning of agricultural wastes in the field, silvicultural wastes for forest management purposes, land-clearing debris, diseased trees, debris from emergency clean-up operations and ordinance.”

**Sec. 814. Hazardous Waste.**

Hazardous waste generators, transporters, or treatment, storage or disposal facilities must comply with the applicable requirements of 40 CFR Parts 262 thru 279, as applicable, pursuant to 3001 of the Solid Waste Disposal Act (U.S.C. 6901 et seq.), as amended by the Resource Conservation and Recovery Act (RCRA) of 1980 and any subsequent amendments. Any violation of these regulations will be considered a violation of this Code and subject to enforcement under this Code. Hazardous waste shall be treated, stored or managed only at a site approved and permitted by the Office of Environmental Protection and federally approved and permitted by the Environmental Protection Agency where a permit is required pursuant to the above regulations.

**Sec. 815. Agricultural Waste.**

Agricultural waste may be disposed of at an approved site by prior arrangement with Operation and Maintenance.

**Sec. 816. Septic Tank Waste Disposal.**

Septic tank waste disposal shall not be made at solid waste facilities. Septic tank waste disposal shall only be allowed at Tribal controlled sewage lagoons or in accordance with 40 CFR § 503.

**Sec. 817. Liquids.**

Bulk or non-containerized liquid waste may not be placed in a roll-off or other approved solid waste containers for disposal in a municipal solid waste landfill. Liquids may be deposited within approved containers or Roll-off Sites if the waste is a household waste, other than septic waste, and the container is a small container similar in size

to that normally found in household waste and the container is designed to hold liquids for use other than storage.

**Sec. 818. Scavenging.**

Scavenging wastes disposed of in approved solid waste containers, roll-offs or at approved collection sites, storage sites or transfer stations is prohibited on the Reservation.

**Sec. 819. Construction and Demolition Wastes.**

The Public Works Board will arrange for development of an appropriate site for the final disposal of construction and demolition wastes.

**Sec. 820. Carcasses.**

Private commercial animal removal companies shall be used for all livestock; pets and livestock may be buried on owner’s land; no animal shall be disposed of at a solid waste facility or in a container without specific authorization from the owner of the solid waste facility.

**Sec. 821. Prohibition of Disposal in Open Dumps.**

In order to protect the limited land, air, and water resources of the Reservation from permanent damage due to hazardous pollution and to protect the health, safety, and welfare of all residents of the Reservation and surrounding communities, disposal or dumping of solid waste by any Person in any location, building or container that is not specifically designated by the Office of Environmental Protection for the collection, storage, transfer or disposal of solid wastes is expressly prohibited within the boundaries of the Reservation and such Person may be subject to a fine.

**Subchapter 9. Permitting.**

**Sec. 901. Existing Solid Waste Facilities.**

Existing solid waste facilities on the Reservation must apply for and obtain a permit within 90 days of the effective date of these codes to continue in operation. All conditions required for a new solid waste facility shall apply to an existing one. Where an existing solid waste management

or disposal facility is not in full compliance with these codes or applicable requirements of 40 CFR Parts 257 or 258, compliance with the law will be required or the solid waste facility must cease operation and be closed within 90 days of the effective date of these codes.

#### **Sec. 902. Permits for Solid Waste Management and Disposal Facilities**

No person shall construct or operate a solid waste facility within the jurisdiction of the Reservation except as authorized by an OEP issued Solid Waste Facility Permit.

#### **Sec. 903. Permits for Transport of Solid Waste.**

No Person shall engage in the business of the transportation of solid waste originating or terminating at a location within the jurisdiction of the Reservation except as authorized by an OEP issued solid waste transportation permit. Existing solid waste transporters on the Reservation must apply for and obtain a permit within 30 days of the effective date of these codes to continue in operation.

#### **Sec. 904. Application for Permit.**

Any Person who proposes to become an Operator of a solid waste facility or a transporter of solid waste shall file with the Office of Environmental Protection for a solid waste facility or Transportation Permit an application for a solid waste facility or Transportation Permit at least 120 days in advance of the date on which such person desires to commence construction of a solid waste facility or transportation of solid waste. The decision to issue or not issue the Permit shall be made by the Office of Environmental Protection within 120 days of the time the application is filed, unless, in the Office of Environmental Protection's best judgment, additional time is necessary to gather additional information on the application, to conduct environmental studies related to the application, or to require further analysis related to the application.

#### **Sec. 905. Contents of the Permit Application.**

Permit applications filed pursuant to this Chapter shall:

(a) Indicate the mechanical and other equipment, holding tanks, vehicles, Roll-off Sites and place of temporary storage used or to be used by the applicant;

(b) A site evaluation report describing the geographic, geologic, climatic, and hydrologic characteristics of the place or places where and the manner in which the applicant will handle, treat, or dispose of solid waste;

(c) The practices, technologies and procedures that will be employed to ensure adequate protection of the quality of groundwater and surface waters from surface runoff contamination, and adequate protection of ambient air quality, including groundwater monitoring, leachate collection and air monitoring for gases;

(d) All Owners and Operators of a Landfill within the Reservation shall meet the financial assurance standards set forth under 40 CFR Part 258. All commercial transporters of solid waste shall have a minimum of \$250,000 insurance to cover the costs of spills and clean up and shall provide evidence of such insurance.

(e) A training program for employees of the solid waste facility to educate employees on environmental concerns in managing solid waste and to provide such employees with needed skills for the safe operation of the solid waste facility or transportation equipment, and

(f) A closure and post-closure maintenance plan for the solid waste facility, and

(g) Such other information as the Office of Environmental Protection deems necessary.

#### **Sec. 906. Application for Revision of a Permit.**

If a permittee wishes to modify his operation, he shall file an application for revision of his existing permit at least 120 days in advance of the date when the proposed modification is to take place. Under circumstances that present an immediate danger to public health, as determined by the Office of Environmental Protection, the 120-day filing period may be waived by the Office of

Environmental Protection. No Operator of a permitted solid waste facility or Transportation service shall make any significant change in the design or operation of any solid waste facility or Transportation service except in conformity with the terms and conditions of the Permit issued to such Operator.

**Sec. 907. Application Submittal; Filing Fee.**

Each report and application filed hereunder shall be submitted in a form approved by the Office of Environmental Protection. Each application shall be accompanied by a reasonable filing fee established by Office of Environmental Protection according to a fee schedule to reflect the cost of processing such applications, including but not limited to the cost of technical and legal consultants, office staff, and overhead. All application fees shall be deposited in the Tribal General Fund. This fee is in addition to the fees authorized for operation and enforcement. The Office of Environmental Protection may waive filing fees for local governments.

**Sec. 908. Issuance of Permit: Contents.**

The Office of Environmental Protection may issue, modify, or revise a Permit that shall contain all terms and conditions for the construction and/or operation of a solid waste facility or for the transportation of solid waste. A permittee must comply with all terms and conditions of the Permit and any modifications or revisions.

**Sec. 909. Conditions for Permit Issuance or Modification.**

The Office of Environmental Protection shall not issue, modify, or revise a facility or transportation permit unless the Office of Environmental Protection is convinced that primary consideration is given by the permittee to preventing environmental damage and that the long-term protection of the environment is the guiding criterion. To achieve these purposes, the Office of Environmental Protection may prohibit or condition the Collection, Handling, Treatment, or Disposal of solid waste to protect, rehabilitate, or enhance the environmental quality of the Reservation or to

mitigate adverse environmental impacts. A permit will be issued only if:

(a) The proposed solid waste facility or transportation operation will be in full compliance with the applicable rules and regulations in effect on the date of Permit issuance;

(b) Feasible mitigation measures identified in any Environmental Assessment or Environmental Impact Statement prepared pursuant to the National Environmental Policy Act (NEPA 1505.2c, 42 USC 4321-370a), have been incorporated as Permit conditions; and

(c) There has been opportunity for public review and comment pursuant to Section 913 of this Code.

**Sec. 910. Additional Conditions for a Solid Waste Facility Permit.**

The Office of Environmental Protection shall not issue, modify, or revise a Solid Waste Facility Permit unless it is accompanied by a Tribal building, special use, or other applicable permit(s) or lease authorizing the establishment of the solid waste facility, and such permit or lease has been approved by the Executive Board and, if appropriate, the Bureau of Indian Affairs. The decision to issue, modify, or revise a Solid Waste Facility Permit requires a finding by the Office of Environmental Protection that the proposed Permit is consistent with the OEP Solid Waste Plan and any applicable standards.

**Sec. 911. Additional Conditions for Solid Waste Transportation Permit.**

As a condition for the issuance of a Solid Waste Transportation Permit, the Office of Environmental Protection shall require:

(a) Every vehicle operated by the transporter to be conspicuously marked or placarded to identify the solid waste transported and its principal hazard. Any such Vehicle shall be specifically marked with the full name or legally registered trade names or names of the Transporter and the number of the Solid Waste Transportation Permit issued pursuant to this Section;

(b) That a Permit shall be kept within the Vehicle for inspection; and

(c) The Transporter to make an annual (or as otherwise conditioned in the permit) report to the Office of Environmental Protection, indicating the number and type of installations emptied or cleaned, the volume and nature of solid waste disposed of, the place and manner in which such solid waste was finally disposed, and such other information as the Office of Environmental Protection may require.

#### **Sec. 912. Statement of Applicability or Denial.**

To determine whether a permit should be issued a written statement shall be public noticed and delivered by the Office of Environmental Protection to the applicant which shall specify the laws, rules and regulations with which the applicant shall show compliance. This statement shall also specify any particular facts or matters that the Office of Environmental Protection determines would justify a denial of the permit.

#### **Sec. 913. Public Review and Comment**

No permit shall be issued, modified or denied except after a public notice of the Statement of Applicability or Denial and a minimum of 20 days opportunity for public review and comment of the proposed permit decision is provided during the permitting process. In addition:

(a) Based upon requests, the Office of Environmental Protection may hold a public hearing at which the applicant and all interested parties have an opportunity to present evidence on whether the application should be granted or denied and the conditions to be included in the permit.

(b) The notice of a hearing shall be in the form approved by the Office of Environmental Protection.

(c) The Office of Environmental Protection shall hold the hearing no earlier than twenty days and no later than forty-five days from applicant's receipt of the Statement of Applicability or Denial.

(d) All written requests for a hearing, and statements or comments on the permit decision, shall be delivered personally or by certified or

registered mail, return receipt requested to the Office of Environmental Protection.

#### **Sec. 914. Permit Denial on any Permit.**

The Office of Environmental Protection may deny a Permit or may impose conditions that will adequately protect against unreasonable degradation of the environment and Natural Resources of the Reservation, if the Office of Environmental Protection determines that:

(a) The proposed method of Transport, the place or manner in which the solid waste is to be collected, handled, treated or disposed of, or the method or location of temporary storage will be detrimental to or damage or pollute the environment or Natural Resources of the Reservation; or

(b) The Permit applicant has an incidence or history of failing to comply or is reasonably deemed not likely to comply with Permit conditions.

#### **Sec. 915. Renewal Denied.**

The Office of Environmental Protection may deny renewal of a permit for failure of the permittee to properly report or otherwise comply with this Title.

#### **Sec. 916. Reconsideration.**

If the Office of Environmental Protection denies a Permit or if the applicant deems the terms and conditions of the Permit inappropriate the applicant may request reconsideration in writing within fifteen days after the applicant receives notice of the denial or of the terms and conditions of the Permit. The Office of Environmental Protection shall thereupon reconsider the denial of the permit and issue and mail its decision by certified mail to the applicant within fifteen days of receipt of the request for reconsideration.

#### **Sec. 917. Appeals.**

In the event that the permit is denied after reconsideration, the applicant may file a written request for a hearing on contested cases before the Hearings Examiner. The request shall be filed within thirty (30) days after the receipt of the decision on the Permit has been issued by the Office

of Environmental Protection. Copies of the request shall be served upon the Office of Environmental Protection and all parties of record by certified mail, return receipt requested. The Hearings Examiner shall conduct a hearing within thirty (30) days of receipt of the request for appeal, unless an extension is agreed upon by the appealing party. The Hearings Examiner may affirm or reverse the decision of the Office of Environmental Protection, but shall only reverse such decision if the Hearings Examiner states with particularity the grounds thereof and finds that the decision of the Office of Environmental Protection is arbitrary, capricious or otherwise unsupported by substantial credible evidence. Hearings Examiner shall issue a decision in writing within 30 days of the close of the hearing on appeal. Such decision shall set forth the grounds thereof. Such decision shall be mailed to the parties by certified mail, return receipt requested. The decision of the Hearings Examiner shall be final and shall not be appealable to the Fort Peck Tribal Court. Nothing in this Section shall be deemed a waiver of the Tribes' immunity from suit or any agency, employee or entity thereof.

**Sec. 918. Compliance with Applicable Law.**

Receipt of a Permit shall not relieve any Person of the responsibility to construct and operate all solid waste facilities and collection systems in a manner that complies with any and applicable Tribal and federal laws, rules, or regulations.

**Sec. 919. Periodic Review.**

Any Permit issued, modified, or revised hereunder shall be reviewed and, if necessary, be revised by the Office of Environmental Protection at least every year. Solid Waste Transportation Permits may be issued for a period of up to twelve (12) months and must be renewed annually and approved by the Office of Environmental Protection.

**Sec. 920. Investigations, Reports, Inspections.**

The Office of Environmental Protection shall make periodic inspections of any premises, container, equipment, or vehicle used for collection,

storage, transportation or disposal of solid waste to ensure compliance with this Title.

(a) The Office of Environmental Protection, in issuing or reviewing any Solid Waste Transportation Permit or in connection with any action relating to or authorized by this Title, may authorize the Compliance Officer to investigate the construction, maintenance, and operation of any solid waste facility or transportation service owned or operated by the permittee or applicant.

(b) In such an investigation, the Office of Environmental Protection may require the permittee or applicant furnish such technical or monitoring program reports or other reports the Office of Environmental Protection may specify.

(c) In such an investigation, the Compliance Officer may enter and inspect any solid waste facility, equipment, or vehicle used for, and any records relating to, the collection, storage, handling, treatment, or disposal of solid waste to ensure compliance herewith and to determine that operators are complying with applicable permit requirements.

**Sec. 921. Protection of Proprietary Information.**

(a) Upon the Tribes' approval of the written request of any person furnishing any report, notice, application, or other document required hereby, the Tribe shall not make available for inspection by the public those portions of such report, notice, application, or other document that contains proprietary information.

(b) However such report, notice, application, or other document or portions thereof, shall be made available to the Tribes or its agencies and to any other government agency or agencies, provided that, the information is at all times kept confidential, and/or used for enforcement or investigative purposes.

**Subchapter 10. Fees**

**Sec. 1001. Solid Waste Facility and Transportation Permit Fees.**

In order to recover operating costs, Operation and Maintenance shall impose reasonable Permit

fees on each Operator of a solid waste facility and solid waste transportation service. The Permit fee may be based on the weight, volume, or type of solid waste received, Handled, Treated, or Disposed of by any such Operator, or on any other appropriate basis or combination thereof. All fees shall be deposited in the Tribal General Fund.

**Sec. 1002. Individual Collection Fees and Roll-off Transfer Station Fees.**

A fee for the collection of individual Household Waste shall be imposed to defray costs of the service. This fee will be determined and approved by the Public Works Board. Before the fee is imposed, there will be a public hearing for all affected households.

**Sec. 1003. Non-commercial and Household Waste Disposal Fees.**

In order to recover operating costs, the Public Works Board may authorize Operations and Maintenance to impose reasonable fees for non-commercial disposal of non-commercial and household solid waste at any Tribal or Tribal contracted solid waste collection or management facility or container.

**Subchapter 11. Enforcement**

**Sec. 1101. Enforcement Agency.**

The Office of Environmental Protection, is hereby designated as the enforcement agency entrusted with the duty and responsibility of ensuring the proper handling, treatment and disposal of solid waste on the Reservation and of ensuring compliance by all Persons with this Title. The Compliance Officer, housed within the Office of Environmental Protection, shall be party responsible for carrying out the enforcement and compliance duties and responsibilities of the Office of Environmental Protection. Decisions of the Compliance Officer may be appealed under the procedures set forth under the Administrative Procedures Act.

**Sec. 1102. Duties.**

The Compliance Officer shall:

(a) Enforce all provisions of this Title and regulations adopted hereunder that pertain to the minimum standards for solid waste collection, storage, handling, treatment and disposal, all for the protection of the public health and safety and of land, air and water.

(b) Enforce compliance with feasible mitigation measures identified within Environmental Assessment/Environmental Impact Statement prepared pursuant to the National Environmental Protection Act (NEPA).

(c) Request enforcement by federal agencies of their respective laws governing solid or hazardous waste handling, treatment, and disposal where those laws do not conflict with this Title.

(d) Provide information to the affected public, the Office of Environmental Protection and the Public Works Board, as requested, where such requests do not conflict with other provisions of this Title.

(e) The Compliance Officer may issue Warning Letters, Notice of Violations and/or impose a fine upon any person who violates any provision of this Title.

(f) Develop, implement, and maintain inspection, enforcement and training programs.

(g) Keep and maintain accurate records of inspections, enforcement actions and training programs.

(h) Consult with appropriate health agencies concerning all actions involving solid waste collection, storage, handling, treatment and disposal or remediation.

**Sec. 1103. Periodic Review.**

The Office of Environmental Protection shall periodically review the Compliance Officer and its implementation of the enforcement program. This review may include an inspection by the Office of Environmental Protection, or any person authorized by the Office of Environmental Protection, of all books, records, accounts and other documents of the Compliance Office. If the Office of Environmental Protection finds that the Compliance Officer is not adequately fulfilling its enforcement responsibilities, the Office of Environmental Protection shall notify the Compliance

Officer and the Executive Board of its intention to take remedial action if the Compliance Officer does not correct the problems specified by the Office of Environmental Protection.

**Sec. 1104. Enforcement Actions.**

(a) Ten (10) days before issuing an enforcement order that is not for an emergency, within five (5) days after issuing an enforcement order for emergency, and within fifteen (15) days after discovering a violation of a Tribal law, regulation, or Permit that is likely to result in an enforcement action, the Compliance Officer shall provide a written statement providing an explanation and justification for the enforcement order and a description of the violation to the Office of Environmental Protection.

(b) If the Compliance Officer receives a complaint concerning the violation of applicable Tribal or federal environmental laws, Tribal solid waste laws, Tribal regulations or Tribal permit conditions, the Compliance Officer shall investigate to ensure proper consideration of the complaint. The Compliance Officer's investigation may include the inspection of the solid waste facility or vehicle to determine whether any applicable tribal or federal law, regulation, or permit has been or is being violated.

(c) If the Compliance Officer receives a complaint by a person or another agency concerning a solid waste facility, transportation service, or other activity, and the Compliance Officer does not refer it to another agency, the Compliance Officer shall either take enforcement action concerning that solid waste facility, transportation service or Transporter or provide the Person or Agency who filed the complaint with a written statement within thirty (30) days explaining why an enforcement action would not be appropriate.

(d) If the Public Works Board or Operations and Management receive a complaint concerning a solid waste facility, transportation service, or other activity, the Public Works Board or Operations and Management shall refer the complaint within ten days of receipt to the Compliance Officer or other appropriate state or federal agency.

**Sec. 1105. Cease and Desist Orders; Remedial Actions.**

(a) Any Person who constructs or operates a solid waste facility in violation of his Solid Waste Facility Permit; constructs or operates a solid waste facility without a Solid Waste Facility Permit, transports solid waste in violation of his Solid Waste Transportation Permit; transports solid waste without a Solid Waste Transportation Permit; violates any requirements found in this Title, or violates any standard adopted by the Office of Environmental Protection or Operation and Maintenance for the collection, storage, handling, treatment, or disposal of solid waste shall, upon order of the Compliance Officer, cease and desist any improper action, clean up any solid waste, and any other remedial action ordered, abate the effects thereof, and take any other remedial action directed by the Compliance Officer. Whenever the Compliance Officer determines that the construction or operation of a solid waste facility or the transport of solid waste is causing or threatening to cause a condition of hazard, pollution, or nuisance due to the migration or release of hazardous waste, substance, pollutant or contaminant or solid waste or for any other reason, the Compliance Officer may require the operator of the solid waste facility or the solid waste transporter to take corrective action necessary to abate any hazard, pollution, or nuisance or to protect public health, safety and the environment.

(b) If any of the circumstances set forth herein above pose an imminent threat to life or health, the Office of Environmental Protection may expend any available monies to perform any cleanup, abatement, and remedial work required.

(c) If any of the circumstances set forth herein above do not pose an imminent threat to life or health, but the Office of Environmental Protection deems it necessary for the public health and safety to perform cleanup, abatement work or remedial work, the Office of Environmental Protection may perform such work and expend monies thereon.

(d) Any action taken may be taken in the absence of, or in addition to, cleanup, abatement, or remedial work by the Operator or other persons.

The Office of Environmental Protection may perform the work or the work may be performed by or in cooperation with any other Tribal or Federal agency or private contractor. The Office of Environmental Protection may request that the Executive Board enter into written contracts for such work, and the contracts, whether written or oral, may include provisions for equipment rental and the furnishing of labor and materials necessary to accomplish the work.

(e) If solid waste or hazardous waste, substance, pollutant or contaminant is cleaned up, the effects thereof abated, or other necessary remedial action is taken as described above, the Person or Person(s) who committed or allowed the improper action or release shall be liable to the Tribes for the reasonable costs actually incurred in cleaning up any solid waste or hazardous waste, substance, pollutant or contaminant, abating the effects thereof, or taking other remedial action. The amount of such costs shall be recoverable in a civil action, taken by the Tribes in the Fort Peck Tribal Court, together with the costs of suit incurred by the Tribes in recovering such monies. A judgment ordering the payment of these costs to the Tribes will bear interest at the maximum rate of interest allowable on judgments under Tribal law.

#### **Sec. 1106. Compliance Schedule.**

The Compliance Officer shall develop a compliance schedule for any permitted solid waste facility or solid waste transporter that violates the Office of Environmental Protection's minimum standards. The compliance schedule shall assure that diligent progress shall be made to bring the solid waste facility or solid waste transporter into compliance with the Office of Environmental Protection's minimum standards within a specific period of time determined by the Office of Environmental Protection or the Compliance Officer. If the solid waste facility or solid waste transporter is not in compliance within the period specified, the Office of Environmental Protection or Public Works Board may recommend to the Executive Board that they revoke, suspend, or

modify the Permit until such time as violations of the minimum standards are remedied.

#### **Sec. 1107 Revocation, Suspension or Modification of Permit.**

(a) After a hearing, the Office of Environmental Protection may suspend, modify, or revoke a Permit issued by the Office of Environmental Protection for cause, including but not limited to:

(1) Any violation of any term or condition contained in the Permit, this Title or regulations promulgated hereunder, or the underlying lease, Tribal land use permit or other agreement for the use of, or granting an interest in tribal property.

(2) Obtaining the permit by misrepresentation or failing to disclose fully all-relevant facts;

(3) A change in any condition that requires a temporary or permanent modification, a reduction, or elimination of the permitted operation to bring it into compliance with the terms or conditions of the Permit, this Title or regulations promulgated hereunder, the underlying lease or Tribal land use permit.

(4) The revocation or suspension of a Permit shall not relieve the owner or operator of the solid waste facility from any legal liability.

(b) The hearing under this section shall be initiated by the Compliance Officer by filing a written Statement of Charges that sets forth the acts or omissions with which the permittee is charged and specifies the terms, laws, conditions, rules, or regulations that the permittee is alleged to have violated. The Statement of Charges and all accompanying documents shall be delivered personally or by certified or registered mail, return receipt requested to the permittee.

(c) The Statement of Charges shall be accompanied by a notice advising the permittee of a date for a hearing, which hearing shall be held no earlier than twenty (20) days and no later than forty-five (45) days from the Compliance Officer's mailing or personal delivery of the Statement of Charges. The notice shall inform the permittee that the permittee has the right to inspect and copy documents relative to the Statement of Charges.



(d) Within fifteen (15) days after service of the Statement of Charges upon the permittee, the permittee may deliver to the Office of Environmental Protection and the Compliance Officer a notice of defense in which the permittee may object to the Statement of Charges upon the grounds that it does not state acts or omissions upon which the Compliance Officer may proceed or to the form of the Statement of Charges on the ground that it is so indefinite or uncertain that the permittee cannot identify the acts or omissions or prepare the permittee's defense.

(1) The notice of defense shall be deemed a specific denial of all parts of the Statement of Charges not expressly admitted. Failure to file a notice of defense shall constitute a waiver of the right to a hearing. The Statement of Charges shall stand and legal action for remedy shall begin.

(2) The notice of defense shall be in writing signed by or on behalf of the permittee.

(3) A copy of any Statement of Charges and notice of defense shall be delivered to the Office of Environmental Protection.

(e) The hearing under this section shall be conducted by a Hearings Examiner, appointed by the Executive Board for such purpose. During such hearing, the Compliance Officer and the Permittee shall be allowed to present evidence, question witnesses and provide argument. At the conclusion of the hearing, the Hearings Examiner shall issue a decision within twenty (20) days. A true and correct copy of the decision shall be mailed to the parties thereto upon issuance. Decisions of the Hearings Examiner shall be final and may not be appealed to the Tribal Court, the Court of Appeals or any other Court.

(f) Discovery. Prior to the hearing, any party, upon written request made to any other party prior to the hearing is entitled to:

(1) Obtain the names and addresses of witnesses to the extent known to the other party, including but not limited to, those intended to be called to testify at the hearing; and

(2) Inspect and make a copy of any relevant documents in the possession or custody or under the control of the other party, including but not

limited to statements made by any person pertaining to the subject matter of the proceeding, all writings pertaining to the subject matter of the proceeding, and investigative reports pertaining to the subject matter of the proceeding. Nothing in this Section shall authorize the inspection or copying of any writing or thing that is privileged from disclosure by law, confidential, protected as attorney work product or otherwise.

(3) Before the hearing has commenced, the Hearings Examiner shall request the participation, at the request of any party, for attendance of witness or production of documents at the hearing.

### **Sec. 1108. Law Enforcement Service.**

The Fort Peck Department of Law & Justice and Game and Fish Departments are hereby given authority for citation of Persons found to be in violation of this Title. It shall be the duty of these departments to enforce the provisions of this Title fairly as to all Person(s) within the Reservation. The Office of Environmental Protection and the Compliance Officer shall be promptly notified in writing of any such citation or enforcement action.

## **Subchapter 12. Violations, Criminal and Civil Penalties.**

### **Sec. 1201 Violations.**

Any Person who violates any provision of this Title maybe subject to fines imposed by the Compliance Officer, or civil and criminal fines and penalties imposed by the Tribal Court in addition to remedies specifically provided for any violation.

(a) The Public Works Board shall have jurisdiction to impose fines for the non-payment of solid waste collection fees.

(b) The Office of Environmental Protection shall have jurisdiction to impose fines for Permit violations.

(c) Persons found to be responsible for illegal dumping or littering on or near any public grounds, or in or around any public waters of the Reservation, shall be required to remove all solid waste illegally disposed of; be subject to fines and

penalties according to this Chapter; be required to restore the site to a condition acceptable to the Office of Environmental Protection; and be required to dispose of the solid waste at a solid waste facility.

(d) Any Person who shall act in such a manner as to permit his property or other private property to become dangerous or hazardous, or impair the safety, health or comfort of the public by the discarding of solid waste will be required to remove such nuisance.

(e) It shall be unlawful for any Person to throw or discharge into any creek, river, ditch or other water conveyance system any solid waste or substance that is subject to decay.

(f) It shall be unlawful for any Person to store within the communities any wrecked, junked or unserviceable vehicle or tires or any other unserviceable appliances or implements such as stoves, refrigerators, washing machines, or any other items discarded which disfigure the appearance of the premises, leak hazardous substances or present a health or safety hazard.

(g) It shall be a violation of this Title for any Person to knowingly omit material information or make any false statement or representation in any label, record, report, or other document filed maintained or used for purposes or application or compliance with this Title or regulations promulgated thereunder.

### **Sec. 1202. Penalties and Fines.**

(a) Any Person who engages in the unauthorized handling, treatment, or disposal of solid waste or hazardous waste within the Reservation; who constructs or operates a solid waste facility in violation of his Solid Waste Facility Permit; who constructs or operates a solid waste facility without a Solid Waste Facility Permit or a Solid Waste Transportation Permit; who transports solid waste in violation of his Solid Waste Transportation Permit; who violates any requirements found in this Title or any other Tribal Title; or who violates any standard adopted by the Office of Environmental Protection or Operations and Management for the handling, treatment or dis-

posal of solid waste shall be liable for a civil penalty not to exceed fifteen thousand dollars (\$15,000.00) each day for each violation, to be assessed by the Office of Environmental Protection. Any Person who commits any of the above prohibited acts may be subject to criminal penalties, may be liable for any civil damages caused by the commission of such acts, and may be excluded from the Reservation in accordance with CCOJ. Any Person who commits any of the above prohibited acts, or whose employees or Agent(s) in the course of their employment or agency commit any of the above prohibited acts, may have its rights to engage in activities on the Reservation suspended or terminated.

(b) Civil penalty funds collected shall be paid to the Office of Environmental Protection. Penalty funds paid to the Office of Environmental Protection shall be deposited in the Tribal General Fund.

(c) Penalties under this section are in addition to and do not supersede or limit any other remedies, civil or criminal.

(d) The Tribal Court shall have jurisdiction to enjoin violations of this Title, and grant such additional relief as it deems necessary or appropriate to secure compliance with the provisions of this Title or any order, license, Permit approval or regulation issued or adopted thereunder upon the petition of the Office of Environmental Protection, Operation and Maintenance or the Public Works Board.

(e) Any person over whom the Tribal Court can exercise criminal jurisdiction, and who violates any of the provisions under Section 12.01, shall, upon conviction in Tribal Court, be guilty of a criminal offense, and shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00), for each day each violation occurs, and in the discretion of the Tribal Court, may also be subject to imprisonment for not more than one year. As an alternative sentence, any person found guilty of violating any of the provisions under Section 12.01 may be placed on probation, and required by the Tribal Court to provide not less than for (40) hours, but not more than two

hundred (200) hours of community service assisting the Solid Waste Program, Compliance Officer, or performing other kinds of community service.

### **Subchapter 13. Limitations**

#### **Sec. 1301. Appropriations.**

Nothing in this Title shall cause the Tribe, Office of Environmental Protection, Operation and Maintenance, or Public Works Board to expend funds in excess of appropriations.

#### **Sec. 1304. Statute of Limitations.**

The Tribal Court shall have no jurisdiction over any action under this Title brought more than three years after the Office of Environmental Protection, Operation and Maintenance, Public Works Board, or injured person first knew, or reasonably could have known, of the injury or damage and the cause thereof.

**ASSINIBOINE AND SIOUX TRIBES STANDARDS  
FOR SUBSURFACE WASTEWATER  
TREATMENT SYSTEMS**

## **FOREWORD**

These standards, based on proven technology, set forth requirements for the design and preparation of plans and specifications for subsurface wastewater treatment systems.

Users of these standards need to be aware that subsurface wastewater treatment systems are considered by the Environmental Protection Agency to be Class V injection wells and may require associated permits. Of particular concern are systems receiving wastewater from industries and automotive service stations.

These standards are adopted from Circular DEQ 4, Montana Standards for Subsurface Wastewater Treatment Systems, 2004 Edition, a revision of the Montana Department of Environmental Quality's Circulars WQB-4, WQB-5, and WQB-6, 1992 Editions and Circular DEQ 4, 2000 and 2002 Editions.

**ASSINIBOINE AND SIOUX TRIBES STANDARDS  
FOR SUBSURFACE WASTEWATER  
TREATMENT SYSTEMS**

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## CHAPTER 1 APPLICABILITY

- 1.1 The Assiniboine and Sioux Tribes Standards for Subsurface Wastewater Treatment Systems ("Standards") apply to all subsurface wastewater treatment systems on the Fort Peck Indian Reservation.

The term "reviewing authority," as used in these Standards, refers to the Fort Peck Tribal Board of Health ("Board"), a division of Fort Peck Tribal government delegated to review public wastewater systems pursuant to the Fort Peck Tribes Comprehensive Code of Justice, Title XIV, Health and Sanitation, Chapter 6, Section 605(b)(1) providing that the Board may "[a]dopt regulations and fees ensuring proper, safe construction and operation of sanitary facilities (water supply, sewage disposal and solid waste disposal" and (b)(11) providing that the Board may "[a]dopt necessary regulations and fees for the control and disposal of sewage from private and public buildings."

- 1.2 Types of systems

These Standards describe different types of wastewater treatment and disposal systems for use in subsurface effluent discharge. These systems include standard absorption trenches, deep absorption trenches, at-grade absorption trenches, sand-lined absorption trenches, gravelless absorption trenches, elevated sand mounds, intermittent sand filters, recirculating sand filters, recirculating trickling filters, evapotranspiration absorption systems, evapotranspiration systems, aerobic wastewater treatment units, chemical nutrient reduction systems, and experimental systems. Systems providing advanced treatment or greater separation to a limiting layer may be used where standard absorption trenches are acceptable. Many of these systems also have specific application to solving particular problems. The list below is a partial list intended to assist in problem solving for a particular set of site conditions.

- 1.2.1 System uses

- 1.2.1.1 Deep absorption trenches are used to break through an impervious soil layer and allow effluent to infiltrate a deeper and more permeable soil. The bottom of the trench must not be more than 5 feet below natural ground surface.
- 1.2.1.2 At-grade absorption trenches are used to achieve the minimum separation distance between the bottom of the trench and a limiting layer and may be used as long as the 4-foot separation can be maintained. These systems may be used only for residential strength wastewater and for flows not exceeding 500 gallons per day.
- 1.2.1.3 Sand-lined absorption trenches are used where the percolation rate is faster than 3 minutes per inch or for rapid or slow permeability situations.

- 1.2.1.4 Gravelless absorption trenches are used in lieu of standard absorption trenches within the limitations provided in these Standards.
- 1.2.1.5 Elevated sand mounds are used to provide advanced treatment of septic tank effluent and/or to achieve the minimum separation distance between the bottom of the drain rock and a limiting layer.
- 1.2.1.6 Intermittent sand filters are used to provide advanced treatment of septic tank effluent and are typically used on small systems.
- 1.2.1.7 Recirculating sand filters are used to provide advanced treatment of septic tank effluent and are typically used on large wastewater systems.
- 1.2.1.8 Recirculating trickling filters are used to provide advanced treatment of septic tank effluent.
- 1.2.1.9 Evapotranspiration absorption systems are used where slow percolation rates or soil conditions would preclude the use of a standard absorption trench.
- 1.2.1.10 Evapotranspiration systems are used where slow percolation rates or soil conditions would preclude the use of a standard system.
- 1.2.1.11 Aerobic wastewater treatment units are used to provide advanced treatment of septic tank effluent or to provide treatment equal to or better than a septic tank. They may also be used to provide treatment of high strength wastewater.
- 1.2.1.12 Chemical nutrient reduction systems are used to provide advanced treatment of septic tank effluent.

The monitoring frequency must be sufficient to establish the treatment efficiency and response to varying wastewater flows, strengths, and climatic conditions.

The Board will consider the complexity and maintenance required of the system, the stability of the processes, and the monitoring data in determining the adequacy, level of maintenance, and monitoring frequency of the system.

- 1.2.1.13 Absorption beds, holding tanks, sealed pit privies, unsealed pit privies, and seepage pits may only be used as specified by Board regulations, and in the absence of Board regulations, applicable federal or state Regulations. These systems are not allowed as new systems in subdivisions unless authorized by the Board, federal or state regulations. Typically, these systems are subject to limited areas, used as replacement systems, or are used in areas where other systems cannot be used.



### 1.3 Deviations

1.3.1 Deviations from the mandatory requirements of these Standards may be granted by the reviewing authority on a case-by-case basis for specific projects. The terms **shall**, **must**, and **may not** are used where practice is sufficiently standardized to permit specific delineation of requirements or where safeguarding of the public health justifies such definite action. These mandatory items serve as a checklist for the reviewing authority. Other terms, such as **should**, **may**, **recommended**, and **preferred**, indicate desirable procedures or methods. These nonmandatory items serve as guidelines for designers.

#### 1.3.2 Procedure

1.3.2.1 A person desiring a deviation shall make a request in writing to the reviewing authority and shall include the appropriate review fee. The request must identify the specific section of the circular to be considered. Adequate justification for the deviation must be provided. "Engineering judgment" or "professional opinion" without supporting data must be considered inadequate justification. The justification must address the following issues:

- A. The system that would be allowed by the deviation would be unlikely to cause pollution of tribal or state waters;
- B. The granting of the deviation would protect the quality and potability of water for public water supplies and domestic uses and would protect the quality of water for other beneficial uses.
- C. The granting of the deviation would not adversely affect public health, safety, and welfare.

1.3.2.2 The reviewing authority will review the request and make final determination on whether a deviation may be granted.

1.3.2.3 A file of all deviations must be maintained by the reviewing authority.

## CHAPTER 2

### DEFINITIONS

- 2.1 **Absorption area** means that area determined by multiplying the length and width of the bottom area of the disposal trench.
- 2.2 **Absorption bed** means an absorption system that consists of excavations greater than 3 feet in width where the distribution system is laid for the purpose of distributing pretreated waste effluent into the ground.
- 2.3 **Absorption system** means any secondary treatment system including absorption trenches, elevated sand mounds, and evapotranspiration absorption (ETA) systems used for subsurface disposal of pretreated waste effluent.
- 2.4 **Absorption trench** means an absorption system that consists of excavations less than or equal to 3 feet in width where the distribution system is laid for the purpose of distributing pretreated waste effluent into the ground.
- 2.5 **Advanced treatment** means a treatment process that provides effluent quality in excess of primary treatment.
- 2.6 **Aerobic wastewater treatment unit** means a wastewater treatment plant that incorporates a means of introducing air and oxygen into the wastewater so as to provide aerobic biochemical stabilization during detention period. Aerobic wastewater treatment facilities may include anaerobic processes as part of the treatment system.
- 2.7 **Bedrock** mean material that cannot be readily excavated by hand tools, or material that does not allow water to pass through or that has insufficient quantities of fines to provide for the adequate treatment and disposal of wastewater.
- 2.8 **Bedroom** means any room that is or may be used for sleeping. An unfinished basement is considered as an additional bedroom.
- 2.9 **BOD<sub>5</sub>** (five-day biochemical oxygen demand) means the quantity of oxygen used in the biochemical oxidation of organic matter in 5 days at 20 degrees centigrade under specified conditions and reported as milligrams per liter (mg/L).
- 2.10 **Building drain** means the pipe extending from the interior plumbing to a point 2 feet outside the foundation wall.
- 2.11 **Building sewer** means the pipe connecting the house or building drain to the public sewer or private sewer.
- 2.12 **Cleanout** means an access to a sewer line at least 4 inches in diameter, extending from the sewer line to the ground surface or inside the foundation, used for access to clean a sewer line.

- 2.13 **Chemical nutrient reduction** means a wastewater treatment system that incorporates the systematic addition of one or more chemicals into the effluent in order to reduce the concentration of one or more chemical components (such as nitrate or phosphorus).
- 2.14 **Design flow** means the peak flow (daily or instantaneous, as appropriate) for sizing hydraulic facilities, such as pumps, piping, storage, and absorption systems and means the average daily flow for sizing other treatment systems.
- 2.15 **Distribution box** means a watertight receptacle that receives septic tank effluent and distributes it equally into two or more pipes leading to the absorption area.
- 2.16 **Distribution pipe** means a perforated pipe used in the dispersion of septic tank or other treatment facility effluent into disposal trenches, seepage trenches, or seepage beds.
- 2.17 **Dosing frequency** means the number of times per day that effluent is applied to an absorption system, drainfield, sand filter, or sand mound, or to a section of an absorption system, drainfield, sand filter, or sand mound.
- 2.18 **Dosing tank** means a watertight receptacle receiving effluent from the septic tank or after another treatment device, equipped with an automatic siphon or pump designed to discharge effluent.
- 2.19 **Dosing volume** means the volume of effluent (in gallons) applied to an absorption system, drainfield, sand filter, or sand mound each time a pump is turned on or each time a siphon functions.
- 2.20 **Drain rock** means the rock or coarse aggregate used in an absorption system, drainfield, sand mound, or sand filter. Drain rock must be washed, be a maximum of 2 ½ inches in diameter and larger than the orifice size unless shielding is provided to protect the orifice, and contain no more than 2 percent passing the No. 8 sieve. The material must be of sufficient competency to resist slaking or dissolution. Gravels of shale, sandstone, or limestone may degrade and may not be used.
- 2.21 **Dwelling or residence** means any structure, building, or portion thereof, which is intended or designed for human occupancy and supplied with water by a piped water system.
- 2.22 **Effective size** means the sieve size in millimeters (mm) allowing only 10 percent of the material to pass as determined by wet-test sieve analysis method ASTM C117-95.
- 2.23 **Effluent** means partially treated wastewater from a septic tank or other treatment facility.
- 2.24 **Effluent filter** means an effluent treatment device installed on the outlet of a septic tank designed to prevent the passage of suspended matter larger than 1/8 inch in size.
- 2.25 **Fats, oils, grease (FOG)** means a component of wastewater typically originating from food stuffs (animal fats or vegetable oils) or consisting of compounds of alcohol or glycerol with fatty acids (soaps and lotions).

- 2.26 **Gravity dose** means a known volume (dose) of effluent that is delivered to an absorption system in a specific time interval. The effluent may be delivered either by a siphon or by a pump to a distribution box or manifold.
- 2.27 **Gray water** means a wastewater other than toilet wastes or industrial chemicals, including, but not limited to, shower and bath wastewater, kitchen wastewater, and laundry wastewater.
- 2.28 **Grease trap** means a device designed to separate grease and oils from the effluent.
- 2.29 **High-strength waste** means effluent from a septic tank or other treatment device that has BOD<sub>5</sub> greater than 300 mg/L, and/or TSS greater than 150mg/L, and/or fats, oils, and grease greater than 25mg/L.
- 2.30 **Impervious layer** means any layer of material in the soil profile that has a percolation rate slower than 120 minutes per inch.
- 2.31 **Individual wastewater system** means a wastewater system that serves one living unit or commercial structure. The total number of people served may not exceed 24.
- 2.32 **Infiltrative surface** means the soil interface that receives the effluent wastewater below the drain rock or sand.
- 2.33 **Influent** means the wastewater flow stream prior to any treatment.
- 2.34 **Manhole** means an access to a sewer line for cleaning or repair, with requirements as defined in Montana Department of Environmental Quality, Circular DEQ-2, 1999 Edition (Department Circular DEQ-2, 1999 Edition).
- 2.35 **Manifold** means a solid (nonperforated) main wastewater line that distributes effluent to individual distribution pipes.
- 2.36 **Multiple-user** wastewater system means a nonpublic wastewater system that serves, or is intended to serve, three through 14 living units or three through 14 commercial structures. The total population served may not exceed 24. In estimating the population served, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data.
- 2.37 **Passive nutrient reduction** means a wastewater treatment system, other than elevated sand mound, intermittent sand filter, or recirculating sand filter, that reduces the effluent concentration of one or more components (such as nitrate or phosphorus) without the addition of chemicals and without mechanical aeration.
- 2.38 **Percolation test** means a standardized test used to assess the infiltration rate of soils.
- 2.39 **Pressure distribution** means an effluent distribution system where all pipes are pressurized, the head at any orifice is at least 1 pound per square inch (psi) and not more

than 6 psi, and the effluent is pumped (or delivered by siphon) to the next portion of the treatment system in a specific time interval.

- 2.40 **Pretreatment** means the wastewater treatment that takes place prior to discharging to any component of a wastewater treatment and disposal system, including, but not limited to, pH adjustment, oil and grease removal, BOD<sub>5</sub> and TSS reduction, screening, and detoxification.
- 2.41 **Primary treatment** means a treatment system that provides retention time to settle the solids in raw wastewater and that retains scum within the system.
- 2.42 **Private sewer** means a sewer receiving the discharge from one building sewer and conveying it to the public sewer system or a wastewater treatment system.
- 2.43 **Public wastewater system** means a system for collection, transportation, treatment, or disposal of wastewater that serves 15 or more families or 25 or more persons daily for a period of at least 60 days in a calendar year. In estimating the population served, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data.
- 2.44 **Residential strength wastewater** means effluent from a septic tank or other treatment device with a BOD<sub>5</sub> less than or equal to 300 mg/L, TSS less than or equal to 150 mg/L, and fats, oils, and grease less than or equal to 25 mg/L.
- 2.45 **Reviewing authority** means the Fort Peck Tribal Board of Health ("Board") a division of Fort Peck Tribal government delegated to review public wastewater systems.
- 2.46 **Secondary treatment** means a biological treatment process coupled with solid/liquid separation. The effluent from secondary treatment should generally have a BOD<sub>5</sub> less than 30 mg/L and TSS less than 30 mg/L.
- 2.47 **Septic tank** means a storage settling tank in which settled sludge is in immediate contact with the wastewater flowing through the tank while the organic solids are decomposed by anaerobic action.
- 2.48 **Sewage** is synonymous with "wastewater" for purposes of these Standards.
- 2.49 **Sewer invert** means inside bottom (or flow line) of a sewer pipe.
- 2.50 **Shared wastewater system** means a wastewater system that serves or is intended to serve two living units or commercial structures. The total number of people served may not exceed 24. In estimating the population served, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data.

- 2.51 **Siphon** means a pipe fashioned in an inverted U shape and filled until atmospheric pressure is sufficient to force a liquid from a reservoir in one end of the pipe over a barrier and out the other end. Siphons are sometimes used to gravity-dose an absorption system from a dosing tank or chamber.
- 2.52 **Synthetic drainage fabric** means a nonwoven drainage fabric with a minimum weight per square yard of 4 ounces, a water flow rate of 100 to 200 gallons per minute per square foot, and an apparent opening size equivalent to a No. 50 to No. 110 sieve.
- 2.53 **Tertiary treatment** means additional removal of colloidal and suspended solids by chemical coagulation and/or medium filtration for the reduction of nutrients.
- 2.54 **TSS (Total Suspended Solids)** means solids in wastewater that can be removed by standard filtering procedures in a laboratory and is reported as milligrams per liter (mg/L).
- 2.55 **Uniformity coefficient (UC)** means the sieve size in millimeters (mm) that allows 60 percent of the material to pass (D60), divided by the sieve size in mm allowing 10 percent of the material to pass (D10), as determined by ASTM C117-95 ( $UC=D60/D10$ ).
- 2.56 **Uniform distribution** is a means to distribute effluent into a sand filter, sand mound, or absorption system such that the difference in flow (measured in gallons per day per square foot) throughout the absorption system, sand filter, or sand mound is less than 10 percent.
- 2.57 **Wastewater** means water-carried waste that is discharged from a dwelling, building, or other facility, including household, commercial, or industrial wastes; chemicals; human excreta; or animal and vegetable matter in suspension or solution.

## CHAPTER 3

### SITE EVALUATION

3.1 Information concerning soil and site conditions is needed for the design of subsurface wastewater treatment systems. Those factors which must be evaluated are thickness of permeable soil above seasonally high ground water, bedrock or other limiting layer, soil properties, land slope, topographic position, flooding hazard and amount of suitable area available, and setback distances required in Administrative Record of Montana ("ARM") Title 17, chapter 36, subchapter 3 or 9. For systems with a design wastewater flow greater than 1,000 gallons per day, the potential for ground water mounding must be evaluated.

3.2 Evaluation of soil factors

Soil properties must be evaluated using a soil profile and must be supported by percolation tests, soils maps, and other available scientific information when variability of the soils indicates additional information is necessary to determine the appropriate application rate.

3.3 Existing soil information

Soil surveys are usually found at the local USDA Natural Resources Conservation Service (NRCS) office. Soil surveys offer good preliminary information about an area and can be used to identify potential problems; however, they cannot substitute for a field investigation.

3.4 Soil profile descriptions

3.4.1 Soil pits within 25 feet of the boundaries of the proposed absorption system are required for soil descriptions. For proposed primary and replacement absorption systems that are not located in the same immediate area, a soil profile may be required for each proposed absorption system area. The minimum depth of soil profile descriptions must be 8 feet unless a limiting layer is encountered at a shallower depth. The soil profile may be completed to a greater depth to demonstrate compliance with nondegradation rules for phosphorous breakthrough.

3.4.2 The following soil properties must be evaluated to the full depth of the holes and reported:

3.4.2.1 Thickness of layers or horizons;

3.4.2.2 Texture, structure, and consistence of soil horizons;

3.4.2.3 Color (preferably described by using the notation of the Munsell color scheme) and color variation (redoximorphic features);

3.4.2.4 Depth of water, if observed;

- 3.4.2.5 Estimated depth to seasonally high ground water and basis for the estimate;
- 3.4.2.6 Depth to and type of bedrock, if observed;
- 3.4.2.7 Stoniness reported on a volume basis (i.e. the percentage of the soil volume occupied by particles greater than 2 mm in diameter);
- 3.4.2.8 Plasticity; and
- 3.4.2.9 Other prominent features such as roots, etc.

### 3.5 Percolation tests

- 3.5.1 Percolation tests, if required, must be conducted at the approximate depth of proposed construction. For elevated sand mounds and at-grade systems, the depth of the percolation test hole must be 12 inches. Additional percolation tests may be required to determine the existence of a limiting layer. The percolation tests must be performed in accordance with the procedures contained in Appendix A. When the proposed replacement area is not immediately adjacent to the primary absorption system, at least one percolation test must be conducted within the boundaries of the replacement area.
- 3.5.2 When more than one percolation test is conducted within the boundaries of a proposed absorption system, the percolation rate will be determined based on the arithmetic mean of the percolation test values.

### 3.6 Site factors

The land slope, potential for flooding and surface water concentration, and amount of suitable area must be evaluated.

#### 3.6.1 Type and percent of land slope

The type (concave, convex, or plane), percent, and direction of land slope must be reported, along with the method of determination.

#### 3.6.2 Flooding and surface water

The potential for flooding or accumulation of surface water from storm events must be evaluated.

#### 3.6.3 Ground water quality impact

Compliance with the nondegradation requirements of the Montana Water Quality Act (75-5-301, MCA) must be demonstrated.



### 3.6.4 Ground water monitoring

When required, ground water monitoring must be conducted in accordance with Appendix C.

## CHAPTER 4

### SITE MODIFICATIONS

Site modifications, as described in this chapter, may only be used for replacement of failing systems. The following systems may not be used for new systems in subdivisions, although cut systems and fills systems may be used for replacement areas for new subdivisions, provided the site preparation (cut or fill) is completed prior to approval.

#### 4.1 Artificially drained site

##### 4.1.1 General

Prior to construction of any site drainage system such as field drain, under drain, or vertical drain, an evaluation of the site must be performed, including soil profile descriptions; slope; depth to bedrock or impervious layer; estimation of depth to seasonally high ground water; topography; distance to wells, seeps, streams, ponds, or other open water; and any other pertinent considerations.

##### 4.1.2 Design of drain system

4.1.2.1 The drainage method chosen (curtain drain, vertical drain, or under drain) and the reason for this choice must be detailed. Drawings showing dimensions of the drain system and materials to be utilized must be provided.

4.1.2.2 The drainage system must be constructed according to the specific design approved by the reviewing authority.

4.1.3 The type of wastewater treatment system to be approved must depend upon the depth to seasonally high ground water. A minimum of 4 feet from the bottom of the trench over the entire area of the proposed absorption system and replacement area to the seasonally high ground water must have been achieved by the site drainage system. An adequate horizontal separation distance must be maintained between the drain and the absorption system in order to reduce the potential for effluent to enter the drain.

4.1.4 The reviewing authority may require monitoring of the depth to seasonally high ground water after installation of the drainage system.

#### 4.2 Cut systems

##### 4.2.1 Limitation

Absorption trenches for these systems must meet the same requirements as a standard absorption trench.

## 4.2.2 Design

4.2.2.1 Cut areas for the replacement absorption system must be physically completed prior to approval. Two soil test holes must be excavated and detailed soil profile descriptions must be provided. Percolation tests may be required after the cut has been completed.

4.2.2.2 A complete lot layout must be submitted showing the cut areas, the uphill and downhill slope, and slope across the cut area. Slope across the absorption system site must be a uniform slope.

4.2.2.3 Cut systems will only be considered on slopes that do not exceed 25 percent and where downhill slope below the cut area is not greater than 25 percent.

## 4.2.3 Report

The designer shall submit a letter of verification indicating that the site meets minimum requirements of applicable rules after the cut has been completed.

## 4.3 Fill system

### 4.3.1 Location

4.3.1.1 Any parcel that will undergo land modification by filling must have enough area suitable for absorption system placement. The entire area necessary for the replacement absorption system must be filled prior to final approval of the system.

4.3.1.2 Fill systems may not be installed on soils with a percolation rate slower than 60 minutes per inch. Side slopes on the fill may not exceed 25 percent (4:1).

### 4.3.2 Fill material

Soils used for fill may not be finer than sandy loam with a maximum of 20 percent passing the No. 100 sieve.

### 4.3.3 Design

4.3.3.1 System configuration, dimensions, and orientation must be approved by the reviewing authority prior to the placement of fill material.

4.3.3.2 Fill may be used only in areas where there is four feet of separation distance from the natural ground surface to a limiting layer. Fill cannot be used to overcome minimum vertical or horizontal separation distances.

- 4.3.3.3 Three percolation tests evenly spaced across the completed fill must be performed at the depth of the proposed infiltrative surface as a basis for design application rate.
- 4.3.3.4 The absorption system must be sized on the basis of the percolation rate for either the soil beneath the fill material or the percolation rate of the fill material, whichever is slower.

#### 4.3.4 Construction

- 4.3.4.1 All vegetative cover must be removed for the area to be filled.
- 4.3.4.2 Fill material must not be put in place when the fill or the original soil surface is frozen.
- 4.3.4.3 Fill material must be placed in lifts specified by the engineer to obtain stable soil structure conditions.
- 4.3.4.4 Absorption trenches must be set back at least 24 feet from the lower edge of the filled area on slopes of 6 percent or greater. For slopes less than 6 percent, absorption trenches must be set back at least 3 feet on all sides prior to starting the side slope.
- 4.3.4.5 The fill area must be seeded with a suitable grass to aid in stabilization.

## CHAPTER 5

### WASTEWATER FLOW

The purpose of this chapter is to provide a method for estimating wastewater flows.

#### 5.1 Residential wastewater flows

Design wastewater flow for residential dwelling units must be in accordance with the following table. Single-family dwelling units will be considered to have three bedrooms unless otherwise approved.

1 bedroom	150 gpd
2 bedrooms	225 gpd
3 bedrooms	300 gpd
4 bedrooms	350 gpd
5 bedrooms	400 gpd
Each additional bedroom	add 50 gpd

#### 5.2 Nonresidential wastewater flow

5.2.1 Typical daily flows for a variety of commercial, institutional, and recreational establishments are presented in Tables 5-1 and 5-2. For design purposes, the typical flows must be used as minimum design flows. Greater design flows may be required where larger flows are likely to occur, such as resort areas. Design flow must be computed using the total number of units in the proposed facility times the typical daily flow in the tables, with no reduction allowed for occupancy rates. Where the system includes several different types of uses from the tables, each use must be computed separately, and the design flow must be based on the sum of all of the uses. A means of flow measurement (such as flow meters or pump run-time meters) may be required.

5.2.2 As an alternative to the flows listed in the tables, design flow may be based on actual water use data from similar facilities. If daily flows are used, the design flow must be 1.1 times the highest daily flow. If monthly averages are used, the peak design flow must be a minimum of 1.5 times the average flow of the highest month. The water use data must be representative of the facility proposed and for a time period adequate to evaluate annual use of the system. System components may be added (or enlarged) to address peak flows to allow absorption systems to be sized based on average flow.

#### 5.3 Gray water

Gray water must be provided the same treatment required for other wastewater.

#### 5.4 Wastewater strength

Subsurface wastewater disposal systems must be used only for residential strength wastewater. Wastewater exceeding the limits for residential strength wastewater must be pretreated to residential strength prior to discharging to systems under these Standards. Effluent from recreational vehicle holding tanks have BOD<sub>5</sub> levels as high as 15 times that of residential strength wastewater and must be pretreated accordingly. High strength waste must be pretreated with systems specifically designed to reduce high strength wastewater to residential strength wastewater. For design, construction, operation and maintenance of systems that treat high strength wastewater, please refer to the Onsite Wastewater Treatment Systems Manual, EPA/625/R-00/008, February 2002.

**TABLE 5-1  
TYPICAL WASTEWATER FLOWS FROM COMMERCIAL, INDUSTRIAL,  
AND OTHER NONRESIDENTIAL SOURCES**

<b>Source</b>	<b>Unit</b>	<b>Wastewater Range</b>	<b>Flow, gpd/unit Typical</b>
Airport	Passenger	2-4	3
Automobile Service Station	Vehicle Served	7-13	10
	Employee	9-15	12
Bar	Customer	5	3
	Employee	10-16	13
Church (Not including a kitchen, food service facility, daycare, or camp)	Seat		3
Church (Including kitchen, but not including a food service facility, day care, or camp)	Seat		5
Daycare	Child	10-30	25
	Employee	10-20	15
Department Store	Toilet Room	400-600	500
	Employee	8-12	10
Hospital, medical	Bed	125-240	165
	Employee	5-15	10
Hospital, mental	Bed	75-140	100
	Employee	5-15	10
Hotel/Motel	Guest	40-56	48
	Employee	7-13	10
Industrial Building (Sanitary waste only)	Employee	10-16	13
Laundry (Self-serve)	Machine	450-650	580
	Wash	45-55	50
Office	Employee	7-16	13
Prison	Inmate	75-150	115
	Employee	5-15	10
Rest home	Resident	50-120	85
Restaurant	Meal	2-4	3
School, day:			
With cafeteria, gym, showers	Student	15-30	25
With cafeteria only	Student	10-20	15
Without cafeteria, gym, showers	Student	5-17	11
School, boarding	Student	50-100	75
Shopping Center	Parking Space	1-2	2
	Employee	7-13	10
Store	Customer	1-4	3
	Employee	8-12	10

**TABLE 5-2  
TYPICAL WASTEWATER FLOWS FROM RECREATIONAL FACILITIES**

Source	Unit	Wastewater	Flow, gpd/unit
		Range	Typical
Apartment, resort	Person	50-70	60
Bed and Breakfast	Person	20 - 40	40
Cabin, resort	Person	8-50	40
Cafeteria	Customer	1-3	2
	Employee	8-12	10
Campground (developed)	Person	20-40	30
Cocktail lounge	Seat	12-25	20
Coffee shop	Customer	4-8	6
	Employee	8-12	10
Country club	Member	60-130	100
	present Employee	10-15	13
Day camp (no meals)	Person	10-15	13
Dining hall	Meal served	4-10	7
Dormitory, bunkhouse	Person	20-50	40
Hotel/Motel, resort	Person	40-60	50
Store, resort	Customer	1-4	3
	Employee	8-12	10
Swimming pool	Customer	5-12	10
	Employee	8-12	10
Theater	Seat	2-4	3
Visitor center	Visitor	4-8	5
Travel trailer parks without individual hookups for water or sewer	Space		50
Travel trailer parks with individual hookups for water and/or sewer	Space		100

## 5.5 Waste segregation

### 5.5.1 General

Waste segregation systems consist of dry disposal for human waste, such as various chemical and incinerator type systems with separate disposal for gray water. However, regardless of the type of dry disposal system used, the gray water must be disposed of using an approved wastewater treatment system, with no flow or size reduction allowed for the waste segregation.

### 5.5.2 Location

A complete layout showing the location of the absorption system and 100 percent replacement site must be provided.



### 5.5.3 Maintenance

Final sludge disposal must be in compliance with tribal law or federal regulations, 40 CFR Part 503.

## CHAPTER 6

### DESIGN OF SEWERS

- 6.1 Separation of water and sewer mains
  - 6.1.1 Sewer mains and water mains are lines that serve more than one building or living unit.
  - 6.1.2 Sewer mains must be at least 10 feet horizontally from any existing or proposed water main. The distance must be measured edge to edge.
  - 6.1.3 Sewers mains crossing water mains must be laid to provide a minimum vertical distance of 18 inches between the outside of the water line and the outside of the sewer. This must be the case whether the water line is above or below the sewer. The crossing must be arranged so that the sewer joints will be equidistant and as far as possible from the water line joints.
- 6.2 Sewer size, slope, and design flows for building and private sewers
  - 6.2.1 Only wastewater may be placed into the sewer system. Rainwater from roofs, streets, and other areas, as well as ground water from foundation drains must be excluded. Also, see Chapters 7 and 8 for special conditions placed on water softeners and other water treatment devices.
  - 6.2.2 Flow used for designing sewers must consider ultimate population to be served, maximum hourly wastewater flow, and possible infiltration.
  - 6.2.3 A building sewer or private sewer from the structure to the septic tank must be at least 4 inches in diameter and must be placed at a minimum slope of 1/4 inch per foot toward the point of discharge unless pressurized. Sewers that are larger than 4 inches in diameter must be designed in conformance with the requirements of Department Circular DEQ-2, 1999 Edition.
  - 6.2.4 Sewers should be designed to prevent freezing.
- 6.3 Sewer materials
  - 6.3.1 Building or private sewers must be PVC.
  - 6.3.2 PVC sewer pipe must meet the requirements of ASTM D 3034, Schedule 40, or Schedule 80 and meet ASTM D 1785 and must be joined by an integral bell-and-spigot joint with rubber elastomeric gasket or solvent cement joints. When using ASTM D 3034, rock-free bedding is required. Schedule 40 pipe must be used leading into and out of the septic tank in the area of backfill around the tank for a minimum length of at least 10 feet.

- 6.3.3 Transition connections to other materials must be made by adapter fittings or one-piece molded rubber couplings with appropriate bushings for the respective materials. All fittings must be at least of equivalent durability and strength of the pipe itself.
- 6.4 Sewer installation
- 6.4.1 Sewers must be installed at a uniform slope. Cleanouts and/or manholes are recommended within 3 feet of the building, for angles greater than 45 degrees, and for solid pipe runs greater than 100 feet in length.
  - 6.4.2 Installation specifications must contain appropriate requirements based on the criteria, standards, and requirements established by the industry in its technical publications. Requirements must be set forth in the specifications for the methods of bedding and backfilling the pipe.
- 6.5 Cleanouts and manholes
- 6.5.1 Manholes must be installed on multiple-user and public gravity systems at the end of lines; at all changes in grade, size, or alignment; and at distances not greater than 400 feet.
  - 6.5.2 The minimum inside dimension of manholes must be 48 inches.
  - 6.5.3 The flow channel through manholes must be made to conform in shape and slope to that of the sewers.
  - 6.5.4 Manholes must meet all the requirements of Department Circular DEQ-2, 1999 Edition.
  - 6.5.5 Inlet and outlet pipes must be joined with a gasketed, flexible, watertight connection or any watertight connection arrangement that allows differential settlement of the pipe and manhole wall to take place. A bell-and-spigot pipe joint with rubber sealing ring, located within 12 inches of the manhole wall, satisfies this requirement.
  - 6.5.6 Cleanouts may not be used in place of manholes on mains of public wastewater systems conveying raw wastewater. Where cleanouts are allowed by deviation, they may be used only for special conditions and at spacing not exceeding 150 feet.
  - 6.5.7 Cleanouts should generally be used in place of manholes on lines conveying septic tank effluent. For systems conveying septic tank effluent, manholes must be located at major junctions of three or more pipes and should be limited to strategic locations for cleaning purposes.

## 6.6 Wastewater pumping stations

- 6.6.1 Wastewater pumping stations receiving wastewater that has not had settleable solids removed and that have design flow rates of 5,000 gpd or greater must be designed in accordance with Department Circular DEQ-2, 1999 Edition.
- 6.6.2 Wastewater pumping stations receiving wastewater that has not had settleable solids removed and that have design flow rates less than 5,000 gpd must be designed in accordance with Department Circular DEQ-2, 1999 Edition, with the following exceptions.
  - 6.6.2.1 Pumps must be capable of passing spheres of at least 2 inches in diameter, or grinder pumps capable of handling raw wastewater must be provided.
  - 6.6.2.2 Discharge lines must be at least 2 inches in diameter if the pump is capable of passing a 2-inch sphere. The discharge line must be sized to provide a minimum velocity of 2 feet per second.
  - 6.6.2.3 Submersible pumps and motors must be designed specifically for totally submerged operation and must meet the requirements of the National Electric Code for such units. In addition, the design must provide for the pumps and motors to be totally submerged at all times.
  - 6.6.2.4 Multiple pumps are not required.
  - 6.6.2.5 A 4-inch pump is not required.
- 6.6.3 Stations receiving wastewater from private sewers that have had the settleable solids removed must be provided with pumps and controls that are corrosion resistant and are listed by Underwriters Laboratories, Canadian Standards Association, or other approved testing and/or accrediting agency as meeting the requirements for National Electric Code Class I, Division 2 locations. As an alternative, submersible pumps and motors must be designed specifically for totally submerged operation and meet the requirements of the National Electric Code for such units. In addition, the design must provide for the pumps and motors to be totally submerged at all times. An audible or visible alarm must be provided to indicate failure of the system.

## CHAPTER 7

### SEPTIC TANKS

A septic tank consists of one or more chambers providing primary treatment. All wastewater treatment systems must provide at least primary treatment prior to disposal in an absorption system or sand mound.

#### 7.1 General

All wastewater must discharge into the septic tank.

Roof, footing, garage, surface water drainage, and cooling water must be excluded.

The wastewater (backwash) from water softeners may only be discharged to a wastewater treatment system if the installed water softener:

- A. regenerates using a demand-initiated regeneration control device; and
- B. is only connected to interior plumbing for potable water usage and not to exterior irrigation water lines.

Wastewater from water treatment devices including water softeners, iron filters and reverse osmosis units may not be discharged into an aerobic, nonstandard (excluding elevated sand mounds, intermittent sand filters and recirculating sand filters), or proprietary on-site wastewater treatment system unless the quality and quantity of discharge meets the recommended usage, operation and maintenance specifications of the designer or manufacturer of the system. If such specifications are not available, then approval for the discharge must be obtained from the reviewing authority.

Wastewater from water treatment devices including water softeners, iron filters and reverse osmosis units may be discharged to a dry well, a separate drainfield with pipe or gravelless chambers or onto the ground if not prohibited by other regulations.

The septic tank must be located where it is readily accessible for inspection and maintenance.

#### 7.2 Design

7.2.1 Septic tanks must be made of materials resistant to the corrosive environment found in septic tanks. The empty tank must be structurally sound and capable of withstanding loads created by 6 feet of burial over the top of the tank. Tanks must be installed in accordance with manufacturer's recommendations.

7.2.2 The walls and floor of concrete tanks must be at least 3 inches thick if adequately reinforced with steel and at least 6 inches thick if not reinforced. Concrete for septic tanks must have a water/cement ratio less than 0.45, a 28-day compressive

strength of at least 4,000 psi, and must be made with sulfate-resistant cement (tricalcium aluminate content of less than 8 percent).

7.2.3 Concrete covers must be at least 3 inches thick and adequately reinforced. Access lids must be at least 2 inches thick.

7.2.4 Liquid connection between compartments shall consist of a single opening completely across the compartment wall or two or more openings equally spaced across the wall. The total area of openings shall be at least three times the area of the inlet pipe.

#### 7.2.5 Inlets

7.2.5.1 The inlet into the tank must be at least 4 inches in diameter and enter the tank 3 inches above the liquid level. The inlet connection must be watertight.

7.2.5.2 The inlet of the septic tank and each compartment must be submerged by means of a vented tee or baffle. Tees and baffles must extend below the liquid level to a depth where at least 10 percent of the tank's liquid volume is above the bottom of the tee or baffle.

7.2.5.3 Vented tees or baffles must extend above the liquid level a minimum of 7 inches.

7.2.5.4 Baffle tees must extend horizontally into the tank to the nearest edge of the riser access to facilitate baffle maintenance.

#### 7.2.6 Outlets

7.2.6.1 Outlets must include an effluent filter approved by the reviewing authority and complying with 7.2.7 below. On combination septic/dosing tanks, the septic tank outlet is considered to be in the wall dividing the septic compartment(s) and the dosing compartment.

7.2.6.2 The outlet of the tank must be at least 4 inches in diameter. The outlet connection must be watertight.

7.2.6.3 Each compartment of the septic tank must be vented.

7.2.6.4 Effluent filter inlets must be located below the liquid level at a depth where 30 to 40 percent of the tank's liquid volume is above the intake of the filter.

#### 7.2.7 Effluent filters

7.2.7.1 Effluent filters must be used in all systems prior to secondary treatment devices unless the reviewing authority approves another filtering device

such as a screened pump vault. The effective opening in the effluent filter must be no larger than 1/8-inch.

- 7.2.7.2 The minimum filter must provide a minimum clean water flow rate of 4.2 gallons per minute when tested in a setup that places the filter in its operation position and the clean water head is at the center of a 4-inch sewer line at the septic tank inlet.
  - 7.2.7.3 All septic tank effluent must pass through the effluent filter. No by-pass capability may be designed into the effluent filter. A high-water alarm should be installed to signal that the filter has clogged and needs maintenance.
  - 7.2.7.4 The effluent filter must be secured so that inadvertent movement does not take place during operation or maintenance. Filters must be readily accessible to the ground surface and the handle must extend to within 2 inches of the access riser lid to facilitate maintenance.
  - 7.2.7.5 Openings developed by penetration, saw cut, or equivalent must be process controlled and all mold flash and penetration burrs removed.
  - 7.2.7.6 The effluent filter material must be designed such that the filtering medium maintains structural integrity throughout the life of the device. The filter medium must not tear or otherwise distort so as to make the filter inoperable during normal operation. The entire filter must be constructed of proven corrosion resistant material for use in wastewater applications.
  - 7.2.7.7 The effluent filter manufacturer must provide documentation that shows at least three years successful field-testing and operation or that the filter meets the design standard for effluent filters in ANSI/NSF Standard 46. The documentation must show the effluent filter has continuously lowered the Total Suspended Solids (TSS) by a minimum of 30 percent and that under normal use the filter is capable of obtaining a minimum of 3 years between maintenance intervals.
  - 7.2.7.8 The effluent filter manufacturer must provide installation and maintenance instructions with each filter. The installer must follow the manufacturer's instructions when installing the filter and must use the manufacturer's recommendations for sizing and application. The installer must provide the owner of the system with a copy of the maintenance instructions.
  - 7.2.7.9 The effluent filter manufacturer must certify to the reviewing authority that the filter meets the requirements of this standard.
- 7.2.8 A septic tank must provide an air space above the liquid level, which will be equal to or greater than 20 percent of its liquid capacity. Dose tanks do not need to

meet the 20 percent air space requirement. Each compartment of the septic tank must be vented back to the inlet pipe.

- 7.2.9 Inspection ports measuring at least 8 inches in diameter must be provided above each inlet and outlet and marked with rebar. An access at least 1.75 square feet in size must be provided into each compartment. Each access must be extended to within 12 inches of the finished ground surface. An access of the effluent filter of a size large enough to maintain the filter must be provided and must be extended to the finished ground surface.

#### 7.2.10 Sizing of septic tanks

##### 7.2.10.1 Minimum capacities are:

A minimum acceptable size of septic tank is 1,000 gallons for any system. Two single compartment tanks may be connected in series to meet the capacity requirements. The reviewing authority may have additional maintenance requirements for tanks connected in series.

##### A. For residential flows:

1. For 1 to 3 bedrooms, the minimum size septic tank is 1,000 gallons.
2. For 4 to 5 bedrooms, the minimum size septic tank is 1,500 gallons.
3. For 6 to 7 bedrooms, the minimum size septic tank is 2,000 gallons.
4. For 8 or more bedrooms, the minimum size septic tank is 2,000 gallons plus 250 gallons for each bedroom greater than 7 bedrooms (i.e. 8 bedrooms requires a 2,250 gallon tank; 9 bedrooms requires a 2,500 gallon tank).

B. For non-residential flows of less than or equal to 1,500 gallons per day, the tank must have a capacity of at least 2.7 times the design flow.

C. For non-residential flows of greater than 1,500 gallons per day, the tank must have a minimum capacity equal to 2.25 times the average daily flow.

D. For a septic tank less than or equal to 5,000-gallon liquid capacity, depths greater than 78 inches must not be used in computing tank capacity.



- E. For the septic tank greater than 5,000-gallon liquid capacity, the maximum liquid depth is determined by dividing the liquid length by a factor of 2.5.
- F. Septic tank volume may be sized using nationally recognized plumbing codes, provided that there is adequate volume to store at least 3.5 times the estimated daily wastewater flow, and the sizing is approved by the reviewing authority.

7.2.10.2 The nominal length of the septic tank must be at least twice the width (or diameter) of the tank.

7.2.10.3 Dose tanks are excluded from these length, width, and depth requirements.

### 7.2.11 Grease traps

Establishments such as restaurants that produce grease exceeding the limits of residential strength wastewater must be provided with grease traps and meet the requirements of Section 5.4.

## 7.3 Construction

All tanks must be watertight. Tanks used for commercial facilities, multiple-user systems or public systems must be tested in place for watertightness. Watertightness testing for a concrete tank may be conducted using a water test or vacuum test. Watertightness testing for a fiberglass tank may be conducted using a water test, a vacuum test, or a pressure test.

7.3.1 Water testing must be conducted by sealing the outlets, filling the septic tank to its operational level, and allowing the tank to stand for at least 8 hours. If there is a measurable loss (2 inches or more), refill the tank and let stand for another 8 hours. If there is again a measurable loss, the tank must be rejected.

7.3.2 Vacuum testing must be conducted by sealing all inlets, outlets, and accesses, then introducing a vacuum of 4 inches of mercury. If the vacuum drops in the first 5 minutes, it must be brought back to 4 inches of mercury. If the septic tank fails to hold the vacuum at 4 inches of mercury for 5 minutes, the tank must be rejected.

7.3.3 For pressure testing a fiberglass tank, all inlets, outlets, and access ports must be sealed and adequately secured. The tank must be charged with 5 psig (3 psig for a 12-foot diameter tank). Allow tank pressure to stabilize. Disconnect the air supply. If there is any noticeable pressure drop in 1 hour, the tank must be rejected or repaired. Repeat the test after repair. Release air carefully through an appropriate valve mechanism.

## 7.4 Maintenance

Owners of septic systems should obtain septic tanks maintenance recommendations published by Montana State University Extension Service, which are available through Montana County Extension Service offices located in each county. Two of these publications are Septic Tank and Drainfield Operation and Maintenance and Septic System Inspection and Troubleshooting. Those who own the systems with siphons, pumps, or controls should carefully adhere to manufacturer's recommendations for operation and maintenance and seek guidance from the county extension service.

## CHAPTER 8

### STANDARD ABSORPTION TRENCHES

#### 8.1 General

The satisfactory operation of the wastewater treatment system is largely dependent upon proper site selection and the design and construction of absorption trenches.

All new and replacement drainfields that receive wastewater discharged from water treatment devices including water softeners, iron filters and reverse osmosis units must be designed to adequately dispose of the additional flow. The sizing of absorption systems is addressed in Section 8.4.2.

Discharge of wastewater from water softeners into absorption trenches in clay soils with shrink/swell properties could result in premature system failure. Area-specific information on potential adverse impacts should be obtained from local health officials before connecting water softener backwash lines to on-site wastewater treatment systems with absorption trenches in clay soils with shrink/swell properties.

#### 8.2 Location

Absorption trenches must meet the location criteria in ARM Title 17, chapter 36, subchapter 3 or 9.

#### 8.3 Design

##### 8.3.1 Distribution pipe materials

8.3.1.1 Gravity-fed distribution lines must be fabricated from 4-inch diameter ASTM D-3034 PVC sewer pipe with perforations per ASTM D-2729.

8.3.1.2 Coiled, perforated-plastic pipe may not be used when installing absorption systems. Straight lengths of pipe must be used instead.

8.3.1.3 Pipe used for pressure-dosed distribution lines must meet ASTM D1785 or ASTM D2241. Fittings used in the absorption field must be compatible with the materials used in the distribution lines. Pressure-rated fittings must be used for pressure-dosed piping.

##### 8.3.2 Trench design

8.3.2.1 The minimum area in any absorption trench system must be based upon the flow as determined in Chapter 5 and sized by the soil type, and percolation rate if percolation testing is required by the reviewing authority, whichever results in a larger absorption system, in accordance with Tables 9-1 and 9-2. Percolation tests may be required by the

reviewing authority when the soils are variable or other conditions create the need to verify trench sizing.

- 8.3.2.2 An area that can be used as a replacement area for the original absorption trench system must be designated. Interim use of the area must be compatible with future absorption system use. The replacement area must be separate from the primary area and must not be interlaced within the primary area. If interlaced, minimum separation must be 14 feet between primary lines.
- 8.3.2.3 Gravity-fed and gravity-dosed absorption trenches must be separated by at least 5 feet between trench walls. Pressure-dosed absorption trenches must be separated by at least 4 feet between trench walls.
- 8.3.2.4 Gravity-fed and gravity-dosed absorption trenches must be at least 18 inches wide. Systems utilizing pressure distribution may have absorption trenches 36 inches wide. For the purposes of sizing, gravity-fed and gravity-dosed trenches must not be considered more than 24 inches wide.
- 8.3.2.5 The bottom of the absorption trenches must be at least 12 inches and no more than 36 inches below the natural ground surface. There must be a minimum of 12 inches of soil or fill material above the drain rock. When the trench is less than 24 inches below ground, a cap above the natural ground surface is required. The cap must be tapered from the edge of the outermost trench wall with a 3 horizontal to 1 vertical or flatter slope. The cap must be sloped to provide positive drainage away from the center of the absorption system.
- 8.3.2.6 Gravity-fed absorption trenches may not exceed 100 feet in length from where effluent is first applied to the soil.
- 8.3.2.7 Gravity-fed absorption field distribution lines must be 4 inches in diameter.

#### 8.4 Application rates for sizing of the absorption system

- 8.4.1 Application rates and absorption system length can be determined by using Table 8-1 for residential systems and Table 8-2 for nonresidential facilities or the formula in section 8.4.2. The residential tables have been calculated for a three bedroom residence, for more or less bedrooms (use the formula in Section 8.4.2). The commercial tables have been calculated for 100 gallons per day (gpd) flow rate, for flows other than 100 gpd, use the formula in Section 8.4.2. Comparison of the soil profile report, percolation rate, and USDA soils report will be used to select the applicable square footage for an absorption system. The application rate (gpd/ft<sup>2</sup>) is the maximum application rate for each soil type listed in Table 8-1 and Table 8-2.

8.4.2 For determining absorption system sizing, the following formula may be used: Wastewater Flow from Chapter 5 (gpd) divided by the application rate in Table 8-1 or Table 8-2( $\text{gpd/ft}^2$ ) = Absorption system length ( $\text{ft}^2$ ) or expressed as a mathematical formula:

$$\frac{\text{gpd}}{\text{gpd/ft}^2} = \text{ft}^2$$

**TABLE 8-1 (Residential)**

<b>Texture</b>	<b>Square feet for three bedroom (ft<sup>2</sup>)</b>	<b>Estimated Perc rate (min/in)</b>	<b>Application rate (gpd/ft<sup>2</sup>)</b>
Gravelly sand or very coarse sands (a)	375	< 3 (a)	0.8(a)
Loamy sand, coarse sand	375	3 - < 6	0.8
Medium sand, sandy loam	500	6 - <10	0.6
Fine sandy loam, loam, silt loam	600	10 - <16	0.5
Very fine sand, sandy clay loam	750	16 - <31	0.4
Clay loam, silty clay loam	1000	31 - <51	0.3
Sandy clay, clay, or silty clay	1500(b)(c)	51 - <121	0.2
Clays, silts, silty clays (soil is reported throughout the soil profile) (USE EVTA BED)	2000(d)	≥ 121	0.15
Clays or silts, pan evaporation rates do not allow for EVTA use		≥ 121	NP

- (a) If the soil for 3 feet below the infiltrative surface is gravelly sand or very coarse sands, or there is less than 6 feet separation between the bottom of the trench and a limiting layer, the trench must be pressured-dosed or other treatment provided as approved by the reviewing authority. If the soil for 3 feet below the infiltrative layer is very gravelly sand or coarser textured, the trench also must be sand-lined or other treatment as approved by the reviewing authority.
- (b) Pressure distribution will be required if more than 500 lineal feet (or 1000 square feet) of distribution line is needed.
- (c) Comparison of soils profile report, percolation rate, and USDA soils report will be used to select applicable square footage.
- (d) Square footage is increased because the trench sidewall is not available in EVTA bed systems.
- NP – Not permitted

**TABLE 8-2 (Nonresidential Facilities)**

Texture	Square feet for 100 gpd (ft <sup>2</sup> )	Estimated Perc rate (min/in)	Application rate (gpd/ft <sup>2</sup> )
Gravelly sand or very coarse sands (a)	125	< 3 (a)	0.8 (a)
Loamy sand, coarse sand	125	3 - < 6	0.8
Medium sand, sandy loam	167	6 - <10	0.6
Fine sandy loam, loam, silt loams	200	10 - <16	0.5
Very fine sand, sandy clay loam	250	16 - <31	0.4
Clay loam, silty clay loam	333	31 - <51	0.3
Sandy clay, clay or silty clay	500(b)(c)	51 - < 121	0.2
Clays, silts, silty clays (soil is reported throughout the soil profile) (USE EVTA BED)	667 (d)	≥ 121	0.15
Clays or silts, pan evaporation rates do not allow for EVTA use	NP	≥ 121	NP

- (a) If the soil for 3 feet below the infiltrative surface is gravelly sand or very coarse sands, or there is less than 6 feet separation between the bottom of the trench and a limiting layer, the trench must be pressured-dosed or other treatment provided as approved by the reviewing authority. If the soil for 3 feet below the infiltrative layer is very gravelly sand or coarser textured, the trench also must be sand-lined or other treatment as approved by the reviewing authority.
- (b) Pressure distribution will be required if more than 500 lineal feet (or 1,000 square feet) of distribution line is needed.
- (c) Comparison of soils profile report, percolation rate, and USDA soils report will be used to select applicable square footage.
- (d) Square footage is increased because the trench sidewall is not available in EVTA bed systems.
- NP – Not permitted

## 8.5 Slope

Gravity-fed and gravity-dosed absorption field distribution lines and trenches must be level. Pressure-dosed distribution lines in a sand filter or absorption system must be level, unless a hydraulic analysis indicates uniform distribution of effluent will occur with a sloped line.

## 8.6 Material

The material used to cover the top of the drain rock must be synthetic drainage fabric or several (two to four) layers of untreated building paper. A 2-inch layer of straw may be substituted when these materials are unavailable. Nonporous plastic or treated building paper may not be used.

## 8.7 Distribution boxes

If a distribution box is used, it must:

- A. Be set level and bedded to prevent settling.

- B. Use some flow control or baffling device to ensure equal distribution of effluent.
- C. Be water tested for equal distribution.
- D. Have each outlet serving an equal length of absorption trench.
- E. If constructed using concrete, the concrete must meet the same requirements as concrete for septic tanks in 7.2.2. Minimum wall, floor, and lid thickness for concrete distribution boxes must be 2 inches. Reinforcement is not required for concrete distribution boxes.
- F. Have an access for inspection provided either through a riser or be marked with iron or a suitable, durable marker.

## 8.8 Construction

- 8.8.1 Pipes leading into and out of septic tanks must have solid walls and have a minimum downward slope of 1/8 inch per foot. Schedule 40 pipe must be used leading into and out of the septic tank in the area of backfill around the tank for a minimum length of at least 10 feet.
- 8.8.2 A manifold must be installed between the septic tank and the absorption trenches. The manifold must be of watertight construction. Distribution boxes may be used in gravity systems in lieu of manifolds. Manifolds must be set level and arranged so that effluent is distributed to an equal length of distribution pipe on both sides of the junction of the inlet pipe to the manifold.
- 8.8.3 When the trenches have been excavated, the sides and bottom must be raked to scarify any smeared soil surfaces. Construction equipment not needed to construct the system should be kept off the area to be utilized for the absorption trench system to prevent undesirable compaction of the soils. Construction must not be initiated when the soil moisture content is high.  
  
Note: If a sample of soil within the working depth can be easily rolled into the shape of a wire or cast, the soil moisture content is too high for construction purposes.
- 8.8.4 At least 6 inches of drain rock must be placed in the bottom of the trench.
- 8.8.5 The distribution pipe must be covered with at least 2 inches of drain rock.
- 8.8.6 The ends of the distribution pipes must be capped or plugged; when they are at equal elevations, they should be connected.
- 8.8.7 Leaching chambers may be used in place of distribution pipe and drain rock in accordance with Chapter 13.

## CHAPTER 9

### DOSING SYSTEM

- 9.1 Dosing includes both gravity dosing and pressure distribution). Pressure distribution should be utilized whenever practical and must be utilized when the design wastewater flow requires more than 500 lineal feet or 1000 square feet of distribution lines. The effective length of the absorption area is the actual length of the trench, which cannot exceed the length of the pipe by more than one-half the orifice spacing.
- 9.2 Dosing may be accomplished with either pumps or siphons. For gravity-dosed systems, the volume of each dose must be at least equal to 75 percent of the internal volume of the distribution lines being dosed.
- 9.3 The dose volume of a pressure-distribution system must be equal to the drained volume of the discharge pipe (pipe leading from the septic tank or dose tank to the distribution lines) and manifold, plus a volume that should be 5 to 10 times the net volume of the distribution pipe. Where the system is designed to operate on a timer, more frequent, smaller doses may be used. The minimum dose volume must still be equal to the drained volume of the discharge pipe and manifold, plus a volume equal to at least two times the distribution pipe volume. Where timers are used, additional controls are necessary to prevent pump operation at low-water level.
- 9.4 The pressure-distribution pipe must be PVC and all fittings must be pressure rated and at least Class 160 PVC pipe. The pipe must have a single row of orifices 1/8-inch diameter or larger in a straight line. Design must include orifices to allow for drainage of the pipe and to allow air to be expelled from the pipe. Maximum orifice spacing must be 5 feet. The size of the dosing pumps and siphons must be selected to provide a minimum pressure of 1 psi (2.3 feet of head) at the end of each distribution line. For orifices smaller than 3/16-inch, the minimum pressure must be 2.16 psi (5 feet of head) at the end of each distribution line.
- 9.5 The duration of each discharge may not exceed 15 minutes to promote uniform distribution.
- 9.6 A hydraulic analysis demonstrating uniform distribution must be provided for all pressure-dosed systems. The analysis must show no greater than 10 percent variation in distribution of dose across the entire absorption system or sand filter/sand mound or hydraulic zone of absorption system or sand filter/sand mound.
- 9.7 Cleanouts must be provided at the end of every lateral. The cleanouts must be within 6 inches of finished grade and should be made with either a long-sweep elbow or two 45-degree bends. A design engineer may specify the use of capped ends that are replaced after flushing if, in his opinion, this is a more feasible option than long sweep cleanouts. A metal location marker or plastic valve cover must be provided for each cleanout.



## 9.8 Dosing tanks

9.8.1 The reserve storage volume of the dosing system must be at least equivalent to 25 percent of the design flow. If a duplex pump station is used, the reserve volume of the dosing system may be reduced. The reserve storage volume is computed from the high-level alarm. The tank must also include adequate liquid capacity for pump submergence and the dose volume. The required volume of the dosing tank must not be considered as any portion of the required volume of the septic tank. The dosing tank must be separated from the septic tank by an air gap to eliminate the possibility of siphoning from the septic tank. Dosing tanks must be provided with access ports sufficiently large to maintain the tank and pumps. Pumps, valves, and other apparatus requiring maintenance must be accessible from the surface without entering the tank or be located in a dry tank adjacent to the wet chamber.

9.8.2 Dosing tanks must meet the material requirements for septic tanks and must be watertight. Dosing tanks utilizing pumps must meet the requirements of Section 6.6.3.

9.8.3 High-water alarms must be provided for all dosing chambers that utilize pumps.

Dosed systems using a siphon should have a dose counter installed to check for continued function of the siphon.

9.9 Pressure distribution systems must be field-tested to verify uniform distribution, which is typically done by a test showing approximately equal squirt height.

**CHAPTER 10****DEEP ABSORPTION TRENCHES**

- 10.1 Deep absorption trenches may be used to break through a less permeable soil layer and allow effluent to infiltrate a deeper and more permeable soil. The bottom of the trench must not be more than 5 feet below natural ground surface.
- 10.2 The site evaluation must include soil profile descriptions of at least two soil observation pits excavated to a minimum depth of 4 feet below the proposed trench bottom. All separation distances in ARM Title 17, chapter 36, subchapter 3 or 9 must be maintained. Monitoring to establish depth to seasonally high ground water may be required where the reviewing authority has reason to believe that ground water is within 6 feet of the bottom of the absorption trench.
- 10.3 Deep absorption trenches must be constructed at least 1 foot into suitable soil.
- 10.4 The bottom (invert) of the distribution pipe for a deep absorption trench must be installed no deeper than 30 inches from the ground surface. The deep trench must be dug 1 foot into the acceptable soil and backfilled with a medium sand (with no more than 3 percent finer than the No. 100 sieve), drain rock, or other approved material to the level of a standard absorption trench. The system must be sized based on the lesser application rate for the soil infiltrative surface or the backfill sand.
- 10.5 Leaching chambers may be used in place of distribution pipe and drain rock in accordance with Chapter 13.

## CHAPTER 11

### AT-GRADE ABSORPTION TRENCHES

#### 11.1 General

At-grade systems may be used only for residential strength wastewater and where the design flow does not exceed 500 gallons per day. At-grade systems must not be installed on land with a slope greater than 6 percent or where the percolation rate is slower than 40 minutes per inch.

#### 11.2 Effective area

11.2.1 The effective area is that area which is available to accept effluent. The effective length of the absorption area is the actual length of the trench, which cannot exceed the length of the pipe by more than one-half the orifice spacing. The effective width is the actual width of the washed rock below the distribution pipe, not to exceed 3 feet for each pipe.

11.2.2 The effective area must be 1.5 times the area required for a standard absorption trench, as described in Table 9-1. Percolation tests must be conducted at a depth of not more than 12 inches below ground surface.

11.3 Pressure distribution is required for at-grade systems.

#### 11.4 Construction

11.4.1 The ground surface where the system is to be placed must be plowed, scarified, or trenched less than 12 inches in depth. Trenching is preferred to plowing or scarifying to prevent horizontal migration of the effluent. There must be at least four feet of natural soil between the scarified layer and groundwater or other limiting layer. The absorption “trench” is constructed by placing drain rock on the scarified ground, with a minimum width of 24 inches at the bottom of the distribution pipe. A minimum of 6 inches of drain rock must be placed under the distribution pipe and a minimum of 2 inches of drain rock must be placed over the distribution pipe. Leaching chambers may be used in place of distribution pipe and drain rock in accordance with Chapter 13.

11.4.2 An appropriate geotextile fabric must be placed over the drain rock and covered with approximately 1 foot of soil.

11.4.3 The fill over the distribution pipe must extend on all sides at least 5 feet beyond the edge of the aggregate below the distribution pipe.

11.4.4 Construction equipment which would cause undesirable compaction of the soils must not be moved across the plowed surface or the effluent disposal area. Construction and/or plowing must not be initiated when the soil moisture content is high.

Note: If a sample of soil within the working depth can be easily rolled into the shape of a wire or cast, the soil moisture content is too high for construction purposes.

## CHAPTER 12

### SAND-LINED ABSORPTION TRENCHES

#### 12.1 General

Sand-lined absorption trenches are used for rapid permeability situations. The trench below the drain rock is lined with sand to provide additional treatment.

#### 12.2 Design

Trenches must be lined with a minimum of 12 inches of fine to medium sand or loamy sand below the constructed absorption system. For rapid permeability situations, the system is to be sized in accordance with Chapter 8 for the soils with percolation rates faster than 3 minutes per inch. For slow permeability situations, the system is to be sized according to the percolation rate of the soils below the trench in accordance with Chapter 8. Where systems are placed in soils with a percolation rate faster than 3 minutes per inch and the underlying soil is gravelly sand or very coarse sands, or the depth to a limiting layer is less than 6 feet from the bottom of the trench, the system must be designed using pressure distribution or other treatment provided as approved by the reviewing authority. If pressure distribution is not used, the side walls of the trench must also be sand-lined a minimum of 6 inches to a point 2 inches above the pipe. As an alternative to placing sand on the side walls of the trench, a 24-inch wide trench with gravity distribution may be constructed with the sand placed such that the elevation of the sand at the center of the trench is at least 6 inches lower than the sand at the edge of the trench (i.e., form a V-ditch with the sand). The sand at the center of the trench must still be at least 12 inches in depth.

#### 12.3 Construction

Where the side walls of the trench must be sand-lined, the trenches must be a minimum of 36 inches wide. Detailed construction specifications will be required showing how side walls will be lined. Sand must not be allowed to enter into the washed gravel zone during construction.

#### 12.4 Leaching chambers may be used in place of distribution pipe and drain rock in accordance with Chapter 13.

## CHAPTER 13

### GRAVELLESS ABSORPTION TRENCHES

#### 13.1 General

Gravelless systems include infiltration or leaching chambers. Absorption trenches for these systems must meet the same requirements as a standard absorption trench, except where specifically modified in this chapter.

#### 13.2 Leaching chambers

13.2.1 Leaching chambers are chambers with an open bottom structurally designed to carry the earth loading.

13.2.2 Leaching chambers must consist of high-density polyolefin or other approved material and be structurally sound for their intended use. Products must maintain at least 90 percent of their original height (vertical deflection shall not exceed 10 percent of original product height) when installed according to manufacturer's installation guidelines and subjected to a 4,000-pound axle load. Vertical deflection is the combined product height deflection due to installation (soil dead load) and the 4,000-pound axle load measured when the tire is directly over the product.

13.2.3 The maximum trench width for chamber is 36 inches. If the trench width exceeds 24 inches, pressure distribution will be required.

13.2.4 The total bottom area of the chamber will be used to calculate the infiltration area. The absorption system size in square footage per Chapter 8 may be reduced in size by 25 percent when using infiltration or leaching chambers. Chambers that are 15 inches in width will be equal to a 18-inch trench width, a 22-inch width chamber will be equal to a 24 inch trench width, and 34-inch width chambers will be equal to a 36 inch width trench for calculating absorption system sizing. The size of the replacement absorption system must be large enough to accommodate a standard absorption system, even though this full area will not be used as part of the primary system.

13.2.5 Chambers may be used in lieu of pipe and drain rock for standard absorption trenches, deep absorption trenches, at-grade absorption trenches, sand-lined absorption trenches, intermittent sand filters, recirculating sand filters, evapotranspiration systems, and evapotranspiration absorption systems.

## CHAPTER 14

### ELEVATED SAND MOUNDS

#### 14.1 Location

- 14.1.1 Separation distances must be measured from the outside of the mound where the topsoil fill meets the natural ground surface or, if the design uses a lesser slope for landscaping purposes, where the toe of the mound would be if the 3:1 slope specified in Section 14.2.7 were used.
- 14.1.2 Elevated sand mounds must be constructed only upon undisturbed, naturally occurring soils.
- 14.1.3 Elevated sand mounds may not be installed on land with a slope greater than 12 percent for soils with a percolation rate faster than 30 minutes per inch nor installed on land with a slope greater than 6 percent on soils with a percolation rate between 30 and 120 minutes per inch. Where trenches are used, the trenches must be installed with the long dimension parallel to the land contour.

#### 14.2 Design

- 14.2.1 *The Wisconsin Mound Soil Absorption System Siting, Design, and Construction Manual*, January 2000, is recommended as a procedural guideline in the design of elevated sand mounds. The requirements of these Standards may be different from those in this reference document, and the requirements of these Standards will govern in those cases. The wastewater strength discharged to the mound must not exceed residential strength wastewater.
- 14.2.2 There must be a minimum total depth of 21 inches of sand fill above the natural soil surface and 12 inches of sand fill between the bottom of the trench or bed and the natural soil surface. Sand must be washed free of silts and clays. The in-place fill material must meet one of the following specifications:

- A. STM C-33 for fine aggregate, with a maximum of 2 percent passing the No. 100 sieve, or
- B. Fit within the following particle size distribution:

Sieve	Particle Size (mm)	Percent Passing
3/8 in	9.50	100
No. 4	4.75	95 to 100
No. 8	2.36	80 to 100
No. 16	1.18	45 to 85
No. 30	0.60	20 to 60
No. 50	0.30	10 to 30
No. 100	0.15	0 to 2

- C. Have an effective size (D10) of 0.15 mm to 0.30 mm with a Uniformity Coefficient (D60/D10) of 4 to 6, with a maximum of 3 percent passing the No. 100 sieve.

- 14.2.3 Drain rock must be washed and range in size from  $\frac{3}{4}$  to 2-1/2 inches. A design engineer may specify a specific size of drain rock if evidence is provided demonstrating the specific size will function equal to the washed rock that ranges in size from  $\frac{3}{4}$  to 2-1/2 inches. Drain rock must be at least 9 inches deep and must be covered with filter fabric.
- 14.2.4 The minimum spacing between trenches must be 4 feet, and the trench width must be 3 feet. Where beds are used, the distribution pipes must be installed parallel to the land contour, with spacing between pipes of at least 3 feet and no more than 5 feet. If using gravelless chambers, the minimum spacing must be 4 feet between the center of each chamber.
- 14.2.5 The required bottom area of the trench or trenches or gravel area for beds must be based upon flows and application rates as determined in Chapter 5 and Chapter 9, with an application rate of 1.0 gallons/day/square foot. A maximum flow per orifice should not create a saturated flow for the depth of the sand fill.
- 14.2.6 The length of the absorption trenches should be at least three times the width of the mound.
- 14.2.7 For soils with percolation rates between 61 and 120 minutes per inch with slopes of 1 to 2 percent, the land area 25 feet on all sides of the elevated sand mound must not be disturbed. A mound system that is constructed on slopes of 3 to 12 percent the effluent dispersal area is considered 50 feet on the down slope side, and the soil in this area may not be removed or disturbed except as specified. For soils with percolation rates faster than 61 minutes per inch, the land area 25 feet down slope of the elevated sand mound may not be removed or disturbed except as specified.
- 14.2.8 The area of sand fill must be sufficient to extend 2 feet beyond the edges of the required absorption area before the sides are shaped to a 3 horizontal to 1 vertical or lesser slope. On sloping sites, the down slope setback must be based on the soil percolation rate (see 14.2.7).
- 14.2.9 The mound must be covered with a minimum of 12 inches (at the center of the mound) and 6 inches (at the edge of the mound) of a suitable medium, such as sandy loam, loamy sand or silt loam, to provide drainage and aeration.

### 14.3 Construction

- 14.3.1 The ground surface where a mound is to be placed must be plowed or scarified, or the sand mound may be keyed into the natural ground 4 inches to 8 inches by removing a portion of the topsoil. When mounds are keyed in, the removed soil must be replaced with the same sand as required for the rest of the mound, and



this sand will not count as part of the required 21 inches of sand in the mound as described in section 14.2.2.

- 14.3.2 Construction equipment that would cause undesirable compaction of the soils must not be moved across the plowed surface or the effluent disposal area. However, after placement of a minimum of 6 inches of sand fill over the plowed area, construction equipment may be driven over the protected surface to expedite construction. Construction and/or plowing must not be initiated when the soil moisture content is high.

Note: If a sample of soil within the working depth can be easily rolled into the shape of a wire or cast, the soil moisture content is too high for construction purposes.

- 14.3.3 Above-ground vegetation must be closely cut and removed from the ground surface throughout the area to be utilized for the placement of the fill material. The fill that is the portion of the 3 to 1 side slope may have trees left in place if, in the opinion of the designer, the trees will enhance the nutrient uptake of the mound. Prior to plowing or scarifying, the dosing-pump discharge line from the pump chamber to the point of connection with the distribution-piping header must be installed. The area must then be plowed, scarified, or keyed in to a depth of 4 to 8 inches, parallel to the land contour, with the plow throwing the soil up slope to provide a proper interface between the fill and natural soils. Tree stumps should be cut flush with the surface of the ground, and roots should not be pulled.
- 14.3.4 The area surrounding the elevated sand mound must be graded to provide for diversion of surface runoff waters.
- 14.3.5 Construction should be initiated immediately after preparation of the soil interface by placing all of the sand fill needed for the mound (to the top of the trench) to a minimum depth of 21 inches above the plowed surface. This depth will permit excavation of trenches to accommodate the 9 inches of drain rock necessary for the distribution piping. After hand leveling of the absorption area, the drain rock should be placed into the trench and hand leveled. An observation port into the gravel is recommended but not required. Filter fabric must be placed over the drain rock to separate the drain rock from the soil cover. After installation of the distribution system, the entire mound should be covered with 6 inches of a finer textured soil material, such as sand loam to loam. A 4- to 6- inch layer of topsoil should then be added. The entire mound should be sloped to drain, either by providing a crown at the center or a uniform slope across the mound, with a minimum slope of 1 percent in either case. The entire mound must be seeded, sodded, or otherwise provided with shallow-rooted vegetative cover to ensure stability of the installation.
- 14.3.6 The installation of the mound system must be inspected by the designer, who must certify that the system has been installed according to the approved design. As-built plans may be required by the reviewing authority prior to final approval of the system.

14.4 Dosing system design

Pressure distribution is required for the elevated sand mound system.

- 14.5 Gravelless chambers constructed in accordance with the requirements of Chapter 13 may be used in lieu of a standard absorption trench. No reduction in absorption system sizing will be allowed for chambers in this application.

**CHAPTER 15****INTERMITTENT SAND FILTERS****15.1 General**

The design criteria must include, but not necessarily be limited to, the type of usage, primary treatment, filter media, filtration rate, and dosage rate. The wastewater strength discharged to the filter must not exceed residential strength wastewater. Sand filters must discharge to a subsurface absorption system. The absorption system used for final disposal may be downsized by 50 percent, as determined by Chapter 8, for soils with percolation rates between 3 and 60 minutes per inch. The absorption system used for final disposal may be downsized by 25 percent, as determined by Chapter 8, for soils with percolation rates between 60 and 120 minutes per inch.

**15.2 Design**

The minimum area in any subsurface sand filter must be based upon a flow as determined in Chapter 5.

15.2.1 The application rate for intermittent sand filters may not exceed 1.2 gal/day/ft<sup>2</sup>.

15.2.2 A minimum of one collection line must be provided. The upper end of the collection line must be provided with a 90-degree elbow turned up, a pipe to the surface of the filter, and a removable cap. The collection line may be level. The bottom of the filter may be flat or sloped to the collection line(s).

15.2.3 Distribution lines must be level and must be horizontally spaced a maximum of 3 feet apart, center to center. Orifices must be placed such that there is at least one orifice for each 4 square feet of sand surface area. All intermittent sand filter dosing must be controlled by a programmable timer. The minimum depth of filter media must be 24 inches. A watertight, 30-mil PVC liner (or equivalent) must be used to line the sand filter.

15.2.4 There must be a minimum of 2 inches of sand fill between the soil surface and/or any projecting rocks and the liner.

15.2.5 Drain rock must be placed in the bottom of the filter to provide a minimum depth of 8 inches in all places and to provide a minimum of 4 inches of material over the top of the collection lines. The drain rock must be covered with a 3-inch thick layer of ¼ inch to 1 inch washed gravel.

Gravel measuring ¼ inch to 1 inch in diameter must meet the following gradation:

Sieve	Particle Size (mm)	Percent Passing
1 inch	25	100
¾ inch	19	50 to 100
3/8 inch	9.5	30 to 80
No.4	4.75	0 to 20
No. 8	2.36	0 to 2
No. 16	1.18	0 to 1

Drain rock must meet the requirements for a standard absorption system, except it must be a minimum of 1 inch in diameter to prevent clogging.

- 15.2.6 A layer of ¼-inch to 1-inch washed gravel must be placed over the sand media, with at least 3 inches placed over the distribution lines and 3 inches placed under the distribution lines.
- 15.2.7 The filter must be covered with 6 inches (at the edges) to 8 inches (at the center) of a suitable medium, such as sand loam or loamy sand, to provide drainage and aeration. The material must be seeded, sodded, or otherwise provided with shallow-rooted vegetative cover to ensure stability of the installation.
- 15.2.8 Monitoring pipes to detect filter clogging must be installed. A means for sampling effluent quality must be provided.
- 15.3 Uniform pressure distribution must be provided for all sand filters in accordance with Chapter 9 except for Section 9.3.
- 15.4 The dose volume must not exceed 0.25 gallons per dose per orifice. The dose frequency must not exceed 1 dose per hour per zone. The dose tank must include a minimum surge volume of one-half the daily flow for individual or shared systems. For multiple-user and public systems, the applicant must demonstrate that a smaller surge volume is adequate. The surge volume is the liquid storage capacity between the "timer-on" float and the "timer-override" float. The "timer-override" float and the "high-water alarm" float may be combined. Note that the surge volume defined here is not the same as the reserve storage volume defined in Chapter 9.
- 15.5 Materials
- 15.5.1 The filter media must be washed and free of clay or silt and meet the following criteria in place.

Sieve	Particle Size (mm)	Percent Passing
3/8 in	9.50	100
No. 4	4.75	95 to 100
No. 8	2.36	80 to 100
No. 16	1.18	45 to 85
No. 30	0.60	15 to 60
No. 50	0.30	3 to 10
No. 100	0.15	0 to 2

- 15.5.2 The material used to cover the top of the sand filter must be separated from the filter by a synthetic drainage fabric.
- 15.5.3 If the system is intended to remove nitrogen, a complete description of the nitrification and denitrification processes must be provided in detail, including the unit where it occurs, carbon source, feed rates, loading rates, pumps, controls, and other mechanisms necessary.
- 15.5.4 A detailed set of plans and specifications and an operation and maintenance manual are required. The operation and maintenance plan must meet the requirements in Appendix D.
- 15.5.5 Gravelless chambers constructed in accordance with the requirements of Chapter 13 may be used in lieu of a standard absorption trench. No reduction in absorption system sizing will be allowed for chambers in this application. The use of chambers will not constitute any additional reduction beyond that listed in 15.1.

## CHAPTER 16

### RECIRCULATING SAND FILTERS

#### 16.1 General

The design criteria must include, but not necessarily be limited to, the type of usage, primary treatment, filter media, filtration rate, and dosage rate. The wastewater strength discharged to the sand filter must not exceed residential strength wastewater. Sand filters must discharge to a subsurface absorption system. The absorption system used for final disposal may be downsized by 50 percent, as determined by Chapter 8, for soils with percolation rates between 3 and 60 minutes per inch. The absorption system used for final disposal may be downsized by 25 percent as approved by the reviewing authority, as determined by Chapter 8, for soils with percolation rates between 60 and 120 minutes per inch.

#### 16.2 Design

16.2.1 A watertight, 30-mil PVC liner (or equivalent) must be used to line the sand filter. There must be a minimum of 2 inches of sand fill between the soil surface and/or any projecting rocks and the liner

16.2.2 Drain rock must be placed in the bottom of the filter, providing a minimum depth of 6 inches in all places and providing a minimum of 2 inches of material over the top of the collection lines. The drain rock must be covered with a 3-inch layer of 1/4-inch to 1-inch washed gravel meeting the gradation chart in 15.2.5. Drain rock for the under-drain lines must meet the requirements for a standard absorption system, except it must be a minimum of 1" in diameter to prevent clogging. The drain rock at the bottom may be replaced with 1/8-inch to 3/8-inch washed gravel, except for 6 inches around the collection pipe.

16.2.3 The depth of filter media must be at least 24 inches. The media must have a maximum particle size of 3/8 inch, and an Effective Size between 1.5 and 2.5 mm with a Uniformity Coefficient of 2 or less, with less than 2 percent passing No. 30 sieve and less than 2 percent passing No. 50 sieve. Filter media measuring 1/8-inch to 3/8-inches in size must be washed and must meet the following gradation.

Sieve	Particle Size (mm)	Percent Passing
1/2 in	12.5	100
3/8 in	9.50	95 to 100
No. 4	4.75	0 to 30
No. 8	2.36	0 to 15
No. 100	0.15	0 to 2

16.2.4 The filter media must be covered with a layer of 1/4-inch to 1 1/2-inch washed gravel at least 6 inches thick. The distribution pipes must be installed in the center of this layer, and all parts of the distribution system must drain between cycles.

- 16.2.5 For sizing the filter, the application rate must not exceed 5 gallons per day per square foot of filter area. This must be computed by dividing the effluent flow rate (not considering the amount of recirculation) by the area (in square feet) of the filter.
- 16.2.6 The liquid capacity of the recirculation tank must be at least 1.5 times the daily design wastewater flow. The recirculation tank must meet the same material and construction specifications as a septic tank. The minimum liquid level in the recirculation tank must be at least 80 percent of the daily flow at all times during the 24-hour daily cycle. The reviewing authority may require systems with large surge flows to have recirculation tanks sized based on the estimated or actual surge flow volume.
- 16.2.7 The filter-effluent line passing through the recirculation tank must be provided with a control device that directs the flow of the filter effluent. The filter effluent will be returned to the recirculation tank for recycling or be discharged to the subsurface absorption system, depending upon the liquid level in the recirculation tank. The recirculation pump(s) must be located at the opposite end of the recirculation tank from the filter return line and the tank inlet(s).
- 16.2.8 The system must be designed with a minimum recirculation ratio of not less than four. Each orifice must be dosed at least every 30 minutes, and the maximum dose volume must be 2 gallons per orifice per dose. All recirculating sand-filter dosing must be controlled with a programmable timer.
- 16.2.9 A minimum of one collection line must be provided. The upper end of the collection line must be provided with a 90-degree elbow turned up, a pipe to the surface of the filter, and a removable cap. The collection line may be flat. The bottom of the filter may be flat or sloped to the collection line(s).
- 16.2.10 Distribution lines must be level and must be horizontally spaced a maximum of 3 feet apart, center to center. Orifices must be placed such that there is at least one orifice for each 4 square feet of filter media surface area.
- 16.2.11 The effluent must be discharged in such a manner as to provide uniform distribution in accordance with Chapter 9 except for Section 9.3.
- 16.2.12 The distribution line must be designed to be protected from freezing. The plans and engineering report will specify how this is accomplished.
- 16.2.13 Topsoil or other oxygen limiting materials must not be placed over the filter.
- 16.2.14 If the recirculation sand filter system is intended to remove nitrogen, a complete description of the nitrification and denitrification processes must be provided in detail, including the unit where it occurs, carbon source, feed rates, loading rates, pumps, controls, and other mechanisms necessary.

16.2.15A detailed set of plans and specifications and an operation and maintenance manual are required. The operation and maintenance plan must meet the requirements in Appendix D.

16.2.16 Gravelless chambers constructed in accordance with the requirements of Chapter 13 may be used in lieu of a standard absorption trench. No reduction in absorption system sizing will be allowed for chambers in this application. The use of chambers will not constitute any additional reduction beyond that listed in 16.1.



**CHAPTER 17****RECIRCULATING TRICKLING FILTERS****17.1 General**

These systems utilize aerobic, attached-growth treatment processes to biologically oxidize organic material and convert ammonia to nitrate (nitrification). A trickling filter consists of a bed of highly permeable medium to which a bio-film adheres. Wastewater is applied to the top of the bed and trickles through the media. Microorganisms in the bio-film degrade organic material and may also nitrify the wastewater. An under-drain system collects the treated wastewater and any sloughed solids and transports it to a settling tank from which it is recirculated back through the trickling filter. The absorption system used for final disposal may be downsized by 50 percent, as determined by Chapter 8, for soils with percolation rates between 3 and 60 minutes per inch. The absorption system used for final disposal may be downsized by 25 percent as approved by the reviewing authority, as determined by Chapter 8, for soils with percolation rates between 60 and 120 minutes per inch.

**17.2 Design**

The design criteria must include, but not necessarily be limited to, primary treatment, filter size, filter media, organic loading, hydraulic loading, dosing rate, and recirculation rate. A discussion of the treatment by the trickling filter must be provided.

17.2.1 Recirculating trickling filter systems must have a means of primary and secondary settling. Additional components such as pump chambers, pumps, controls, recirculation valves, etc. may be used as required.

17.2.2 Filter medium must be resistant to spalling or flaking, and must be relatively insoluble in wastewater. The type, size, depth, volume, and clogging potential of the medium used must be based on published criteria and proven through monitoring and testing (see Section 17.2.8).

17.2.3 The vessel containing the media must be watertight and corrosion resistant.

17.2.4 Waste effluent must be distributed uniformly across the design surface area of the filter.

17.2.5 The means of aerating the recirculation trickling filter must be described. If the means of aeration does not require any mechanical equipment, the system may be considered a passive nutrient reduction system if nutrient reduction is proven through monitoring and testing. If the means of aeration requires mechanical equipment, the system may be considered a nonpassive nutrient reduction system if nutrient reduction is proven through monitoring and testing.

17.2.6 The method of recirculation and recirculation rate must be discussed and justified. The liquid capacity of the recirculation tank must be at least 1.5 times the daily

design wastewater flow. The recirculation tank must meet the same material and construction specifications as a septic tank. The minimum liquid level in the recirculation tank must be at least 80 percent of the daily flow at all times during the 24-hour daily cycle. The reviewing authority may require systems with large surge flows to have recirculation tanks sized based on the estimated or actual surge flow volume.

- 17.2.7 All recirculating trickling systems must operate in a manner such that if a component of the system fails and treatment diminishes or ceases, untreated effluent will not be discharged to the absorption system. Systems must be equipped with adequate alarms.
- 17.2.8 If the recirculation trickling filter system is intended to remove nitrogen, a complete description of the nitrification and denitrification processes must be provided in detail, including the unit where it occurs, carbon source, feed rates, loading rates, pumps, controls, and other mechanisms necessary.
- 17.2.9 The Board will consider the complexity and maintenance required of the system, the stability of the processes, and the monitoring data in determining the adequacy, level of maintenance, and monitoring frequency of the system.
- 17.2.10 Gravelless chambers constructed in accordance with the requirements of Chapter 13 may be used in lieu of a standard absorption trench. No reduction in absorption system sizing will be allowed for chambers in this application. The use of chambers will not constitute any additional reduction beyond that listed in 17.1.
- 17.2.11 A detailed set of plans and specifications and an operation and maintenance manual are required. The operation and maintenance plan must meet the requirements in Appendix D.

**CHAPTER 18****EVAPOTRANSPIRATION ABSORPTION SYSTEMS**

- 18.1 Evapotranspiration absorption (ETA) systems must meet all minimum separation distances as stated in ARM Title 17, chapter 36, subchapter 3 or 9. Distances must be measured from the edge of the system. ETA systems must not be installed on land with a slope greater than 6 percent.
- 18.2 The material in the ETA system must be at least 24-inches deep below the laterals and must be washed coarse sand or drain rock. Testing must be provided to document the void ratio used. In this application, drain rock larger than the orifice size up to a maximum of 6 inches in diameter may be used.
- 18.2.1 ETA systems must utilize pressure distribution design. The beds must be installed with the long dimension parallel to the land contour. A minimum of one lateral per ten feet of bed width is required.
- 18.2.2 The volume of the ETA system must be based upon the pan evaporation, average precipitation for a 10-year period, and soils information from the site. The design must show that total water lost through evaporation and absorption equals or exceeds the total water gained through precipitation and effluent discharge. Due to lack of pan evaporation data, published information on pan evaporation, or data from a similar climatic location, may be used. Typically, storage capacity must be built into the system to accommodate months with low evaporation. The design must include a water balance for a one-year period. Transpiration may be included in the water balance where it can be adequately demonstrated.
- 18.3 Construction
- 18.3.1 Excavation may proceed only when the moisture content is below the soil's plastic limit. If a sample of soil taken at the depth of the proposed bottom of the system forms a wire, instead of crumbling, when one attempts to roll it between the hands, the soil is too wet to excavate.
- 18.3.2 The distribution pipes must have drain rock extending to the bottom of the system and be covered with a minimum of 2 inches of drain rock.
- 18.3.3 The ETA construction must be completed in such a manner to prevent compaction of the bed surface. The maximum depth from the top of the laterals to the surface of the topsoil must not exceed 18 inches.
- 18.3.4 The drain rock must be covered completely with drainage fabric, layers of untreated construction paper, or 2 inches of straw to prevent the soil cover from entering the media.
- 18.3.5 A 4-inch diameter, standing check pipe with both ends capped (only the bottom cap should be glued) must be installed. Several 1/8-inch to 1/4-inch diameter holes

- 18.3.6 A berm surrounding the bed must be constructed to ensure that storm water or other runoff does not enter the bed.
- 18.3.7 The backfill topsoil material must be loamy sand or sandy loam. The topsoil cap must be between 6 to 12 inches in depth. It must be mounded above natural grade, with a minimum of one percent slope, to allow for settling and to direct runoff away from the system.
- 18.3.8 If the system is intended to remove nitrogen, a complete description of the nitrification and denitrification processes must be provided in detail, including the unit where it occurs, carbon source, feed rates, loading rates, pumps, controls, and other mechanisms necessary.
- 18.3.9 A detailed set of plans and specifications and an operation and maintenance manual are required. The operation and maintenance plan must meet the requirements in Appendix D.

**CHAPTER 19****EVAPOTRANSPIRATION SYSTEMS****19.1 Location**

Evapotranspiration (ET) systems must meet all minimum separation distances in ARM Title 17, chapter 36, subchapter 3 or 9. Distances must be measured from the edge of the liner. ET systems may not be installed on land with a slope greater than 6 percent.

19.2 The material in the ET system must be at least 24 inches deep and must be washed coarse sand or drain rock. Testing must be provided to document the void ratio used.

**19.3 Design**

19.3.1 A watertight liner of at least 30-mil thickness must be installed to contain the effluent. Seams for a synthetic liner must be completely sealed in accordance with the manufacturer's recommendations.

19.3.2 There must be a minimum of 2 inches of sand fill between the soil surface and/or any projecting rocks and the liner.

19.3.3 Drain rock must be placed around the distribution pipes.

19.3.4 The pipes must be installed with the long dimension parallel to the land contour. The minimum spacing between pipes must be 6 feet, and the maximum spacing must be 8 feet.

19.3.5 The volume of the ET system will be based upon 90 percent of the pan evaporation, minus effluent, plus precipitation for the wettest year in a 10-year period. In the wettest year in a 10-year period, the design must show that total water lost through evaporation equals or exceeds the total water gained through precipitation and effluent discharge. Due to lack of pan evaporation data, published information on pan evaporation, or data from a similar climatic location, may be used. Typically, storage capacity must be built into the system to accommodate months with low evaporation. The design report must include a water balance for a one-year period.

**19.4 Construction**

19.4.1 Construction should be initiated immediately after preparation of the liner by placing all of the fill needed to a minimum depth of 24 inches. Trench sidewalls should be protected by placing synthetic filter fabric as a liner when the media is coarse sand.

19.4.2 The bottom of each trench or bed must be level throughout to ensure uniform distribution of effluent.

- 19.4.3 The distribution pipes must have 6 inches of drain rock underneath and must be covered with a minimum of 2 inches of drain rock.
- 19.4.4 The gravel or rock filter media must be covered completely with synthetic drainage fabric to prevent the soil cover from entering the media.
- 19.4.5 A 4-inch diameter, standing check pipe with both ends capped (only the bottom cap should be glued) must be installed. Several 1/8-inch to 1/4-inch diameter holes should be drilled in the bottom of the pipe and covered with filter cloth. Check pipe should be anchored in fill material to prevent the pipe from being pulled out of the bed.
- 19.4.6 The backfill material must be loamy sand or sandy loam. The topsoil cap must be between 6 to 12 inches in depth. It must be mounded above natural grade, with a minimum of one percent slope, to allow for settling and to direct runoff away from the system.
- 19.4.7 A berm surrounding the bed must be constructed to ensure that storm water or other runoff does not enter the bed. The berm must be 6 to 12 inches above the natural grade of the site.
- 19.4.8 If the system is intended to remove nitrogen, a complete description of the nitrification and denitrification processes must be provided in detail, including the unit where it occurs, carbon source, feed rates, loading rates, pumps, controls, and other mechanisms necessary.
- 19.4.9 A detailed set of plans and specifications and an operation and maintenance manual are required. The operation and maintenance plan must meet the requirements in Appendix D.

## CHAPTER 20

### AEROBIC WASTEWATER TREATMENT UNITS

#### 20.1 General

Aerobic treatment units (ATUs) are concrete tanks or other containers of various configurations that provide for aerobic biodegradation or decomposition of the wastewater components by bringing the wastewater in contact with air by some mechanical means. A means of securing continuous operation and maintenance of these systems must be approved by the Board prior to Board approval of the ATU system. ATU systems must be recorded on the property Deed of Trust.

#### 20.2 Types of devices/systems

For the purposes of these Standards, there are two types of aerobic devices or systems:

20.2.1 Those devices or systems designed to treat residential strength wastewater.

20.2.2 Those devices or systems designed to treat high-strength wastewater to at least residential strength wastewater.

#### 20.3 Design of the Individual Treatment Device

20.3.1 ATUs are exclusively proprietary products representing a wide variety of designs, materials, and methods of assembly

#### 20.3.2 Reliability and performance

20.3.2.1 The individual treatment device must have been tested by a laboratory independent from the manufacturer of that device.

A. For Type 1, aerobic treatment devices (those designed to treat residential strength wastewater), the testing criteria and performance must be at least equal to that specified and required in NSF Standard No. 40 for Class 1 certification.

B. For Type 2, aerobic treatment devices (those designed to treat high-strength wastewater to at least residential strength wastewater), the testing criteria must at least be equal to that specified and required in NSF Standard No. 40, with a stress testing regime designed to evaluate the device under adverse conditions consistent with those anticipated for the specific wastewater treatment application(s). Device treatment performance must be at least equal to residential strength wastewater.

20.3.2.2 An adequate form of positive filtration will be required between the treatment device and the disposal component to prevent excessive solids from being carried over into the disposal component during periods of bulking.

### 20.3.3 Primary Treatment

20.3.3.1 For those ATUs using an external trash tank or septic tank (single or multiple compartment) to pretreat wastewater during performance testing:

- A. A tank of at least equivalent design and volume capacity is required as a component of the wastewater system.
- B. A conventional two-compartment tank may be used in the place of a single compartment tank, if consistent with the manufacturer's recommendations.

20.3.3.2 For those ATUs not using an external trash tank or septic tank to pretreat wastewater, primary treatment must be provided.

### 20.3.4 Advanced treatment (level 2)

20.3.4.1 Unless otherwise addressed by rule for level 2 treatment, if the aerobic treatment unit is intended to attain a higher level of treatment than a septic tank, monitoring data must be submitted from at least three existing systems operating in similar climates and treating wastewater similar in characteristics to that to be treated. Monitoring must include at least six cumulative years of data, with one system being in operation at least three years. Minimum data submitted must include information on time to reach steady state conditions, required maintenance and operation, average daily flow, and influent values for each parameter (if other than residential strength wastewater), and effluent values for each parameter. Sample analysis is to be done by an independent laboratory.

20.3.4.2 If the system is intended to remove nitrogen, a complete description of the nitrification and denitrification processes must be provided in detail, including the unit where it occurs, carbon source, feed rates, loading rates, pumps, controls, and other mechanisms necessary.

20.3.4.3 The monitoring frequency must be sufficient to establish the treatment efficiency and response to varying wastewater flows, strengths, and climatic condition.

20.3.4.4 The Board will consider the complexity and maintenance required of the system, the stability of the processes, and the monitoring data in determining the adequacy, level of maintenance, and monitoring frequency of the system.



20.4 Access ports

20.4.1 Ground level access ports must be sized and located to facilitate installation, removal, sampling, examination, maintenance, and servicing of components or compartments that require routine maintenance or inspection.

20.4.2 Access ports must be protected against unauthorized intrusion. Acceptable protective measures include, but are not limited to, padlocks or covers that can be removed only with tools.

20.5 Failure sensing and signaling equipment

20.5.1 The ATU must possess a mechanism or process capable of detecting:

- A. Failure of electrical and mechanical components that are critical to the treatment process, and
- B. High liquid level conditions above the normal operation specifications.

20.5.2 The ATU must possess a mechanism or process capable of notifying the system owner of failure identified by the failure sensing components. The mechanism must deliver a visible and audible signal.

20.6 Installation

ATUs must be installed:

- A. According to the manufacturer's instructions in compliance with tribal and state rules, and
- B. By an authorized representative of the manufacturer and an installer who is approved by the reviewing authority.

20.7 Sampling ports

20.7.1 A sampling port must be designed, constructed, and installed to provide easy access for collecting a water sample from the effluent stream. The sampling port may be located within the ATU or other system component (such as a pump chamber) provided that the wastewater stream being sampled is representative of the effluent stream from the ATU.

20.7.2 For ATUs using effluent disinfection to meet the fecal coliform criteria, the sampling port must be located downstream of the disinfection component (including the contact chamber if chemical disinfection is used) so that samples will accurately reflect disinfection performance.

20.7.3 Sampling ports must be protected against unauthorized intrusion, as described in 20.4.2.

## 20.8 Design of the disposal component

20.8.1 If using soil absorption for disposal, the size of the effluent absorption area must be the same as for a standard absorption trench system. No reduction in absorption system area may be allowed. If monitoring data is collected as required in 20.3.4, and that data clearly indicates the following effluent quality parameters are met, the absorption system size may be reduced by 50 percent:

BOD<sub>5</sub> – 30-day average of less than 10 mg/L

TSS – 30-day average of less than 10 mg/L

Fecal coliform – 30-day geometric mean less than 800 coliform/100 ml

20.8.2 If an absorption system size reduction is allowed, adequate space must still be provided for an absorption area (and replacement area) large enough for a standard absorption trench system.

20.9 A detailed set of plans and specifications and an operation and maintenance manual are required. The operation and maintenance plan must meet the requirements outlined in Appendix D.

### 20.9.1 Service-related obligations

20.9.1.1 In the event that a mechanical or electrical component of the ATU requires off-site repair, the local authorized representative must maintain a stock of mechanical and electrical components that can be temporarily installed until repairs are completed if repairs are expected to render the unit inoperable for longer than 24 hours.

20.9.1.2 Emergency service must be available within 48 hours of a service request.

20.9.1.3 The ATU service provider must possess adequate knowledge and skill regarding on-site wastewater treatment, effluent disposal concepts, and system function. The service provider must be:

- A. Product-certified by each manufacturer for any ATUs they intend to serve,
- B. Able to provide documentation of product certification as evidence upon request, and
- C. Able to demonstrate competency in the servicing (O & M) of on-site wastewater systems.

20.9.1.4 O & M service contracts establish the initial and on-going relationship between the O & M service provider and system owner. The service provider may be the ATU manufacturer/service representative of the system owner. The contract must identify the roles and responsibilities assigned to the service provider. The specifics of O & M service contracts may vary product-to-product and locality-to-locality, but all O & M service contracts must include information/conditions of agreement such as:

- A. Owner's name and address;
- B. Property address and legal description;
- C. Local health department permit requirements;
- D. Specific contracts/owner address, service provider, and local health department;
- E. Detail of service to be provided;
- F. Schedule of service provider duties;
- G. Cost and length of service contract/time period;
- H. Details of product warranty;
- I. Owner's responsibilities under the contract and routine operation of the wastewater treatment and disposal system;
- J. Document recording, such as notification to the mortgage-holder or attachment to the deed of trust.

20.9.1.5 O & M service record keeping and reports required for the local health jurisdiction must specify:

- A. What data is to be reported,
- B. To whom the reports are to be submitted,
- C. The format for presenting information, and
- D. The frequency of reporting.

**CHAPTER 21****CHEMICAL NUTRIENT-REDUCTION SYSTEMS**

## 21.1 General

A means of securing continuous maintenance and operation of the system must be approved by the reviewing authority.

## 21.2 Design

Specific design criteria will not be outlined in this document due to the various alternatives and design complexity involved. The EPA manual, *On-Site Wastewater Treatment Systems Manual* (February 2002), pages TFS-41 to 52, will be used as a guideline for the design of these systems.

## 21.3 Maintenance and Operation

A detailed set of plans and specifications and an operation and maintenance manual are required. The operation and maintenance plan must meet the requirements outlined in Appendix D.

## CHAPTER 22

### EXPERIMENTAL SYSTEMS

#### 22.1 General

Treatment systems not listed in these Standards may receive a waiver for use as experimental systems. Experimental systems must only be considered under the following conditions:

- 22.1.1 The applicant must provide adequate information to the reviewing authority that ensures the system will effectively treat the wastewater in a manner that will prevent ground water contamination and will meet all of the requirements of ARM Title 17, chapter 36, subchapter 9. Failure to meet the requirements of ARM Title 17, chapter 36, subchapter 9 or any waiver, deviation, or variance conditions shall invalidate the approval and be grounds to order cessation of use of the system and buildings that the system serves.
  - 22.1.2 The applicant must include a complete description of a scientific evaluation process to be carried out by a scientific, educational, governmental, or engineering organization.
  - 22.1.3 The applicant must provide for any funding necessary to provide adequate design, installation, monitoring, and maintenance.
  - 22.1.4 The system must be designed by a professional engineer, sanitarian, or other professional acceptable to the reviewing authority.
- 22.2 The reviewing authority may place any requirements or restriction it deems necessary on an experimental system. All requirements for conventional systems must apply to experimental systems except those specifically exempted by the waiver. An approval to construct an experimental system is not transferable from person to person. Applicants must provide for inspections to be made by persons acceptable to the reviewing authority. Monitoring and inspections must be conducted as required by the reviewing authority. The monitoring and inspection results must be submitted to the reviewing authority. The reviewing authority may require a redundant system (i.e., a system that meets the requirements of another chapter of these Standards) be installed in parallel with the experimental system.
- 22.3 Any person who sells a property containing an experimental system must disclose all permit, monitoring, and maintenance requirements to the buyer.
- #### 22.4 Maintenance and operation
- 22.4.1 Continuous maintenance and operation must be provided for the life of the system by a management entity acceptable to the reviewing authority. The type of entity required and the degree of management will be commensurate with the complexity of the system and the site conditions.

- 22.4.2 The management entity must be responsible for monitoring the operation of the system.
  - 22.4.2.1 Frequent inspections (as determined by the reviewing authority) of the mechanical equipment must be provided during the first 90-day start-up period.
  - 22.4.2.2 The routine inspection schedule must be quarterly at a minimum.
  - 22.4.2.3 Records, both of maintenance and performance, must be kept and submitted annually to the reviewing authority department.
  - 22.4.2.4 All manufacturers of experimental systems must provide a maintenance and operation manual, which must be followed. The manual must contain detailed instructions on proper operation and maintenance procedures, including safety, a replacement parts list, public health considerations, limitations of the unit, detection of a malfunction, and expectations from a well functioning unit.
  - 22.4.2.5 Notification to the service provider and the local health department must be made within two business days if, for some reason, a unit fails to function properly.

## 22.5 Advance treatment

- 22.5.1 Unless otherwise addressed by rule for level 2 treatment, if the experimental system is intended to attain a higher level of treatment than a septic tank, monitoring data must be submitted from at least three existing systems operation in similar climates and treating wastewater similar in characteristics to that to be treated. Monitoring must include a least six cumulative years of data, with one system being in operation at least three years. Minimum data submitted must include information on time to reach steady-state conditions, required maintenance and operation, average daily flow, and influent and effluent values for each parameter. Sample analysis is to be done by an independent laboratory.
- 22.5.2 The monitoring frequency must be sufficient to establish the treatment efficiency and response to varying wastewater flows, strengths, and climatic conditions.
- 22.5.3 The Board will consider the complexity and maintenance required of the system, the stability of the processes, and the monitoring data in determining the adequacy, level of maintenance, and monitoring frequency of the system.

**CHAPTER 23****ABSORPTION BEDS****23.1 General**

Absorption beds may be used as replacement wastewater treatment systems in existing lots where standard absorption trenches cannot be utilized. Absorption beds may be used as replacement for previously approved seepage pits when the reviewing authority has completed rewrite of the certificate of subdivision approval. Absorption beds may not be used to create new lots without an existing wastewater treatment system that has been in continuous use and was permitted by the reviewing authority.

**23.2 Absorption beds must meet the following design requirements.**

23.2.1 Absorption beds must be more than three feet wide, and must be at least two feet in depth, unless a limiting condition requires a lesser depth, but in no case may the bed be less than one foot in depth.

23.2.2 Absorption beds must not be constructed on unstabilized fill.

23.2.3 The excavation must be filled with a minimum of six inches of washed rock or six inches of ASTM C-33 sand.

23.2.4 Pressure dosing must be used unless another method of distribution is approved by the reviewing authority in accordance with Chapter 8.

**23.4 Distribution piping – pressure dosing**

23.4.1 Pressure dosing shall be in accordance with Chapter 9 and the following conditions shall also apply.

23.4.2 A minimum of two distribution pipes shall be installed.

23.4.3 Distribution piping should be separated by a minimum of 30 inches and a maximum of 48 inches.

23.4.4 Distribution piping should be covered by two inches of drain rock except when designed in accordance with Section 23.5.

23.4.5 Distribution piping should be installed 18 to 30 inches from the edge of the excavation..

23.4.6 Distribution piping shall be installed to ensure uniform distribution of effluent.

23.4.7 Drain rock must be covered with geofabric, or, if geofabric is unavailable, a straw layer of at least four inches in depth.

- 23.4.8 Backfill for beds should be loam type soils that do not form an impervious seal. The use of high clay or silt content soils for back filling should be avoided.
- 23.4.9 Absorption bed sizing is determined by flows in Chapter 5, the application rates in Chapter 9, or using the maximum area available. Absorption beds shall not be installed with soils that have percolation rates of greater than 60 minutes per inch.
- 23.4.10 Infiltration chambers may be used in absorption beds if the entire excavation has chambers installed. Infiltration chambers must be installed in accordance with this chapter and Chapter 13. No change in application rate or reduction in sizing will be allowed for chambers in absorption beds.



**CHAPTER 24****HOLDING TANKS**

## 24.1 General

Holding tanks are used to hold wastewater until pumping occurs by a licensed septic tank pumping service and wastewater is disposed at an approved location.

## 24.2 Holding tanks are septic tanks that have no standard outlets and are modified to provide full time access for pumping.

24.2.1 Holding tanks must have a minimum capacity of 1000 gallons. Larger tank capacity may be required by the reviewing authority as determined on a case by case basis.

24.2.2 Holding tanks must meet the construction standards of chapter 7 except that no outlet opening shall be cast in the tank walls. Holding tanks installed where the seasonal groundwater table may reach any portion of the tank must be a single pour (seamless) tank design.

24.2.3 Holding tanks must have an audible or visual warning alarm that signals when the tank level has reached 75 percent of capacity. The tank must be pumped as soon as possible after the alarm is triggered and before the tank reaches 100 percent capacity.

24.2.4 Holding tanks must be stabilized against flotation if the tank is installed where seasonal groundwater may reach any portion of the tank.

24.2.5 Holding tanks must be waterproofed against infiltration and exfiltration.

24.2.6 Holding tanks must meet the separation distances and other requirements in the subdivision and county minimum standard regulations, ARM 17.36.101 through 1107.

**CHAPTER 25****SEALED (VAULT) PIT PRIVY****25.1 General**

A sealed pit privy is an underground vault for the temporary storage of non-water-carried wastewater. The vault must be pumped periodically and the wastewater disposed at a secondary treatment site.

**25.2 Construction**

25.2.1 The vault must be watertight, constructed of durable material and not subject to excessive corrosion, decay, frost damage or cracking.

25.2.2 The vault may be used in a floodplain or high groundwater area at public recreational facilities operated by governmental institutions provided that the floor surface is one foot above the floodplain elevation and the weight of the structure is adequate to prevent the vault from floating during high groundwater or a flood even when the vault is empty.

25.2.3 The access or pumping port should be located outside of any structure and should have a minimum diameter of 8 inches. This access must have a tight, locking lid.

25.2.4 The vault may be a modified septic tank with the inlet and outlet opening sealed. The toilet structure over the tank vault must meet construction standards for a pit privy.

**25.3 Maintenance**

The vault must be pumped as needed, prior to reaching the maximum capacity of the tank, by a licensed septic tank pumper.

**CHAPTER 26****UNSEALED PIT PRIVY****26.1 General**

A pit privy is a building containing a stool, urinal or seat over an excavation in natural soil for the disposal of undiluted black wastes (toilet wastes). Pit privies shall serve structures that have no pumping fixtures or running water (piped water supply). Pit privies are framed structures used for disposal of black wastes (toilet wastes) that meet setback distances of standard absorption trench excavations.

**26.2 Construction**

26.2.1 Pit privies shall be located to exclude surface water.

26.2.2 Pit privy buildings must be constructed to prohibit access to insects with openings no greater than 1/16 inch.

26.2.3 The pit must be vented with a screened flue or vent stack having a cross sectional area of at least 7 inches per seat and extending at least 12 inches above the roof of the building.

26.2.4 The pit privy must be constructed on a level site with the base of the building being at least 6 inches above the natural ground surface as measured 18 inches from the sides of the building.

26.2.5 The bottom of the pit should be between three feet (3') and six feet (6') below the original ground surface.

**26.3 Abandoning Pit Privies**

26.3.1 A pit privy should be abandoned when the waste comes within 16 inches of the ground surface.

26.3.2 A pit privy building should be either dismantled or moved to cover a new pit.

26.3.3 The pit shall be filled with soil, free of rock, with sufficient fill material to allow for 12 inches or more of settling. The site shall be marked.

**CHAPTER 27****SEEPAGE PITS****27.1 General**

Seepage pits may be used for replacement systems only and may not be constructed in unstabilized fill. Seepage pits are excavations in which a concrete ring(s) is placed and filled around the concrete ring with drain rock to receive effluent from the septic tank.

**27.2 Design**

27.2.1 Seepage pits shall be sized according to the permeability of the vertical stratum where wastewater will contact the soils.

27.2.2 A seepage pit that is excavated to a four-foot depth and a five-foot diameter shall be equivalent to 50 square feet of absorption area.

27.2.3 A seepage pit shall have a concrete ring with a minimum diameter of three feet and a minimum height of 3.5 feet. Concrete rings can be stacked to provide for additional absorption area.

27.2.4 The seepage pit shall have six inches of drain rock placed in the bottom of the excavation for bedding.

27.2.5 The concrete ring shall have a minimum of one foot of drain rock placed on the out side of the ring. A concrete lid shall be installed on each concrete ring or on the top most concrete ring if stacked.

27.2.6 Schedule 40 piping, or equivalent strength, shall be used to connect the septic tank or the distribution box to the concrete ring(s).

27.2.7 Drain rock must be covered with geofabric or synthetic drainage fabric, or if geofabric is unavailable, a straw layer of a least five inches in depth.

27.2.8 Effluent distribution to multiple seepage pits shall use a distribution box.

27.2.9 Seepage pits shall not be installed in soils that have percolation rates greater than 60 minutes per inch.

**APPENDIX A****PERCOLATION TEST PROCEDURE 1**

Properly conducted percolation tests are needed to determine absorption system site suitability and to size the absorption system. Percolation tests must be conducted within the boundary of the proposed absorption system. The percolation test must be completed by an individual approved by the reviewing authority.

**Test hole preparation**

1. Dig or bore holes 6 to 8 inches in diameter, with a maximum size of 10 inches, with vertical sides. The depth of the holes must be at the approximate depth of the proposed absorption trenches, typically 24 inches below ground. If hole is larger than 6 to 8 inches, place a piece of 4-inch diameter, perforated pipe inside the hole, and fill the space between the pipe and the walls of the hole with drain rock.
2. Roughen or scratch the bottoms and sides of the holes to provide natural unsmearred surfaces. Remove loose material. Place about 2 inches of  $\frac{3}{4}$ -inch washed gravel in the bottom of holes to prevent scouring during water addition.
3. Establish a reference point for measurements in or above each hole.

**Soaking**

1. Fill holes with clear water to a level at least 12 inches above the gravel.
2. If the first 12 inches of water seeps away in 60 minutes or less, add 12 inches of water a second time. If the second filling seeps away in 60 minutes or less, the percolation test should be run in accordance with the sandy soil test; proceed immediately with that test. As an alternative to proceeding with the test, if these conditions are met and documented, the percolation rate may be considered to be faster than 3 minutes per inch, and the test may be stopped.
3. If either the first 12 inches or the second 12 inches does not seep away in 60 minutes, the percolation test must be run in accordance with the test for other soils. In these other soils, maintain at least 12 inches of water in the hole for at least 4 hours to presoak the hole.

**Test**

1. Sandy soils (percolation rate of 10 minutes per inch or faster)

Add water to provide a depth of 6 inches above gravel. Measure water level drop at least four times, in equally spaced intervals, in a 1 hour time period. Measure to nearest  $\frac{1}{4}$  inch. Refill to 6-inch depth after each measurement. Do not exceed 6-inch depth of water. Use final water-level drop to calculate rate.

2. Other soils (percolation rate slower than 10 minutes per inch).

Remove loose material on top of gravel. Add water to provide a depth of 6 inches above gravel. Measure water levels for a minimum of 1 hour. A minimum of four measurements must be taken. The test must continue until two successive readings yield percolation rates that do not vary by more than 15 percent, or until measurements have been taken for four hours. Do not exceed 6-inch depth of water. Use final water-level drop to calculate rate.

### **Records**

Record the following information on the attached form, and include as part of the application:

- Date(s) of test(s),
- Location, diameter, and depth of each test hole,
- Time of day that each soak period began and ended,
- Time of day for beginning and end of each water-level drop interval,
- Each water-level drop measurement,
- Calculated percolation rate,
- Name and signature of person performing test,
- Name of owner or project name.

### **Rate Calculation**

Percolation Rate = Time interval in minutes/Water-level drop in inches

**FORT PECK TRIBAL BOARD OF HEALTH PERCOLATION TEST FORM**

Owner Name \_\_\_\_\_

Project Name \_\_\_\_\_

Lot of Tract Number \_\_\_\_\_ Test Number \_\_\_\_\_

Diameter of Test Hole \_\_\_\_\_ Depth of Test Hole \_\_\_\_\_

Date and Time Soak Period Began \_\_\_\_\_ Ended \_\_\_\_\_

Date Test Began \_\_\_\_\_

Distance of the reference point above the bottom of the hole \_\_\_\_\_

Test Results

Start Time of Day	End Time of Day	Time Interval (Minutes)	Initial Distance Below Reference Point	Final Distance Below Reference Point	Drop in Water Level	Percolation Rate (minutes/inch)

I certify that this percolation test was done in accordance with Assiniboine and Sioux Tribes Standards for Subsurface Wastewater Treatment Systems, Appendix A.

\_\_\_\_\_  
 Name (printed)                      Signature                      Date

\_\_\_\_\_  
 Company

## PERCOLATION TEST PROCEDURE II

The consultant may use either or both tests in choosing the value used in site evaluation. The results of all tests must be reported in the application, and the procedure used must be specified. Test Procedure II requires substantially more data be obtained at well-defined intervals. If this information is not properly obtained, the results are not valid and will not be accepted. The percolation test must be completed by an individual approved by the reviewing authority.

*Note:* This test is run without a pre-soak time period, therefore results can be obtained in a shorter time period.

### Depth of tests

Tests must be taken entirely within the most dense, least permeable soil identified at the approximate depth of the absorption trench, as identified from the test pit(s) on the site.

### Type of test hole

The test hole must be unlined, shaped like a vertically oriented cylinder with a diameter of 6 to 8 inches.

### Preparation of test hole

Using a sharp instrument, carefully scrape the side walls of the hole to remove any smeared surface. This is particularly important in soils having a significant silt or clay content. Place 1 inch of clean fine to medium gravel in the bottom of the hole to reduce scouring. After this process the evaluator may place a perforated pipe at least 4 inches in diameter in the center of the hole and surround it with the same gravel that is in the bottom. This must be done if the type of test hole required above cannot be constructed. This process will help keep the side walls from falling and causing the bottom to clog. When possible, instead of pouring water directly from a bucket into the hole, use a hose to siphon water out of a suitably located reservoir; this will provide a higher degree of control over the rate of water entering the hole, thereby minimizing scouring.

### Percolation test measurements

To begin the test, fill the hole with water up to a level 6 inches above the stone and allow it to drop the distance specified in the table below for seven consecutive runs. After each run, bring the water up to the 6-inch level. The time of each run, the refill time between each run, and the total elapsed time must be accurately recorded.

	Soil Texture		
	Coarse to Medium Sand	Fine Sand to Silt Loam	Silts to Clay Loam
Anticipated Percolation Rate (min/inch)	1-10	10-60	60-120
Drop (inches)	2	1	0.5



## Determining the percolation rate

The rate of drop for each run is plotted on graph paper, with logarithmic scales on both axes (log/log graph paper) against the cumulative time of the seven runs, including the refill time. The best straight line is fitted to the seven data points and extrapolated out to one day (1,440 minutes) of cumulative time. The rate of drop after 1,440 minutes is the percolation rate. A mathematical computation of the line of best fit of the seven or more data values may be used in lieu of the graphical method. The reviewing authority may require the mathematical computation of the line of best fit.

A typical data sheet is shown below, with units for each column noted below the table.

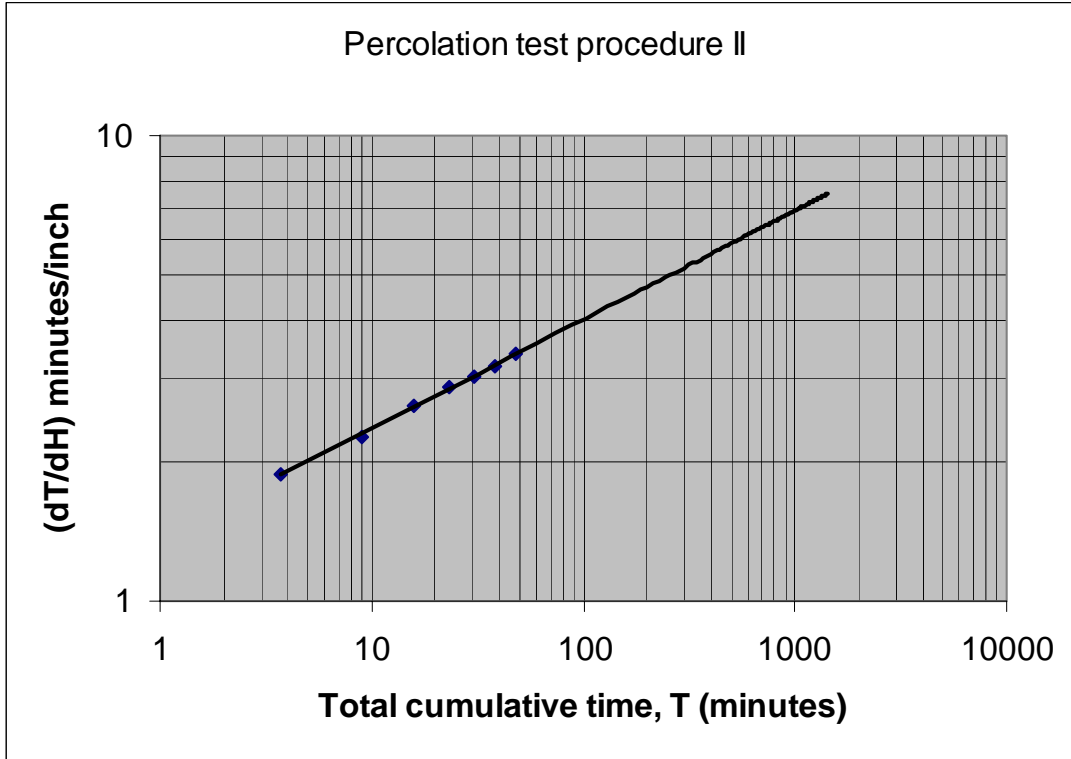
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
				t	T	H	
Test #	Time @ Begin of Test Run	Time @ End of Test Run	Fill Time (sec)	Time for Specific Drop (mm)	Total Time Since Start of Test (min)	Total Drop Since Start of Test (inches)	dT/dH min/inch
1	3:32:15	3:36:00	30	3.75	3.75	2	1.88
2	3:36:30	3:41:15	45	5.25	9.00	4	2.25
3	3:42:00	3:48:00	10	6.75	15.75	6	2.63
4	3:48:10	3:55:15	45	7.25	23.00	8	2.88
5	3:56:00	4:03:30	30	7.25	30.25	10	3.03
6	4:04:00	4:11:45	35	8.25	38.50	12	3.21
7	4:12:20	4:20:45		9.00	47.50	14	3.39

Common units:

1. Number of test cycle (show all if more were run)
2. Start of test periods in hours, minutes, seconds
3. End of test periods in hours, minutes, seconds
4. Time to refill the test hole with water (seconds)
5. t – time in minutes to drop the predetermined distance for the test period
6. T – total cumulative time in minutes since the start of the first test
7. H – total measured drop in inches of water in the test hole since the start of the test
8. dT/Dt – the rate of water drop in minutes per inch

## Test results

Based on the graphical plot show below, the percolation rate at 1,440 minutes is about 7.5 minutes per inch. This is the design percolation rate.



## APPENDIX B

### SOILS AND SITE CHARACTERIZATION

Accurate description of soil types must be based on information within Appendix B for evaluating the soils in the area of proposed absorption system to determine if suitable conditions for wastewater treatment and disposal exist. Appendix B provides guidance for reporting soil characteristics using terminology generally accepted by the field of soil science.

#### Definitions

*Bedrock* means material that cannot readily (easily) be excavated by power equipment, or material that is jointed, fractured, or has cohesive structure that does not allow water to pass through or has insufficient quantities of fines within fractures or layers to allow for the adequate treatment of wastewater.

*Escarpment* means any slope greater than 50 percent, which extends vertically 6 feet or more as measured from toe to top.

*Limiting layer* means bedrock, an impervious layer or seasonally high ground water.

*Mottling or redoximorphic features* means soil properties associated with wetness that results from the reduction and oxidation of iron and manganese compounds in the soil after saturation with water and desaturation, respectively.

*Natural soil* means soil that has developed in place through natural processes, and where no fill material had been added.

*Seasonally high ground water* means the minimum depth, at any season of the year, to the upper surface of the zone of saturation, measured from the ground surface, as measured in an unlined hole or perforated monitoring well during the time of year when the water table is the highest. The term includes the upper surface of a perched water table.

*Slope* means the rate that a ground surface declines in feet per 100 feet. It is expressed as percent of grade.

*Soil profile* means a description of the soil to a depth of 7 to 10 feet using the USDA soil classification system.

*Soil texture* means the amount of sand, silt, or clay, measured separately in soil mixture.

#### Soil Texture

Soil texture refers to the weight proportion of the separates for particles less than 2 mm, as determined from a laboratory particle-size distribution. Field estimates should be checked against laboratory determinations, and field criteria should be adjusted as necessary. Field criteria for estimating soil texture must be chosen to fit the soils of the area. Sand particles feel gritty and can be seen individually with the naked eye. Silt particles cannot be seen individually

without magnification; they have a smooth feel to the fingers when dry or wet. In some places, clay soils are sticky; in others, they are not. Soils dominated by montmorillonite clays, for example, feel different than soils that contain similar amounts of micaceous or kaolinitic clay.

Definitions of the soil texture classes according to distribution of size classes of mineral particles less than 2 mm in diameter are as follows:

**Sands:** 85 percent or more sand and the percentage of silt plus 1.5 times the percentage of clay is 15 or less.

*Coarse sand:* 25 percent or more very coarse and coarse sand and less than 50 percent any other single grade of sand.

*Sand:* 25 percent or more very coarse, coarse, and medium sand (but less than 25 percent very coarse and coarse sand) and less than 50 percent either fine sand or very fine sand.

*Fine sand:* 50 percent or more fine sand; or less than 25 percent very coarse, coarse, and medium sand and less than 50 percent very fine sand.

*Very fine sand:* 50 percent or more very fine sand.

**Loamy sands:** At the upper limit, 85 to 90 percent sand and the percentage of silt plus 1.5 times the percentage of clay is 15 or more; at the lower limit, 70 to 85 percent sand and the percentage of silt, plus twice the percentage of clay, is 30 or less.

*Loamy coarse sand:* 25 percent or more very coarse and coarse sand and less than 50 percent any other single grade of sand.

*Loamy sand:* 25 percent or more very coarse, coarse, and medium sand (but less than 25 percent very coarse and coarse sand) and less than 50 percent either fine sand or very fine sand.

*Loamy fine sand:* 50 percent or more fine sand; or less than 50 percent very fine sand and less than 25 percent very coarse, coarse, and medium sand.

*Loamy very fine sand:* 50 percent or more very fine sand.

**Sandy loams:** 20 percent or less clay and 52 percent or more sand and the percentage or silt plus twice the percentage of clay exceeds 30; or less than 7 percent clay, less than 50 percent silt, and between 43 and 52 percent sand.

*Coarse sandy loam:* 25 percent or more very coarse and coarse sand and less than 50 percent any other single grade of sand.

*Sandy loam:* 30 percent or more very coarse, coarse, and medium sand (but less than 25 percent very coarse and coarse sand) and less than 30 percent either fine sand or very fine sand.

*Fine sandy loam:* 30 percent or more fine sand and less than 30 percent; or between 15 to 30 percent very coarse, coarse, and medium sand; or more than 40 percent fine and very fine sand, at least half of which is fine sand, and less than 15 percent very coarse, coarse, and medium sand.

*Very fine sandy loam:* 30 percent or more very fine sand; or more than 40 percent fine and very fine sand, at least half of which is very fine sand, and less than 15 percent very coarse, coarse, and medium sand.

**Loam:** 7 to 27 percent clay, 28 to 50 percent silt, and less than 52 percent sand.

**Silt loam:** 50 percent or more silt and 12 to 27 percent clay; or 50 to 80 percent silt and less than 12 percent clay.

**Silt:** 80 percent or more silt and less than 12 percent clay.

**Sandy clay loam:** 20 to 35 percent clay, less than 28 percent silt, and 45 percent or more sand.

**Clay loam:** 27 to 40 percent clay and 20 to 45 percent sand.

**Silty clay loam:** 27 to 40 percent clay and less than 20 percent sand.

**Sandy clay:** 35 percent or more clay and 45 percent or more sand.

**Silty clay:** 40 percent or more clay and 40 percent or more silt.

**Clay:** 40 percent or more clay, less than 45 percent sand, and less than 40 percent silt.

Necessarily these verbal definitions are somewhat complicated. The texture triangle is used to resolve problems related to word definitions. The eight distinctions in the sand and loamy sand groups provide refinement greater than can be consistently determined by field techniques. Only those distinctions that are significant to use and management and that can be consistently made in the field should be applied.

### **Particle size distribution**

Particle-size distribution (fine earth or less than 2 mm) is determined in the field mainly by feel. The content of rock fragments is determined by estimating the proportion of the soil volume that they occupy.

### **Soil**

The United States Department of Agriculture uses the following size separates for the <2 mm mineral material:

Very coarse sand:	2.0 – 1.0 mm
Coarse sand:	1.0 – 0.5 mm

Medium sand:	0.5 – 0.25 mm
Fine sand:	0.25 – 0.10 mm
Very fine sand:	0.10 – 0.05 mm
Silt:	0.05 – 0.002 mm
Clay:	<0.002 mm

The texture classes are sand, loamy sand, sandy loam, loam, silt loam, silt, sandy clay loam, clay loam, silty clay loam, sandy clay, silty clay, and clay. Subclasses of sand are subdivided into coarse sand, sand, fine sand, and very fine sand. Subclasses of loamy sands and sandy loams that are based on sand size are named similarly.

## Rock fragments

Rock fragments are unattached pieces of rock 2 mm in diameter or larger that are strongly cemented or more resistant to rupture. Rock fragments include all sizes that have horizontal dimensions less than the size of a pedon.

Rock fragments are described by size, shape, and, for some, the kind of rock. The classes are pebbles, cobbles, channers, flagstones, stones, and boulders. If a size or range of sizes predominates, the class is modified, as for example: “fine pebbles,” “cobbles 100 to 150 mm in diameters,” “channers 25 to 50 mm in length.”

Gravel is a collection of pebbles that have diameters ranging from 2 to 75 mm. The terms “pebble” and “cobble” are usually restricted to rounded or subrounded fragments; however, they can be used to describe angular fragments if they are not flat. Words like chert, limestone, and shale refer to a kind of rock, not a piece of rock. The upper size of gravel is 3 inches (75 mm). The 5-mm and 20-mm divisions for the separation of fine, medium, and coarse gravel coincide with the sizes of openings in the “number 4” screen (4.76 mm) and the “3/4 inch” screen (19.05 mm) used in engineering.

The 75-mm (3 inch) limit separates gravel from cobbles. The 250-mm (10 inch) limit separates cobbles from stones, and the 600-mm (24 inch) limit separates stones from boulders. The 150-mm (channers) and the 380-mm (flagstones) limits for thin, flat fragments follow conventions used for many years to provide class limits for plate-shaped and crudely spherical rock fragments that have about the same soil use implications as the 250-mm limit for spherical shapes.

## Rock fragments in soil

The adjectival form of a class name of rock fragments (Table C-1) is used as a modifier of the textural class name: “gravelly loam,” “stony loam.” The following classes, based on volume percentages, are used:

*Less than 15 percent:* No adjectival or modifying terms are used in writing for contrast with soils having less than 15 percent pebbles, cobbles, or flagstones. The adjective “slightly” may be used, however, to recognize those soils used for special purposes.

*15 to 35 percent:* The adjectival term of the dominant kind of rock fragment is used as a modifier of the textural terms: “gravelly loam,” “channery loam,” “cobbly loam.”

*35 to 60 percent:* The adjectival term of the dominant kind of rock fragment is used with the word “very” as a modifier of the textural term: “very gravelly loam,” “very flaggy loam.”

*More than 60 percent:* If enough fine earth is present to determine the textural class (approximately 10 percent or more by volume), the adjectival term of the dominant kind of rock fragment is used with the word “extremely” as a modifier of the textural term: “extremely gravelly loam,” “extremely bouldery loam.” If there is too little fine earth to determine the textural class (less than about 10 percent by volume), they term “gravel,” “cobbles,” “stones,” or “boulders” is used as appropriate.

The class limits apply to the volume of the layer occupied by all pieces of rock larger than 2 mm. The soil generally contains fragments smaller or larger than those identified in the term. For example, a stony loam usually contains pebbles, but “gravelly” is not mentioned in the name. The use of a term for larger pieces or rock, such as boulders does not imply that the pieces are entirely within a given soil layer. A simple boulder may extend through several layers.

**Table B-1**  
**Terms for Rock Fragments**

<b>Shape and size</b>	<b>Noun</b>	<b>Adjective</b>
Spherical, cubelike, or equiaxial:		
2-75 mm diameter	Pebbles	Gravelly
2-5 mm diameter	Fine	Fine gravelly
5-20 mm diameter	Medium	Medium gravelly
20-75 mm diameter	Coarse	Coarse gravelly
75-250 mm diameter	Cobbles	Cobbly
250-600 mm diameter	Stones	Stony
> 600 mm diameter	Boulders	Bouldery
<u>Flat:</u>		
2-150 mm long	Channers	Channery
150-380 mm long	Flagstones	Flaggy
380-600 mm long	Stones	Stones
> 600 mm long	Boulders	Bouldery

**Table B-2**  
**Classes of Surface Stones and Boulders in Terms of Cover and Spacing**

Class	Percentage of surface covered	Distance in meters between stones or boulders if the diameter is:			Name
		0.25m <sup>1</sup>	0.6m	1.2m	
1	0.01 – 0.1	>8	>20	>37	Stony or bouldery
2	0.1 – 3.0	1 – 8	3 – 20	6 – 37	Very stony or very bouldery
3	3.0 – 15	0.5 – 1	1 – 3	2 – 6	Extremely stony or extremely bouldery
4	15 – 50	0.3 – 0.5	0.5 – 1	1 – 2	Rubbly
5	50 – 90	<0.3	<0.05 – 1	<1	Very rubbly

<sup>1</sup>0.38 m if flat

### Soil Color

Elements of soil color descriptions are the color name, the Munsell notation, the water state, and the physical state: “brown (10YR 5/3), dry, crushed, and smoothed.”

Physical state is recorded as broken, rubbed, crushed, or crushed and smoothed. The term “crushed” usually applies to dry samples and “rubbed” to moist samples. If unspecified, the surface is broken. The color of the soil is recorded for a surface broken through a ped, if a ped can be broken as a unit.

The color value of most soil material becomes lower after moistening. Consequently, the water state of a sample is always given. The water state is either “moist” or “dry.” The dry state for color determinations is air-dry and should be made at the point where the color does not change with additional drying. Color in the moist state is determined on moderately moist or very moist soil material and should be made at the point where the color does not change with additional moistening. The soil should not be moistened to the extent that glistening takes place, as color determinations of wet soil may be in error because of the light reflection of water films.

Munsell notation is obtained by comparison with a Munsell system color chart. The most commonly used chart includes only about one-fifth of the entire range of hues. It consists of about 250 different colored papers, or chips, systematically arranged on hue cards according to their Munsell notations.

The Munsell color system uses three elements of color – hue, value, and chroma – to make up a color notation. The notation is recorded in the form: hue, value/chroma – for example, 5Y 6/3.

*Hue* is a measure of the chromatic composition of light that reaches the eye. The Munsell system is based on five principle hues: red (R), yellow (Y), green (G), blue (B), and purple (P). Five intermediate hues representing midpoints between each pair of principle hues complete the 10 major hue names used to describe the notation. The intermediate



hues are yellow-red (YR), green-yellow (GY), blue-green (BG), purple-blue (PB), and red-purple (RP).

*Value* indicates the degree of lightness or darkness of a color in relation to a neutral gray scale. On a neutral gray (achromatic) scale, value extends from pure black (0/) to pure white (10/). The value notation is a measure of the amount of light that reaches the eye under standard lighting conditions.

*Chroma* is the relative purity or strength of the spectral color. Chroma indicates the degree of saturation of neutral gray by the spectral color. The scales of chroma for soils extend from /0 to a chroma of /8 as the strongest expression of color used for soils.

### **Conditions for Measuring Color**

The quality and intensity of the light affect the amount and quality of the light reflected from the sample to the eye. The moisture content of the sample and the roughness of its surface affect the light reflected. The visual impression of color from the standard color chips is accurate only under standard conditions of light intensity and quality. Color determination may be inaccurate early in the morning or late in the evening. When the sun is low in the sky or the atmosphere is smoky, the light reaching the sample and the light reflected is redder. Even though the same kind of light reaches the color standard and the sample, the reading of sample color at these times is commonly one or more intervals of hue redder than at midday. Colors also appear different in the subdued light of a cloudy day than in bright sunlight. If artificial light is used, as for color determinations in an office, the light source used must be as near the white light of midday as possible. With practice, compensation can be made for the differences, unless the light is so subdued that the distinctions between color chips are not apparent. The intensity of incidental light is especially critical when matching soil to chips of low chroma and low value.

Roughness of the reflecting surface affects the amount of reflected light, especially if the incidental light falls at an acute angle. The incidental light should be as nearly as possible at a right angle. For crushed samples, the surface is smoothed; the state is recorded as “dry, crushed, and smoothed.”

### **Recording guidelines**

*Uncertainty.* Under field conditions, measurements of color are reproducible by different individuals within 2.5 units of hue (one card) and 1 unit of value and chroma.

*Dominant color.* The dominant color is the color that occupies the greatest volume of the layer. Dominant color (or colors) is always given first among those of a multicolored layer. It is judged on the basis of colors of a broken sample. For only two colors, the dominant color makes up more than 50 percent of the volume. For three or more colors, the dominant color makes up more of the volume of the layer than any other color, although it may occupy less than 50 percent.

*Mottling.* Mottling refers to repetitive color changes that cannot be associated with compositional properties of the soil. Redoximorphic features are a type of mottling that is associated with wetness. A color pattern that can be related to the proximity to a ped surface of

other organizational or compositional feature is not mottling. Mottle description follows the dominant color. Mottles are described by quantity, contrast, color, and other attributes in that order.

*Quantity* is indicated by three areal percentage classes of the observed surface:

<i>Few:</i>	less than 2 percent,
<i>Common:</i>	2 to 20 percent, and
<i>Many:</i>	more than 20 percent.

The notations must clearly indicate to which colors the terms for quantity apply.

*Size* refers to dimensions as seen on a plane surface. If the length of a mottle is not more than two or three times the width, the dimension recorded is the greater of the two. If the mottle is long and narrow, as a band of color at the periphery of a ped, the dimension recorded is the smaller of the two and the shape and location are also described. Three size classes are used:

<i>Fine:</i>	smaller than 5 mm,
<i>Medium:</i>	5 to 15 mm, and
<i>Coarse:</i>	larger than 15 mm.

*Contrast* refers to the degree of visual distinction that is evident between associated colors:

*Faint:* Evident only on close examination, faint mottles commonly have the same hue as the color to which they are compared and differ by no more than 1 unit of chroma or 2 units of value. Some faint mottles of similar but low chroma and value differ by 2.5 units (one card) of hue.

*Distinct:* Readily seen but contrast only moderately with the color to which they are compared. Distinct mottles commonly have the same hue as the color at which they are compared but differ by 2 to 4 units of chroma or 3 to 4 units of value; or differ from the color to which they are compared by 2 units (one card) of hue but by no more than 1 unit of chroma or 2 units of value.

*Prominent:* Contrast strongly with the color to which they are compared. Prominent mottles are commonly the most obvious color feature of the section described. Prominent mottles that have medium chroma and value commonly differ from the color to which they are compared by at least 5 units (two pages) of hue if chroma and value are the same; at least 4 units of value or chroma if the hue is the same; or at least 2 unit of chroma or 2 units of value if hue differs by 2.5 units (one card).

Contrast is often not a simple comparison of one color with another but is a visual impression of the prominence of the one color against a background commonly involving several colors.

## **Soil structure**

Soil structure refers to units composed of primary particles. The cohesion within these units is greater than the adhesion among units. As a consequence, under stress, the soil mass tends to

rupture along predetermined planes or zones. Three planes or zones, in turn, form the boundary. A structural unit that is the consequence of soil development is called a ped. The surfaces of peds persist through cycles of wetting and drying in place. Commonly, the surface of the ped and its interior differ as to composition or organization, or both, because of soil development.

Some soils lack structure and are referred to as structureless. In structureless layers or horizons, no units are observable in place or after the soil has been gently disturbed, such as by tapping a space containing a slice of soil against a hard surface or by dropping a large fragment on the ground. When structureless soils are ruptured, soil fragments, single grains, or both, result. Structureless soil material may be either single grain or massive. Soil material of single grains lacks structure. In addition, it is loose. On rupture, more than 50 percent of the mass consists of discrete mineral particles.

Some soils have simple structure, each unit being an entity without component smaller units. Others have compound structure, in which large units are composed of smaller units separated by persistent planes of weakness.

In soils that have structure, the shape, size, and grade (distinctness) of the units are described. Field terminology for soil structure consists of separate sets of terms designating each of the three properties, which by combination form the names for structure.

## Shape

Several basic shapes of structural units are recognized in soils.

*Platy:* The units are flat and platelike. They are generally oriented horizontally. A special form, lenticular platy structure, is recognized for plates that are thickest in the middle and thin toward the edges.

*Prismatic:* The individual units are bounded by flat to rounded vertical faces. Units are distinctly longer vertically, and the faces are typically casts or molds of adjoining units. Vertices are angular or subrounded; the tops of prisms are somewhat indistinct and normally flat.

*Columnar:* The units are similar to prisms and are bounded by flat or slightly rounded vertical faces. The tops of columns, in contrast to those prisms, are very distinct and normally rounded.

*Blocky:* The units are block like or polyhedral. They are bounded by flat or slightly rounded surfaces that are casts of the faces of surrounding peds. Typically, blocky structural units are nearly equidimensional but grade to prisms and to plates. The structure is described as angular blocky if the faces intersect at relatively sharp angles; a subangular blocky if the faces are a mixture of rounded and plane faces and the corners are mostly rounded.

*Granular:* The units are approximately spherical or polyhedral and are bounded by curved or very irregular faces that are not casts of adjoining peds.

## Size

Five classes are employed: very fine, fine, medium, coarse, and very coarse. The size limits differ according to the shape of the units. The size limit classes are given in table B-3. The size limits refer to the smallest dimension of plates, prisms, and columns.

**Table B-3**  
**Size Classes of Soil Structure**

Size Classes	Shape of Structure			
	Platy <sup>1</sup>	Prismatic & Columnar	Blocky	Granular
	mm	mm	mm	mm
Very Fine	<1	<10	<5	<1
Fine	1 – 2	10 – 20	5 – 10	1 – 2
Medium	2 – 5	20 – 50	10 – 20	2 – 5
Coarse	5 – 10	50 – 100	20 – 50	5 – 10
Very Coarse	>10	>100	>50	>10

<sup>1</sup> In describing plates, “thin” is used instead of “fine” and “thick” instead of “coarse.”

## Grade

Grade describes the distinctness of units. Criteria are the ease of separation into discrete units and the proportion of units that hold together when the soil is handled. Three classes are used:

*Weak:* The units are barely observable in place. When gently disturbed, the soil material parts into a mixture of whole and broken units and much material that exhibits no planes of weakness. Faces that indicate persistence through wet-dry-wet cycles are evident if the soil is handled carefully. Distinguishing structurelessness from weak structure is sometimes difficult. Weakly expressed structural units in virtually all soil materials have surfaces that differ in some way from the interiors.

*Moderate:* The units are well formed and evident in undisturbed soil. When disturbed, the soil material parts into a mixture of mostly whole units, some broken units, and material that is not in units. Peds part from adjoining peds to reveal nearly entire faces that have properties distinct from those of fractured surfaces.

*Strong:* The units are distinct in undisturbed soil. They separate cleanly when the soil is disturbed. When removed, the soil material separates mainly into whole units. Peds have distinctive surface properties.

Three terms for soils structure are combined in order (1) grade, (2) size, (3) shape. “Strong fine granular structure” is used to describe a soil that separates almost entirely into discrete units that are loosely packed, roughly spherical, and mostly between 1 and 2 mm in diameter.

## **Compound structure**

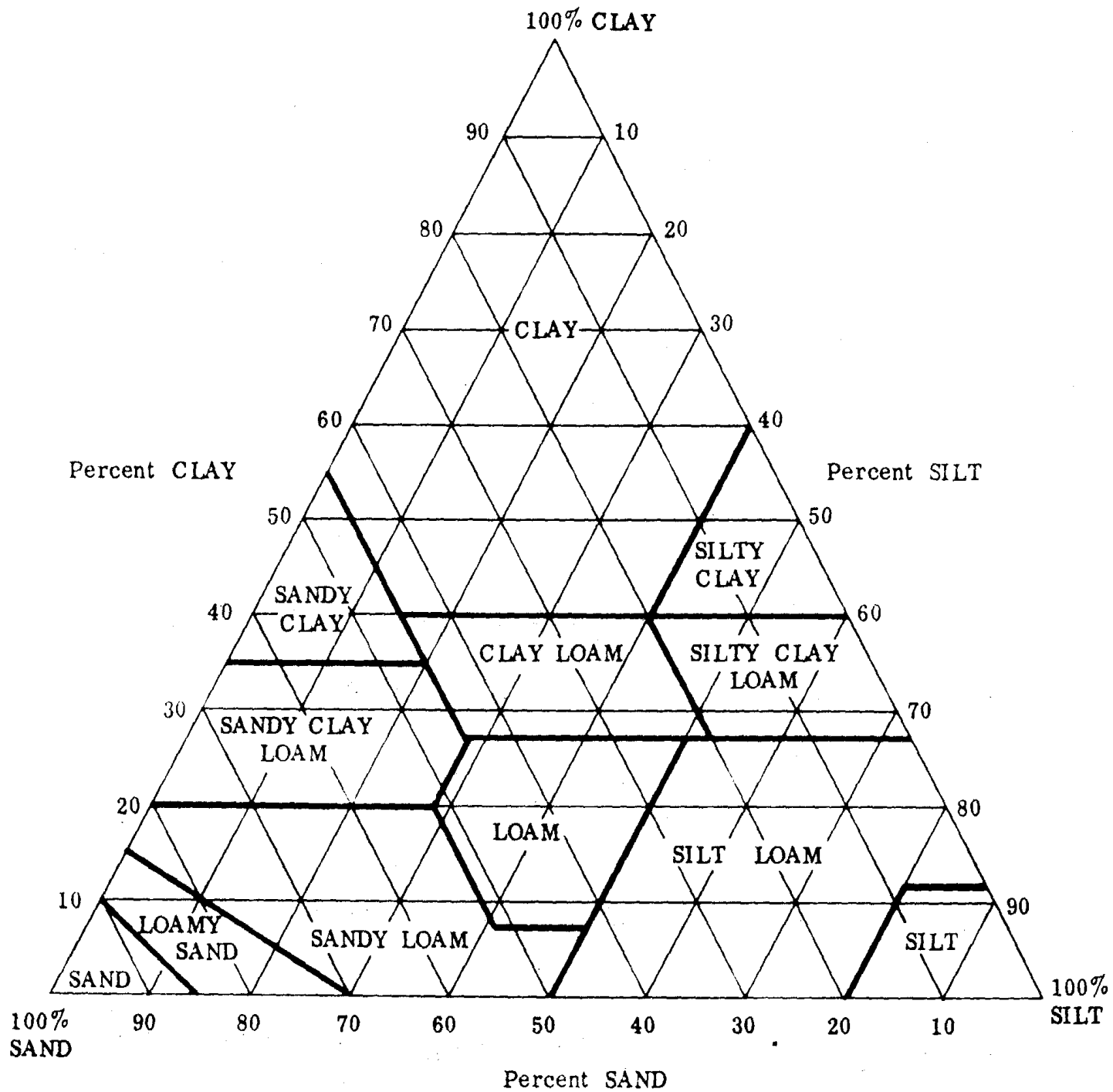
Smaller structural units may be held together to form larger units. Grade, size, shape are given for both, and the relationship of one set to the other is indicated: “strong medium blocks within moderate coarse prisms,” or “moderate coarse prismatic structure parting to strong medium blocky.”

## **Concentrations**

The features discussed here are identifiable bodies within the soil that were formed by pedogenesis. Some of these bodies are thin and sheetlike; some are nearly equidimensional; others have irregular shapes. They may contrast sharply with the surrounding material in strength, composition, or internal organization. Masses are non-cemented concentrations of substances that commonly cannot be removed from the soil as a discrete unit. Most accumulations consist of calcium carbonate, fine crystals of gypsum or more soluble salts, or iron and manganese oxides. Except for very unusual conditions, masses have formed in place.

Nodules and concretions are cemented bodies that can be removed from the soil intact. Composition ranges from material dominantly like that of the surrounding soil to nearly pure chemical substances entirely different from the surrounding material.

Concretions are distinguished from nodules on the basis of internal organization. Concretions have crude internal symmetry organized around a point, a line, or a plane. Nodules lack evident, orderly internal organization.



## APPENDIX C

### GROUND WATER OBSERVATION WELL INSTALLATION AND MEASURING PROCEDURES

#### Observation Schedule

Observation must be done during the time when ground water levels are highest. This is typically during spring runoff or during the irrigation period, but may also be at some other time during the year. Observation must be done weekly or more frequently during the appropriate periods of suspected high ground water. Observation must include at least two weeks of observation prior to and after the ground water peak, otherwise the reviewing authority may reject the results. The applicant is encouraged to consult with federal or tribal officials before installing wells. The monitoring must be completed by an individual approved by the reviewing authority.

Surface water levels may be indicative of the ground water levels that may peak several weeks after spring runoff and irrigation seasons.

Local conditions may indicate that there is more than one geologic horizon that can become seasonally saturated. This may require observation wells to be installed at different horizons. The well should be placed in, but not extended through, the horizon that is to be monitored.

The reviewing authority may refuse to accept seasonal high ground water data when the total precipitation for the previous year (defined as May 1 of the previous year to April 30 of the current year), of April 1 snowpack equivalent, measured at the nearest officially recognized observation station, is more than 25 percent below the 30-year historical average. This is based upon the definition of drought conditions created by the National Drought Mitigation Center. The reviewing authority may consider soil morphology and data from nearby ground water observation sites with similar soil, geology, and proximity to streams or irrigation ditches, if available, to determine maximum ground water elevation during periods of drought.

#### Where to Install

The observation well(s) must be installed within 25 feet of the proposed absorption trench and on the same elevation. The reviewing authority may require the placement of the well(s) in an exact location. Additional observation wells may be required if the recommended observation sites show ground water higher than 6 feet below the ground surface.

#### Installation Process

1. The well must be installed vertically into a dug or drilled hole.
2. A slotted water well pipe should be used that is 2 to 4 inches in diameter and 10 feet long.
  - A. Slotted pipe (PVC is the most common material) with slot sizes between 40 and 100 (i.e. slot widths between 0.04 and 0.10 inches wide) is suggested. Slots should be horizontal and spaced at intervals less than or equal to

- B. Check with the reviewing authority to determine if an alternate well material is acceptable.
3. The pipe should be perforated from 1 foot below ground surface to 8 feet below the ground surface unless multiple horizons exist.
  4. The casing must be unperforated 1 foot below ground surface to the top of the well. The well must extend at least 2 feet above the ground surface.
  5. The top of the well must be sealed with a watertight cap.
  6. The area around the well must be backfilled with native material to 1 foot below ground surface.
  7. The well must be sealed in such a manner that prevents surface runoff from running along the outside of the well casing. The well should be sealed from 1 foot below ground surface to slightly above grade to allow for subsidence and to maintain a positive ground slope away from well casing. The material used to seal the well can be either fine-grained material or bentonite.
  8. Each observation well should be flagged to facilitate locating the well and labeled with the lot number, location, and subdivision name.

### **Measuring Procedures**

Lower a measuring tape or stick to the water level and measure the distance from the water level to the top of the pipe (see example, the next page). Water levels should be measured to the nearest inch. A plunking device or electronic water sensor can also be used. Data should be submitted in a similar form to that of the example.

Measure the distance from the top of the pipe to the natural ground surface; this is B distance (see example). Then measure the distance from the top of the pipe to the water level; this is A (see example). Subtract B from A; this value equals the actual separation between the water table and the natural ground surface.



## APPENDIX D

### OPERATION AND MAINTENANCE PLAN

Wastewater treatment systems are to be operated and maintained in accordance with the manufacturer's instructions, unless a written exception to those procedures has been approved by the reviewing authority and the product manufacturer.

The owner of the residence or facility served by the system is responsible for assuring proper operation and providing timely maintenance of the unit. The septic tank or other primary or settling tanks must be pumped as specified by manufacturer and in accordance with Chapter 7.

The authorized representative for the system must instruct or assure that instruction regarding proper operation of the system is provided to the owner of the residence or facility.

If observations reveal an absorption trench failure or history of long-term, continuous, and increasing effluent ponding within the absorption trench, the owner of the system must take appropriate action, according to the direction and satisfaction of the reviewing authority, to alleviate the situation.

A service contract for on-going service and maintenance of the entire wastewater system is required. Continued service and maintenance must be addressed for the life of the system by an operation plan.

#### **Owner's manual**

A comprehensive owner's manual must be submitted to the reviewing authority for the wastewater system. The manual may be a collection of individual system component manuals. This document must include a system installation manual, an operation and maintenance manual, a troubleshooting and repair manual, and as-built plans with the name of the designer and installer.

The information in this manual must include:

- A. A clear statement providing examples of the types of waste that can be effectively treated by the system;
- B. Requirements for periodic removal of residuals from the system;
- C. A course of action to be applied if the system will be used intermittently, or if extended periods of non-use are anticipated;
- D. The name and telephone number of a service representative to be contacted in the event that the system experiences a problem;
- E. Description of the initial and extended service policies;

- F. Emergency contact numbers for service providers, pumpers, the local health department, and the reviewing authority.

### **Installation manual**

The installation manual must be submitted to the reviewing authority and include:

- A. A numbered parts list of system components with accompanying illustrations, photographs, or prints in which the components are respectively identified;
- B. Design, construction, and material specifications for the system's components;
- C. Schematic drawings of the system's electrical components;
- D. A process overview explaining the function of each component and a description of how the entire system functions when all components are properly assembled and connected;
- E. A clear description of installation requirements for, but not limited to, plumbing, electrical power, ventilation, air intake protection, bedding, hydrostatic displacement protection (floating in high ground water conditions), watertightness, slope, and miscellaneous fittings and appurtenances;
- F. A sequential installation procedure from the residence out to the effluent discharge connection; and
- G. A detailed start-up procedure.

### **Operations and maintenance manual**

The system designer or manufacturer must provide comprehensive and detailed operation and maintenance instructions to the reviewing authority. The operation and maintenance manual must include:

- A. A maintenance schedule for all components;
- B. Requirements and recommended procedures for periodic removal of residuals from the system;
- C. A detailed procedure for visually evaluating function of system components;
- D. Safety concerns that may need to be addressed.

### **Service-related obligations**

The entire wastewater treatment and disposal system must be assured proper O & M through an initial and renewed service contract for the life of the system or through other means approved by the reviewing authority.

A two-year initial service policy must be furnished to the owner by the designer, manufacturer or authorized representative with the following conditions.

- A. The initial service policy must contain provisions for four inspection/service visits (scheduled once every six months over the two-year period) during which electrical, mechanical, and other components are inspected, adjusted, and serviced;
- B. The service policy must contain a clause stating that the owner must be notified, in writing, about any improper system function that cannot be remedied during the time of inspection, and the written notification must include an estimated date of correction by the designer, manufacturer or its representative.

Service providers must maintain accurate records of their service contracts, customers, performance data, and time lines for renewing the contracts. These records must be available for inspection upon request by the reviewing authority. The reviewing authority may require copies of these records to be submitted.

The designer, manufacturer or authorized representative must make available, for purchase by the owner, an extended service policy with terms comparable to those of the initial service policy, which includes O & M service for the entire wastewater system. The service provider must notify the reviewing authority and local health department of service contracts that are not renewed.

In the event that a mechanical or electrical component of the system requires off-site repair, the local authorized representative must maintain a stock of mechanical and electrical components that can be temporarily installed until repairs are completed if repairs are expected to render the unit inoperable for longer than 24 hours.

Emergency service must be available within 48 hours of a service request.

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**Fort Peck Tribal Court**  
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**Title 23 - Taxation**

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## Chapter 1. Oil and Gas Tax

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### Sec. 101. Tax.

Any person or entity engaged in the production of oil or gas, or oil and gas, from land located within the exterior bounds of the Fort Peck Indian Reservation and held in trust by the United States (hereafter "trust oil or gas") for the Tribes, or for an individual Indian, shall, for the privilege of doing business on the Reservation pay seven per centum (7%) of the market value at the well of all trust oil and gas produced, saved and sold or transported from the field where produced.

**(AMENDED AS PER RESOLUTION NO. 2413-87, DATED 03/23/87.)**

### Sec. 102. Exclusions and credit.

(a) Exclusions. The tax imposed by this Chapter shall not apply to:

(1) The interest of the Tribes in such trust oil or gas;

(2) The royalty or other interest in such oil and gas of the United States or any Indian for whom the land from which it was produced is held in trust.

(b) Credits. If the rate of royalty payable to the Tribes, the United States, or any Indian beneficiary of trust land together with this tax exceeds twenty-seven percent (27%) of total production, then any portion of this tax above such twenty-seven percent (27%) shall be credited against payment of the tax so that the total of this tax and royalty shall not exceed twenty-seven percent (27%).

**(AMENDED AS PER RESOLUTION NO. 2413-87-3, DATED 03/23/87.)**

### Sec. 103. Payment.

The tax shall be paid on a quarterly basis by check made payable to the Assiniboine and Sioux Tribes and delivered to the Tribal Oil and Gas Office at Poplar, Montana on or before February 15, May 15, August 15 and November 15 of each year.

### Sec. 104. Penalties and interest.

A penalty of five percent (5%) shall be charged on any taxes not paid within the time specified in the Chapter plus interest on the unpaid amount at the rate of one-and-one-half percent (1-1/2%) per month from the date of delinquency until paid.

### Sec. 105. Persons responsible for payment.

The lessee, producer, and buyer of the trust oil and gas each shall be responsible for the payment of the tax on all production subject to the tax; provided, that every owner of a taxable interest in trust oil or gas, or in the proceeds thereof, shall be liable for that owner's proportionate share of the tax. Any taxpayer paying the taxes imposed by the Chapter may deduct the taxes paid from any amounts due, or to become due, to the taxable interest ownership.

### Sec. 106. Tax reports.

Any person or entity engaged in the production of trust oil or gas shall on or before February 15, May 15, August 15 and November 15 of each year file with the Tribal Oil and Gas Office a report for the preceding calendar quarter showing by least the following:

(a) Identification of the lease or contract under which the trust oil or gas is produced and the name and address of the taxpayer;

(b) The number of wells on the leases, the number of producing wells and the number of days of production by month for each well;

(c) The gross amount of oil and gas produced and saved from each well;

(d) The price or value base on which royalties were computed;

(e) The gross production of trust oil or gas as reported to the United States and the gross

amount of royalties on trust oil or gas as reported to the United States on behalf of the Tribes or the individual Indian owners.

**Sec. 107. Refunds of excess tax.**

Any excess tax paid shall be refunded to the person paying the tax, or credited to taxes due from the taxpayer, provided that no refund shall be made unless the application for refund is filed with the Tribal oil and Gas Officer within one (1) year of the payment of the excess tax.

**Sec. 108. Appeal of refund determination.**

(a) Any person whose application for a refund is denied by the Tribal Oil and Gas Office may, within thirty (30) days, appeal the denial to the Tax Commission established under Chapter 3 of this Title. As soon as practicable after receiving an application for refund, the Tax Commission shall review the application for adequacy and completeness. If additional information is required, the Commission shall inform the applicant in writing and provide a reasonable time for the applicant to provide further information. When the application is adequate and complete, the Commission shall schedule a hearing. The applicant shall be given not less than twenty-one (21) days notice of the hearing date.

(b) At the hearing the applicant shall have the right to present oral and written testimony of witnesses under oath, and to be represented by counsel at its own expense. The Commission shall have power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel the attendance of witnesses or for the production of books, records, documents and other evidence. The Fort Peck Tribal Court shall enforce any subpoena issued by the Commission in the same manner as the Court enforces its own subpoenas. The ordinary rules of evidence shall not apply in any hearing, but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfair if admitted, shall be excluded or may be admitted by the Commission only under special conditions or stipulations.

(c) The Chairman of the Tribal Executive Board may appoint a representative to represent

the interest of the Tribes and present the case for the Tribes at the hearing. The representative shall have all the same rights at the hearing as the applicant.

(d) The hearing shall be on the record, with all testimony taken under oath, and a permanent record shall be made by tape recorder or stenographic means.

(e) If the Commission determines that the applicant has proven by a preponderance of the evidence that the applicant is entitled to a refund, it shall order the refund paid. Otherwise, it shall deny all relief. The ruling shall either be issued in writing or orally on the record at the hearing.

(f) The Court of Appeals of the Fort Peck Tribal Court shall have exclusive jurisdiction to hear appeals from final decisions of the Commission pursuant to this Section. Any party may appeal any final decision within thirty (30) days after the decision by filing a notice of appeal with the Tax Commission, and serving a copy on the Tribes. Thereafter the Tax Commission shall promptly file the full record of the proceeding, including the notice of appeal with the Court of Appeals. The Fort Peck Court of Appeals shall hear the appeal in the same manner as it hears appeals of civil cases from the Fort Peck Tribal Court in which a petition for review is granted. In all appeals, the Court shall give proper deference to the administrative expertise of the Commission. The Court of Appeals shall not set aside, modify or remand any determination by the Commission unless it finds that the determination is arbitrary and capricious, unsupported by substantial evidence, or contrary to law. The Court of Appeals shall issue a written decision on all appeals, which decision shall be final. The Court of Appeals may, in its discretion, award costs and attorneys' fees to the Tribes against any appellant whose appeal was frivolous, malicious, or in bad faith. Such fees shall be assessed and collected as a tax imposed under this Chapter.

(g) Any final finding or determination of the Tax Commission which is not timely appealed, and any final determination by the Court of Appeals in proceedings pursuant to this Section,

shall be final and binding in any other proceeding against or by the same person.

**(AMENDED AS PER RESOLUTION NO. 2413-87-3, DATED 03/23/87.)**

**Sec. 109. Regulations.**

The Tribal Executive Board may promulgate such rules and regulations as may be appropriate for the administration of this Chapter.

**Sec. 110. Effective date.**

This amended Chapter shall become effective and supersede the previous ordinance upon approval in accordance with the Constitution and By-Laws.

**Chapter 2. Privilege of Operating Construction Business Tax**

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**Sec. 201. Tax.**

Any person or entity engaged in contracts for the improvement of real estate of any kind whatsoever on trust land on the Reservation shall, for the privilege of doing business on the Reservation, pay one half of one percent (½%) of the gross receipts from each prime contract for realty improvement on trust land; provided that any contract between an Indian tribe or tribal organization and the United States under P.L. 93-638 or any other statute authorizing such contracts shall not be considered a prime contract, and any sub-contract by such tribe or tribal organization shall be considered a prime contract.

**Sec. 202. Exemption.**

(a) The tax imposed by this Chapter shall not apply to the Tribes, any organization or agency of the Tribes, or any business wholly owned by the Tribes.

(b) The tax imposed by this Chapter shall not apply to any contract from which the gross receipts are less than one hundred thousand dollars (\$100,000.00).

**Sec. 203. Definitions of gross receipts.**

For the purpose of this Chapter, "gross receipts" means the amount received in money, credits, property, or other consideration for the performance of contracts for the improvement of real estate of any kind on trust lands within the Reservation, without any deduction on account of the cost of the property sold, materials used, services and labor purchased, state or federal taxes paid, or any other expenses whatsoever.

**Sec. 204. Payment.**

(a) The tax on any contract which is completed or terminated in the same year it is begun shall be paid on or before sixty (60) days from the date of substantial completion or termination of the contract.

(b) The tax on any contract which is not completed or terminated in the same year it is begun shall be paid in installments. An installment shall be paid on or before March 1 of each year for gross receipts on the contract during the preceding calendar year. The balance of the tax shall be paid within sixty (60) days of substantial completion or termination of the contract.

(c) All payments shall be by check payable to the Assiniboine and Sioux Tribes of the Fort Peck Reservation and delivered to the Tribal Office, at Poplar, Montana.

**Sec. 205. Delinquent taxes.**

(a) A penalty of five percent (5%) plus interest on the unpaid amount at the rate of one and one half percent (1 ½%) per month from the date of delinquency until payment shall be charged on any taxes not paid within the time specified in Section 204.



(b) Any person or entity delinquent in payment of taxes by more than six (6) months may be barred from doing business on the Reservation by the Executive Board.

**Sec. 206. Reports and returns.**

(a) Prior to beginning work on any contract subject to the tax, the contractor shall file a report with the Tribes showing:

- (1) The date of the contract;
- (2) The location of land on which the contract will be performed;
- (3) The names and addresses of all parties to the contract;
- (4) The amount to be received under the contract;
- (5) When the work is expected to begin;
- (6) When the contract is expected to be completed;
- (7) A brief description of the work to be performed under the contract;

(b) On or before the due date of the tax or an installment of the tax as specified in Section 204 is due, the contractor shall file a return with the Tribes identifying the contract by the date and parties and showing:

- (1) The gross receipts received under the contract during the period covered by the return; and
- (2) The amount of the tax due under Section 201 and Section 204. The return shall also update or correct the information contained in the report required by subsection (a) to reflect any changes since the filing of the last report or return. Payment of the tax due shall accompany each return.

**Sec. 207. Refunds.**

(a) Any excess tax paid shall be refunded to the person or entity paying the tax, or credited to taxes due from the taxpayer, provided that no refund shall be made unless an application for refund is filed within one (1) year of the payment of the tax.

(b) Any person whose application for a refund is denied may, within thirty (30) days, appeal the denial to the Fort Peck Tribal Court, which shall determine de novo, after holding a hearing and

taking evidence, whether the appealing party is entitled to a refund.

**Sec. 208. Regulations.**

The Executive Board may promulgate such rules and regulations as may be appropriate for the administration of this Chapter.

**Sec. 209. Effective date.**

This Chapter shall apply to all receipts received after the date of enactment of this Chapter from realty improvement contracts.

**Chapter 3. Utilities Tax**

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### **Sec. 301. Definitions.**

For the purposes of this Chapter, unless the context specifically requires otherwise:

(a) "Utility" means any publicly or privately owned railroad; communications, telegraph, telephone, electric power or transmission line; natural gas or oil pipeline; or similar system for transmitting or distributing services or commodities; but does not include roads or highways constructed or maintained by the United States, the Tribes or the State of Montana or a subdivision thereof.

(b) Property or an interest in property is "used for utility purposes" if it was granted, or is used, in connection with operation of a utility, as that term is defined herein.

(c) "Utility property" means all property used for utility purposes and located on or using trust lands on the reservation. Utility property shall include all improvements placed on trust land on the reservation. For purposes of this section, trust land includes the entire acreage of any tract where the United States holds an undivided interest in such tract in trust for the Tribes or for any Indian.

(d) "Owner" means any person who owns any interest in utility property as grantee, lessee, permittee, assignee, sublessee, or transferee. In the case of parties to a joint venture or operating agreement, the Tribes shall determine whether a joint venture partner or an operator is an owner in light of the terms of the agreement on the basis of the parties; respective participation in and entitlement to income or profits, assets and management of the venture or operation.

(e) "Person" means any individual, whether Indian or non-Indian, or any organization, including, but not limited to sole proprietorships, partnerships, joint ventures, trusts, estates, unincorporated associations, corporations and governments, or any division, department or agency of any of the foregoing.

(f) "Taxes" include the tax and any interest, penalties or costs imposed or assessed pursuant to this Chapter.

**(AMENDED AS PER RESOLUTION NO. 885-2000-7, DATED 02/08/99).**

### **Sec. 302. The Tax Commission.**

(a) There is hereby created a Tax Commission, which shall consist of three (3) members, appointed for a term of three (3) years each by a two-thirds (2/3) majority of those voting at a meeting of the Tribal Executive Board at which a quorum is present. The initial Commission shall have one member serving for a term of three (3) years, one member serving for a term of two (2) years and one member serving for a term of one (1) year.

(b) To be eligible to hold the office of Tax Commissioner, a person must (1) be at least twenty-five (25) years of age; (2) have a least a high school education or its equivalent; (3) be of high moral character and integrity; (4) never have been convicted of a criminal offense other than traffic offenses; and (5) be physically able to carry out the duties of office. Members of the Executive Board may serve on the Tax Commission.

(c) On taking office each member of the Commission shall take an oath as follows:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will administer justice and do equal right without respect to persons and will truly, faithfully, and impartially discharge and perform all the duties incumbent upon me as a member of the Tax Commission according to the best of my abilities. So help me God."

(d) Compensation of the Commission members shall be fixed by the Executive Board. Commission members shall receive compensation only for those days they sit as members of the Commission, including meetings they are required to attend as members of the Commission. The rate of compensation for Commission member may not be altered during his/her term of office.

(e) Members of the Commission may be suspended or removed in accordance with the procedures of Title 23, Section 306 of the Code of Justice.

(f) A member of the Commission shall disqualify himself/herself in any proceeding in which his/her impartiality might reasonably be questioned, in which he/she has any personal bias or prejudice concerning any party, in which he/she or a member of his/her immediate family might

be a witness or has any personal knowledge of disputed evidentiary facts concerning the proceeding, in which he/she or any member of his/her immediate family is a party or has any financial or other interest in the proceeding, has acted or is acting as an attorney in the proceeding, or in which he/she might otherwise appear to be biased or prejudiced.

**Sec. 303. Tax Imposed.**

A tax of four percent (4%) of the value on each assessment date of all utility property is hereby imposed.

**(AMENDED AS PER RESOLUTION NO. 1213-99-2, DATED 02/08/99.)**

**Sec. 304. Assessment and valuation.**

(a) The assessment date for each calendar year shall be January 1 of that year. Utility property shall be assessed annually as of the assessment date. The Tribes may assess unassessed utility property as of the date upon which they should have been assessed, and may redetermine incorrect or erroneous assessments.

(b) The value of utility property shall be presumed to be equal to the full value per linear mile of the utility as assessed by the State of Montana pursuant to Chapter 15-23 of the Montana Code Annotated, multiplied by the number of miles of the utility located on trust land within the Reservation. The value of utility property not measured by linear mile shall be presumed to be equal to the full value as assessed by the State of Montana pursuant to Chapter 15-23 of the Montana Code Annotated. For purpose of these presumptions the most recent Montana assessment made prior to the assessment date shall be used. Unless a presumed value is challenged pursuant to Section 313, the tax shall be levied and collected upon the presumed value.

**(AMENDED AS PER RESOLUTION NO. 1213-99-2, DATED 02/08/99; AND AS PER RESOLUTION NO. 606-98-7, DATED 07/13/98).**

(c) If a presumption of value is challenged pursuant to Section 313, the value of the utility property shall be determined by the Tax Commission,

after a hearing, based on one or more of the following methods:

(1) Fair market value method. On the basis of the selling prices of comparable property (whether within or outside the Reservation) which are sold by willing sellers to willing buyers, neither of whom are under a compulsion to act.

(2) Present value of income method. By computing the capitalized value of the gross income to be received from the property less the reasonable expenses to be incurred in producing the income, over the remaining useful life of the property.

(3) Any other method which reasonably and accurately reflects the value of the utility property.

**(AMENDED AS PER RESOLUTION NO. 606-98-7, DATED 07/13/98.)**

**Sec. 305. Persons liable for payment.**

(a) All owners of utility property are liable for payment of the entire tax assessed upon that interest.

(b) If an owner is an association, joint venture or partnership, the associates, participants or partners both limited and general, shall be jointly and severally liable for the entire tax assessed upon that property.

(c) Each person liable for taxes under this Section shall have a right of contribution from any other person liable for a share of the taxes paid proportionate to the share of such person in the utility property. The owners may, by agreement, alter the allocation by contribution of the tax liability among themselves; but no such agreement shall affect the liability to the Tribes of any person named in subsection (a) and (b) hereof.

**Sec. 306. Exemptions.**

The tax imposed by this Chapter shall not apply to:

(a) The Assiniboine and Sioux Tribes, any subdivision, agency or program of the Tribes or any enterprise or entity wholly owned by the Tribes;

(b) The United States of its subdivisions, agencies or departments, except to the extent such taxes are authorized by federal law; or If a utility property is owned in part by entities exempt under this Section and in part by entities not exempt, the proportionate share owned by nonexempt entities shall be subject to tax.

**(AMENDED AS PER RESOLUTION NO. 1213-99-2, DATED 02/08/99; AND PER RESOLUTION NO. 606-98-7, DATED 07/13/98).**

**Sec. 307. Declarations of interest.**

On or before March 1 following each assessment date, each owner subject to tax under this Chapter must file with the Tribes a declaration of its interest in any utility property on such forms and containing such information as the Tribes may require. If the owner of the utility property is exempt under Section 306, the declaration shall so state. The declaration shall state the value per linear mile of the utility as most recently assessed by the State of Montana.

**Sec. 308. Notice of and payment of tax.**

(a) The Tribes shall, by April 15 of each year, mail to each owner notice of the assessed value of the utility property and the tax due. The notice shall be based on the presumed value established as provided in Section 304 (b) unless a different value has been finally established by the Tax Commission. The notice shall be mailed to the address specified in the most recent declaration filed pursuant to Section 307, or, if no declaration has been filed, to the owners' last known address. Failure to send or receive notice, shall not relieve the owner of the obligation to timely pay the tax due.

(b) The tax due shall be paid in two (2), equal semi-annual installments, with one-half (½) being due by May 15 following the assessment date, and one-half (½) being due November 15 following the assessment date.

(c) The tax shall be paid by check made payable to the Assiniboine and Sioux Tribes and mailed or delivered to the Tribes at Poplar, Montana. Payment is timely if postmarked or actually delivered on or prior to the due date.

**Sec. 309. Penalties and interest for late payment.**

(a) A penalty of five percent (5%) shall be charged on any taxes not paid when due, and interest at one and one-half percent (1 ½%) per month shall be charged on the unpaid balance from the payment due date until the date of payment.

(b) Any person failing to pay taxes when due shall also be liable for a penalty equal to any extraordinary administrative costs, including attorneys' fees and other litigation costs, incurred in collecting the unpaid amount.

(c) The penalties and interest set forth in this Section shall be assessed and collected as a tax imposed under this Chapter.

**Sec. 310. Lien for taxes.**

(a) Taxes assessed shall be a lien against the utility property subject to the tax. Such lien shall arise in favor of the Tribes as of the assessment date, without notice or demand, and shall be prior and superior to all other liens and encumbrances.

(b) The lien shall continue until the amount of the lien is paid to the Tribes or the lien is released by the Tribes. Partial payment of the taxes shall reduce the amount of the lien by the amount paid.

(c) The Tribes may foreclose upon the utility property subject to a lien by filing a civil action in Tribal Court for that purpose. In the event of such a foreclosure, the utility property shall be sold in a commercially reasonable manner and the proceeds applied first to the expenses for the foreclosure, then to the liability for costs, penalties, interest and tax, in that order. Any remaining balance shall be remitted to the owners of the utility property in proportion to their ownership interest.

(d) The Tribes may release liens as part of a settlement of the taxes due or where the payment of the tax is adequately protected by other security or by a surety bond.

**Sec. 311. Civil actions for tax penalties and interest.**

In any case of failure of a person liable for taxes under this Chapter to pay the taxes, penalties or interest due the amount of such taxes, penalties and interest may be recovered in a civil action in Tribal Court pursuant to Title 7 of the Code of Justice, or in any other court of competent jurisdiction.

**Sec. 312. Refunds of excess tax payments.**

Any person who believes that it has overpaid taxes under this Chapter may apply to the Tax Commission for a refund within six (6) months of the overpayment. Any tax paid which, after a hearing pursuant to Section 314 is found to be in excess of that required to be paid, shall be refunded to the person paying the tax, or credited against taxes due from the taxpayer.

**Sec. 313. Challenges to presumed value.**

(a) Any owner of utility property may, at the time of filing a declaration of interest, or at any time prior to the deadline for filing a declaration of interest, file a challenge to the presumed value established as provided in Section 304 (b). The challenge shall state in detail why the presumed value is not accurate, what the correct value is, and why that value is correct. It shall have attached to it as an exhibit any appraisals or other information upon which the owner intends to rely. The challenge shall be filed with the Tax Commission and a copy shall be served on the Tribes.

(b) During the pendency of a challenge proceeding the tax shall be paid and collected based on the presumed value established as provided by Section 304 (b). If the value assessed by the Tax Commission is greater than the presumed value, any further tax due shall be paid within thirty (30) days of the date of the decision, or, if the decision is appealed, within thirty (3) days of the decision of the appeal. If the value assessed by the Tax Commission is less than the presumed value the Commission shall order a refund of any overpayment or permit the owner to deduct it from future payments.

**Sec. 314. Hearing on application for refund or challenge to presumed value assessment.**

(a) As soon as practicable after receiving an application under Section 312 of a challenge under Section 313, the Tax Commission shall review the application for adequacy and completeness. If additional information is required, the Commission shall so inform the applicant in writing and provide a reasonable time for the applicant to provide further information. When the application is adequate and complete the Commission shall schedule a hearing. In the case of a challenge under Section 313, the hearing shall not be less than three (3) months after the date the challenge was served on the Tribes. The applicant shall be given not less than twenty-one (21) days notice of the hearing date.

(b) At the hearing the applicant shall have the right to present oral and written testimony of witnesses under oath, and to be represented by counsel at its own expense. The Commission shall have power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel the attendance of witnesses or for the production of books, records, documents and other evidence. The Fort Peck Tribal Court shall enforce any subpoena issued by the Commission in the same manner as the Court enforces its own subpoenas. The ordinary rules of evidence shall not apply in any hearing, but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfair if admitted, shall be excluded or may be admitted by the Commission only under special conditions or stipulations.

(c) The Chairman of the Tribal Executive Board may appoint a representative to represent the interests of the Tribes and present the case for the Tribes at the hearing. The staff member or representative shall have all the same rights at the hearing as the applicant. The Tribes may employ an outside appraiser to assist it.

(d) The hearing shall be on the record, with all testimony taken under oath, and a permanent record shall be made by tape recorder or stenographic means.

(e) If the Commission determines that the applicant has proven by a preponderance of the evidence that the applicant is entitled to a refund or correction of the assessment or both, it shall order the appropriate relief. If the Commission determines that the Tribes have proved by a preponderance of the evidence that a greater assessment is required it shall order an increase in the assessment. Otherwise, it shall deny all relief. The ruling shall either be issued in writing, or orally on the record at the hearing.

**Sec. 315. Appeals.**

(a) The Court of Appeals of the Fort Peck Tribal Court shall have exclusive jurisdiction to hear appeals from final decisions pursuant to Section 314.

(b) Any party may appeal any final decision under Section 314 within thirty (30) days after the decision by filing a notice of appeal with the Tax Commission, and serving a copy on the Tribes. Thereafter the Tax Commission shall promptly file the full record of the proceeding, including the notice of appeal, with the Court of Appeals.

(c) The Fort Peck Court of Appeals shall hear the appeal in the same manner as it hears appeals of civil cases from the Fort Peck Tribal Court in which a petition for review is granted. In all appeals, the Court shall give proper deference to the administrative expertise of the Commission. The Court of Appeals shall not set aside, modify or remand any determination by the Commission unless it finds that the determination is arbitrary and capricious, unsupported by substantial evidence or contrary to law. The Court of Appeals shall issue a written decision on all appeals, which decision shall be final.

(d) The Court of Appeals may, in its discretion, award costs and attorneys' fees to the Tribes against any appellant whose appeal was frivolous, malicious, or in bad faith. Such fees shall be assessed and collected as a tax imposed under this Chapter.

**Sec. 316. Finality of Tax Commission or Court action.**

Any final finding or determination of the Tax Commission pursuant to Sections 312 to 314 which is not timely appealed, and any final determination of the Court of Appeals in proceedings pursuant to Section 315 and of the Tribal Court in proceedings pursuant to Section 311, shall be final and binding in any other proceeding against or by the same person before the Tax Commission or the Tribal Court. In all proceedings before the Tax Commission or any court, the presumed value established as provided in Section 304 (b) shall be treated as conclusive unless it has been timely challenged pursuant to Section 313, and the Tax Commission has established a different value.

**Sec. 317. Enforcement and recordkeeping.**

(a) The Tribes may require each owner to keep such records as may be necessary to determine ownership and value of utility property subject to tax under this Chapter. Such records shall be retained for at least six (6) years beyond the date of payment of the tax to which they relate, or if no payment is due, for six (6) years beyond the due date of the declaration of interest to which the records relate.

(b) The Tribes may, for the purposes of preparing for a challenge proceeding under this Chapter or otherwise implementing or enforcing the provisions of this Chapter, inspect property, examine and require the production of pertinent records, books, information, or evidence, and require the presence and testimony under oath of any person within the jurisdiction of the Tribes.

(c) If an owner or other person fails upon request to testify, or to provide information or documents, the Tax Commission may seek and obtain a subpoena or other order from the Fort Peck Tribal Court compelling the testimony or production of the information or documents.

**Sec. 318. Settlements of taxes due.**

(a) If at any time, the Tribes in good faith are in doubt of the liability of the owner for the payment

of taxes, it may compromise the liability by entering in writing with the owner an agreement that adequately protects the interests of the Tribes.

(b) If entered into after any court acquires jurisdiction of the matter, a settlement agreement shall be part of a stipulated order or judgement disposing of the case.

(c) As a condition for entering into a settlement agreement, the Tribes may require the provision of security for payment of any taxes due according to the terms of the agreement.

(d) A settlement agreement is conclusive as to the liability or no liability for payment of taxes relating to the periods referred to in the agreement, except upon a showing of fraud, malfeasance, misrepresentation or concealment of a material fact.

### **Sec. 319. Assignment or transfer of utility property.**

(a) If a person buys substantially all of the assets of an owner of utility property, that person shall withhold from the purchase price and pay to the Tax Commission the amount of taxes owed by the owner prior to the purchase.

(b) If a person buys an interest in utility property, that person shall withhold from the purchase price and pay the Tax Commission a share of the amount of taxes owed by the owner prior to the purchase proportionate to the interest purchased.

(c) Any purchaser failing to withhold taxes shall be personally liable for said taxes up to the value of all the property acquired. Any liability arising under this Section shall be assessed and collected as a tax imposed by this Chapter.

(d) The purchaser may make a written request for and, within thirty (30) days after the owner's records are made available for audit, the Tribes shall send to the purchaser, a notice of the taxes due. Thereafter, the purchaser shall not be personally liable under this Section for any taxes in excess of the amount stated in the notice, or for any such taxes if not notice is given with the time required.

(e) No consent to the assignment or transfer of any utility property shall be granted by the Tribes unless all taxes owed by the transferor have been

paid, or that payment has been adequately secured.

### **Sec. 320. Civil penalties for evasion or interference with tax.**

(a) Any owner under-assessed by reason of incomplete or incorrect information provided through negligence or intentional disregard of this Chapter or rules and regulations issued pursuant to this Chapter (but without the intent to defraud) shall be assessed a penalty of twenty-five percent (25%) of the underpayment of tax, but not less than two hundred fifty dollars (\$250.00).

(b) Any owner under-assessed as a result of its fraud shall be assessed a penalty of fifty percent (50%) of the underpayment of tax, but not less than five hundred dollars (\$500.00).

(c) Any person who assists an owner in fraud resulting in an underassessment shall be subject to a penalty of twenty-five percent (25%) of the underpayment of tax, but not less than two hundred fifty dollars (\$250.00).

(d) Any person who removes from the Reservation any property upon which there is a lien for taxes under Section 308 shall be subject to a penalty equal to the amount of the lien.

(e) Any liability arising under this Section shall be assessed and collected as a tax imposed by this Chapter.

### **Sec. 321. Criminal offenses.**

(a) Any Indian obligated to pay taxes, to file a declaration, to provide information or documents or allow access to property within his/her control pursuant to the provisions of this Chapter who fails to do so, is guilty of a Class B. misdemeanor.

(b) Any Indian who by fraud or misrepresentation attempts to defeat or evade the tax imposed by this Chapter or to assist another to defeat or evade such tax is guilty of a Class A misdemeanor.

(c) Any non-Indian who violates the provisions of subsection (a) or (b) may be excluded from the Fort Peck Reservation or may have his/her right to do business on the Reservation suspended or revoked by order of the Tribal Executive Board.

**Sec. 322. Prohibition of suits.**

No suits for the purpose of restraining the assessment of collection of the taxes imposed under this Chapter shall be maintained in any court by a person, whether or not such person is the person against whom such taxes were assessed. The remedies provided in Section 312 to 314 shall be exclusive.

**Sec. 323. Severability.**

If any provision of this Chapter or its application to any person or circumstance, is held invalid by a final judgement of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

**Sec. 324. Effective date.**

This Chapter shall be effective beginning on the date of approval of this Chapter by the Secretary of the Interior or his/her designated representative. The taxes for the year during which this Chapter is approved shall be assessed as provided herein, but shall be prorated by the number of days during the year that this Chapter was in effect. The Tribes may send out notices for such taxes at any time. The first installment of such taxes shall be due on the due date under Section 308 (b) or thirty (30) days after the notice is mailed, whichever date is later. The second installment shall be due on the due date under Section 308 (b) or thirty (30) days after the notice is mailed, whichever date is later.

**(AMENDED AS PER RESOLUTION NO. 2150-87-1, DATED 01/27/87)**

**Chapter 4. Basic Gasoline License Tax Sections:**

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- Sec. 406. Examination of records. .... 12
- Sec. 407. Tax penalty for delinquency. .... 12

**Sec. 401. Definitions.**

As used in this chapter, unless otherwise noted, the following definitions apply:

(1) “State” means the State of Montana, Department of Transportation.

(2) “Agreement” means the Fort Peck-Montana Gasoline Tax Agreement.

(3) “Distributor” means any a person who maintains a valid distributor license with the State; and

(a) Who engages in the business with the Reservation of producing, refining, manufacturing, or compounding gasoline for sale, use or distribution; or

(b) Who imports gasoline for sale, use or distribution; or

(c). Who engages in the wholesale distribution of gasoline within the Reservation.

(4) “Gasoline” includes all products commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline, and all flammable liquids composed of a mixture of selected hydro-carbon expressly manufactured and blended for the purpose of effectively operating internal combustion engines.

(5) “Import” means to receive into any person’s possession or custody first after its arrival and coming to rest at destination within the Reservation of any gasoline shipped or transported into this Reservation from a point of origin outside this Reservation other than in the fuel supply tank of a motor vehicle.

(6) “Person” means any person, firm, association, joint-stock company, syndicate, or corporation.

(7) “Use” includes and means the operation of motor vehicles upon the public roads or highways of the Reservation.

**Sec. 402. Tax Imposed.**

Every distributor shall pay a Tribal license tax for the privilege of engaging in and carrying on business on the Reservation in an amount equal



to 21.4 cents for each gallon of all gasoline distributed by him within the Reservation, and upon which the gasoline tax has not been paid by any other distributor. Pursuant to the Agreement, this tax shall be collected by the State.

**Sec. 403. Distributor's statement and payment.**

Each distributor shall, not later than the 25th day of each calendar month, render a true statement, duly signed, to the State of all gasoline distributed and received by him within the Reservation during the preceding calendar month and containing any other information the Tribes or the State may reasonably require in order to administer this tribal gasoline license tax law. Where the distributor has not separately paid the state gasoline license tax with respect to such gasoline, the statement must be accompanied by a payment in an amount equal to the tax imposed by Sec. 402, less any per capita agricultural refund credit issued pursuant to the Agreement and less 1% of the total tax that may be deducted by the distributor as an allowance for evaporation and other loss of gasoline distributed by the distributor.

**Sec. 404. Recordkeeping requirement.**

(a) Each distributor, retail service station owner, or any other person dealing in, transporting, receiving, or storing gasoline shall keep for a period not to exceed three years such records, receipts, invoices, and statements (required under Sec. 403) and any other pertinent papers and information as the Tribes or State may require.

(b) Retail service station owners within the Reservation are hereby required to maintain a record of total purchases and sales of gasoline and total taxes paid to all distributors of gasoline on a quarterly basis, and to report the same to the State within 25 days after the close of each calendar month.

**Sec. 405. Invoice of distributors.**

Each distributor operating on the Reservation, shall at the time of delivery, except where author-

ized by the Tribes, issue to the purchaser an invoice in which shall be stated the number of gallons of gasoline covered by such invoice.

**Sec. 406. Examination of records.**

The Tribes, or its authorized representative is hereby empowered to examine all pertinent books, papers, records, and equipment of any gasoline distributor or retail service station owner operating on the Reservation.

**Sec. 407. Tax penalty for delinquency.**

(1) Any license tax not paid within the time provided shall be delinquent, and a penalty of 10% shall be added to the tax, in addition the tax shall bear interest at the rate of 1% per month from the date of delinquency until paid. Upon showing good cause by the distributor, the Tribes may waive the penalty.

(2) If any distributor or other person subject to the payment of such license tax shall willfully fail, neglect, or refuse to make any statement required by this Chapter or shall willfully fail to make payment of such license tax within the time provided, the Tribes shall be authorized to revoke any license to engage in and carry on business on the Reservation.

(3) In addition, the Tribes shall inform itself regarding the matters required to be in any such statement and determine the amount of the license tax due the Tribes from such distributor and shall add thereto a penalty of \$25.00 or 10% thereof, whichever is the greater, together with interest at the rate of 1% per month from the date of such statements should have been made and said license tax paid.

(4) The Tribes shall proceed to collect such license tax, with penalties and interest. The Tribes may commence and prosecute to final determination in any court of competent jurisdiction an action to collect such license tax.

**(AMENDED AS PER RESOLUTION NO. 609-92-3, DATED 03/09/92.)**

## Chapter 5. Basic Liquor, Beer and Wine License Tax

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### Sec. 501. Definitions.

As used in this Chapter, unless otherwise noted, the following definitions apply:

- (1) "Tribes" means the Assiniboine and Sioux Tribes of the Fort Peck Reservation.
- (2) "State" means the State of Montana.
- (3) "Agreement" means the Fort Peck-Montana Liquor, Wine and Beer Tax Agreement.
- (4) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.
- (5) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.
- (6) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.
- (7) "Beer importer" means a person other than a brewer who imports malt beverages.
- (8) "Brewer" means a person who produces malt beverages.
- (9) "Liquor" means an alcoholic beverage except beer and table wine.
- (10) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom and with or without other wholesome products suitable for human food consumption.
- (11) "Distributor" means any person:

(i) Who imports liquor, beer, or wine for sale, use or distribution; or

(ii) Who engages in the wholesome distribution of liquor, beer, or wine within the Reservation.

(12) "Wholesaler" means any person who engages in the wholesale distribution of liquor, beer, or wine within the Reservation.

(13) "Package" means a container or receptacle used for holding an alcoholic beverage.

(14) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(15) "Table wine" means wine as defined below which contains not more than 15% alcohol by volume.

(16) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed with the Fort Peck Reservation.

(17) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine.

(18) "Import" means to receive into any person's possession or custody first after its arrival and coming to rest at destination within the Reservation of any alcoholic beverage shipped or transported into this Reservation from a point of origin outside this Reservation.

(19) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

**Sec. 502. Tax on liquor imposed.**

(1) Each purchaser shall pay, at the time of the sale and delivery of any liquor on the Fort Peck Reservation, a liquor tax at the rate of:

(a) 26% of the retail selling price on all liquor sold and delivered on the Reservation by a company that manufactures, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(b) 22.4% of the retail selling price on all liquor sold and delivered on the Reservation by a company that manufactures, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The liquor tax shall be charged and collected on all liquor brought into the Reservation. The retail selling price shall be computed by adding to the cost of said liquor the State markup as designated by the State.

(3) Pursuant to the Agreement, the tax on liquor shall be collected by the State.

**Sec. 503. Tax on beer imposed.**

(1) Any wholesaler shall pay a tax of \$4.30 per barrel of 31 gallons on each and every barrel of beer sold on the Assiniboine and Sioux Tribe of the Fort Peck Reservation by any wholesaler.

(2) Said tax shall be paid by said wholesaler at the end of each month upon any such beer so sold by him during that month. As to any beer sold in containers other than barrels of more or less capacity of 31 gallons, the quantity content shall be ascertained and computed in determining the amount of tax due.

(3) Pursuant to the Agreement, the tax on beer shall be collected by the State.

**Sec. 504. Tax on wine imposed.**

(1) Any table wine distributor shall pay a tax of 27 cents per liter on table wine imported by such distributor.

(2) The tax on table wine imported by a table wine distributor shall be paid by the table wine

distributor by the 15th day of the month following the sale of the table wine from the table wine distributor's warehouse.

(3) Pursuant to the Agreement, the tax on table wine shall be collected by the State.

**Sec. 505. Distributor's and wholesaler's statement.**

(1) Every beer wholesaler or table wine distributor subject to this tax and licensed to do business in the State shall, on or before the 15th day of each month, in the manner and form as shall be prescribed by the State Department of Revenue, make an exact return to the Department of the amount of beer or wine sold and delivered by him within the Reservation during the previous month. Where the distributor or wholesaler has not separately paid the State, the beer or wine tax with respect to such beer or wine must be accompanied by a payment in an amount equal to the tax imposed by Sections 503 and 504.

**Sec. 506. Recordkeeping requirements.**

(1) Each distributor or wholesaler shall keep for a period not to exceed three years such records, receipts, invoices, and statements (required under Sec. 505) and any other pertinent papers and information as the Tribes may require.

**Sec. 507. Examination of records.**

(1) The Tribes, or its authorized representative, is hereby empowered to examine all pertinent books, papers, and records of any wholesaler or distributor on the Reservation.

**Sec. 508. Tax Penalty for delinquency.**

(1) Any tax not paid within the time provided shall be delinquent, and a penalty of 10% shall be added to the tax, and in addition the tax shall bear interest at a rate of 1% per month from the date of delinquency until paid. Upon showing of good cause by a distributor or wholesaler, the Tribes may waive the penalty.

(2) If any distributor or other person subject to the payment of such tax shall willfully fail, neglect, or refuse to make any statement required by

this Chapter or shall willfully fail to make payment of such tax within the time provided, the Tribes shall be authorized to revoke any license to engage in and carry on business on the Reservation.

(3) In addition, the Tribes shall inform itself regarding the matters required to be in any such statement and determine the amount of the tax due the Tribes from such distributor or wholesaler and shall add thereto a penalty of \$25.00 or 10% thereof, whichever is the greater, together with interest at the rate of 1% per month from the date such statements should have been made and said tax paid.

(4) The Tribes shall proceed to collect such tax, with penalties and interest. The Tribes may commence and prosecute to final determination in any court of competent jurisdiction an action to collect such tax.

**(AMENDED AS PER RESOLUTION NO. 3201-93-9, DATED 09/12/93.)**

## **Chapter 6. Cigarette Tax and Tax on Other Tobacco Products**

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### **Sec. 601. Definitions.**

Unless otherwise noted, as used in this chapter, the following definitions apply:

(1) "Agreement" means the Fort Peck-Montana Tobacco Tax Agreement.

(2) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, regardless of size or shape or whether or not the tobacco is favored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of

non-tobacco paper or any other substance or material except tobacco.

(3) "Insignia" means an impression, mark, or stamp approved by the Montana Department of Revenue for use on cigarette packages.

(4) "Moist snuff" means any product containing finely cut, ground or powdered tobacco, other than dry snuff, intended to be placed in the oral cavity.

(5) "Person" means an individual, firm, partnership, corporation, association, company, or other business entity, however formed.

(6) "Reservation" means the Fort Peck Indian Reservation.

(7) "Sale" means any transfer of cigarettes or a tobacco product for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means, where such transfer occurs within the Reservation and is not subject to State tobacco taxes.

(8) "State" means the State of Montana, Department of Revenue.

(9) "State tobacco taxes" means the Montana cigarette tax and the Montana tax on other tobacco products.

(10) "Tribal tobacco taxes" means the Tribal cigarette tax and the Tribal tax on other tobacco products.

(11) "Tribes" means the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

(12) "Tobacco product" means a substance other than cigarettes or moist snuff that is intended for human consumption and contains tobacco.

(13) "Wholesaler" means a person who sells cigarettes and other tobacco products for resale on the Reservation.

**(AMENDED AS PER RESOLUTION NO. 1749-2003-6, DATED 06/23/03).**

### **Sec. 602. Intent.**

This ordinance is enacted to meet the requirement on Paragraph 3 of the Agreement that the Tribal Executive Board adopt and keep in force an ordinance imposing Tribal tobacco taxes similar to the State tobacco taxes.

**Sec. 603. Tribal cigarette tax.**

(1) A Tribal cigarette tax is imposed on the sale of cigarettes within the Reservation. The tax is equal to seventy (70) cents for each package of cigarettes containing twenty (20) cigarettes. When a package contains more or less than twenty (20) cigarettes, the tax on each cigarette is equal to one-twentieth (1/20th) of the tax on a package containing twenty (20) cigarettes.

(2) A wholesaler selling cigarettes for resale within the Reservation must pre-collect and pay the Tribal cigarette tax through the purchase of State tax insignia as provided in Sec. 504.

(3) With respect to pre-collected Tribal cigarette taxes, a wholesaler must report to the State the same information that would be required under Montana laws and regulations with respect to pre-collected State cigarette taxes.

**(AMENDED AS PER RESOLUTION NO. 1749-2003-6, DATED 06/23/03).**

**Sec. 604. Tax Insignia.**

A State tax insignia must be affixed to all cigarettes sold within the Reservation. A wholesaler selling cigarettes subject to the Tribal cigarette tax shall comply with Montana laws and regulations on the requirements for purchasing and affixing State tax insignia. In calculation any insignia discount, sales subject to the State cigarette tax and sales subject to the Tribal cigarette tax should be combined.

**Sec. 605. Records of wholesalers.**

All wholesalers making sales of cigarettes subject to the Tribal cigarette tax must maintain for five (5) years and make available for examination by the State and/or the Tribes the same books and records as are maintained with respect to cigarette sales subject to the Montana cigarette tax.

**Sec. 606. Licenses.**

All wholesalers must be licensed by the State of Montana before selling cigarettes or other tobacco products for resale within the Reservation.

**Sec. 607. Tax on other tobacco products.**

(1) A Tribal tax is imposed on the sale of other tobacco products on the Reservation. The tax is equal to twenty-five percent (25%) of the wholesale price paid by the wholesaler.

(2) A Tribal tax is imposed on the sale of moist snuff at a rate of thirty-five (35) cents per ounce, or any portion thereof, based upon the net weight of the package listed by the manufacturer on the package. When a package contains more or less than one (1) ounce, the tax on the package shall be proportional to the weight of the package.

(3) A wholesaler making sales of moist snuff and other tobacco products for resale within the Reservation must pre-collect and pay to the State the Tribal tax on other tobacco products. A wholesaler may reduce the amount of the Tribal tax on other tobacco products the wholesaler pays by two and one half percent (2.5%) to compensate for such person's collection and administrative expenses.

(4) With respect to the pre-collected Tribal tax on moist snuff and other tobacco products, a wholesaler must report to the State the same information that is required under Montana laws and regulations with respect to the State tax on other tobacco products.

**(AMENDED AS PER RESOLUTION NO. 1749-2003-6, DATED 06/23/03).**

**Sec. 608. Payment to Tribes.**

The State shall pay the Tribes its share of all taxes upon the sale of cigarettes and other tobacco products in accordance with Paragraph 5 of the Agreement.

**Sec. 609. Transition Reflecting Change in State Taxes on Cigarettes**

To observe the changes in state tax law as proposed in Montana Senate Bill No. 407 (2003), the Tribes require all vendors, retailers and wholesalers to:

(1) Report to the State the number of stamped cigarettes and the cigarette insignia on hand as of 12:01 a.m. on April 30, 2003, and

(2) Pay the difference between the former tax rate on cigarettes and the cigarette insignia and

the new tax rate, if the inventory count taken April 30, 2003, exceeds the inventory amount of stamped cigarettes and cigarette insignia listed at the close of the last income tax reporting year. A statement that no taxes are owed after comparing inventory amounts should be reported the State. **(AMENDED AS PER RESOLUTION NO. 1749-2003-6, DATED 06/23/03).**

**Fort Peck Tribal Court**  
**807 Court Avenue - P.O. Box 1027**  
**Poplar, MT 59255**



**Title 24 – Commercial Law**

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# **Chapter 1. General Provisions and Definitions**

## **Subchapter A. General Provisions**

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### **Sec. 101. Scope**

This Chapter, and all subsequent Chapters and Sections of this Title, shall apply to the over-all processes and procedures for engaging in commercial activities with the Fort Peck Tribal Government and/or individual Indians and non-Indians under the civil jurisdiction of the Fort Peck Tribes.

### **Sec. 102. Purposes: Rules of Construction; Variation by Agreement**

(1) This Title shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this Title are:

(a) To simplify, clarify and modernize the tribal law governing commercial transactions, and

(b) To permit the continued expansion of commercial practices through custom, usage and agreement of the parties.

(3) The effect of provisions of the Title may be varied by agreement, except as otherwise provided in this Title and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Title may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this Title of the words "unless otherwise agreed" or words of similar import does not imply that the

effect of other provisions may not be varied by agreement under subsection (3).

(5) In this Title unless the context otherwise requires:

(a) Words in the singular number include the plural, and in the plural include the singular;

(b) Words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

### **Sec. 103. Supplementary General Principles of Law Applicable**

Unless displaced by the particular provisions of this Title the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, or other validating or invalidating cause shall supplement its provisions.

### **Sec. 104. Remedies to Be Liberally Administered**

(1) The remedies provided by this Title shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this Title or by other rule of law.

(2) Any right or obligation declared by this Title is enforceable by action unless the provision declaring it specifies a different and limited effect

## **Subchapter B. General Definitions**

### **Sec. 111. General Definitions.**

Subject to additional definitions contained in the subsequent Chapters of this Title which are applicable to specific Sections thereof, and unless the context otherwise requires, in this Title;

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.



(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Title. Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts. (Compare "Contract")

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note by air waybill.

(7) "Burden of establishing a fact" means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(8) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be person in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(9) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against who it is to operate ought to have noticed

it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(10) "Contract" means the total legal obligation which results from the parties agreement as affected by this Title and any other applicable rules of law. (Compare "Agreement")

(11) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(12) "Credit committee" means the Tribal Credit Committee as currently established under tribal and/or federal law and procedure.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, warehouse receipt or order for the delivery of goods, and also any other documents which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible Goods" are goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honestly in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued, or endorsed to him or his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent as determined by the Tribal Court.

(23) "Insolvency Proceedings" are any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(24) "Joint venture" means an association of persons with intent, by way of contract, express or implied, to engage in and carry out a single business adventure for joint profit, for which purpose they combine their efforts, property, money, skill, and knowledge, but without creating a partnership in the legal or technical sense of the term, or a corporation, and they agree that there shall be community of interest among shall be a community of interest among them as to the purpose of the undertaking, and that each co-adventurer shall stand in the relation of principal, as well as agent, as to each of the other co-adventurer, with an equal right of control of the means employed to carry out the common purpose of the adventure.

(25) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(26) A person has "notice" of a fact when:

(a) He has actual knowledge of it; or

(b) He has received a notice or notification of it; or

(c) From all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge

rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this title.

(27) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) It comes to his attention; or

(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by as the place for receipt of such communications.

(28) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(29) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(30) "Party", as distinct from "third Party", means a person who has engaged in a transaction or made an agreement within this Title.

(31) "Persons" includes an individual or an organization.

(32) "Personal Property" is property used or bought for use primarily for personal, family, or household purposes.

(33) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its non-existence.

(34) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(35) "Purchaser" means a person who takes by purchase.

(36) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a court or tribunal.

(37) "Repossession" means a taking of possession after a relinquishment of possession. A remedy of the vendor upon default by the buyer under a conditional sale contract. The remedy of the holder of a trust receipt in retaking possession of the subject matter of the receipt upon default of the debtor.

(38) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(39) "Rights" includes remedies.

(40) "Secretary of State" for the purposes of filing under Article 9 the term "Secretary of State" shall mean the Fort Peck Tribal "Secretary/Accountant."

(41) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment of delivery to the buyer is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Chapter 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale is not a "security interest", but a buyer may also acquire a "security interest" by complying with Chapter 9. Unless a lease or consignment is intended as security, reservation of title there under is not a "security interest", but a buyer may also acquire a "security interest" by

complying with Chapter 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales. Whether a lease is intended as security is to be determined by the facts of each case; however,

(a) The inclusion of option to purchase does not of itself make the lease one intended for security, and

(b) An agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(42) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified there on otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice with the time at which it would have arrived if properly sent has the effect of a proper sending.

(43) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(44) "Surety" includes guarantor.

(45) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(46) "Term" means that portion of an agreement which relates to a particular matter.

(47) "Tribe or Tribes" means the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation unless otherwise set forth in writing in a commercial document.

(48) "Unauthorized" signature or endorsement means one made without actual, implied or apparent authority and includes a forgery.

(49) "Value" means a person gives "value" for rights if he acquires them:

(a) In return for a binding commitment to extend credit or for the extension of immediately

available credit whether or not drawn upon an whether or not a chargeback is provided for in the event of difficulties in collection; or

(b) As security for or in total or partial satisfaction of a pre-existing claim; or

(c) By accepting delivery pursuant to a pre-existing contract for purchase; or

(d) Generally, in return for any consideration sufficient to support a simple contract.

(50) "Warehouse Receipt" is a receipt issued by a person engaged in the business of storing goods for hire.

(51) "Written" or "writing" includes printing, typewriting or any intentional reduction to tangible form.

## Chapter 2. Sales

### Sections:

Sec. 201. Applicable Codes. ....5

Sec. 202. Effective Date.....5

### Sec. 201. Applicable Codes.

(a) Under the authority set forth in title 4 - Civil Procedure, Chapter 5, Section 501 (a) - (d), the Fort Peck Tribal Court shall, in determining any case over which it has jurisdiction, give effect to and apply the General Provisions and Official Comments of Article 2 - Sales, Sections 2-101 through 2- 725, of the Uniform Commercial Code (UCC), as such Code has been adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, except where those provisions conflict with another provision of the Tribes' Code of Justice or are inconsistent with a custom of the Tribes demonstrated by clear proof. Section 2-204 shall be amended to include the following provisions as 2-204 (4):

For transactions involving the shipment of cattle or cattle being released from auction yards for shipment, the seller may issue a regular title or bill of sale, or give a conditional transfer of title or bill of sale. The conditional transfer of title or bill of sale is fully validated and the title passes when the following conditions are met:

(1) The bank on which the buyer's warrant, check, or draft was drawn notifies the seller, or his/her designated bank, that the instrument of payment has cleared the bank for payment; and,

(2) A copy of the notification from the buyer's bank is attached to the conditional transfer of title or bill of sale.

(b) The Tribal Court shall give binding effect to and utilize only the most recent copyrighted version of the UCC, whenever such version is revised and reprinted.

### Sec. 202. Effective Date.

This Chapter shall become effective on January 1, 1992. It applies to transactions entered into and events occurring after such date.

## Chapter 3. Commercial Paper

### Sections:

Sec. 301. Applicable Codes. ....5

Sec. 302. Effective Date. ....5

### Sec. 301. Applicable Codes.

(a) Under the authority set forth in Title 6 - Civil Procedure, Chapter 5, Section 501 (a) - (d), the Fort Peck Tribal Court shall, in determining any case over which is has jurisdiction, give effect to and apply the General Provisions and Official Comments of Article 3 - Commercial Paper, Sections 3-101 through 3-805, of the Uniform Commercial Code (UCC), as such Code has been adopted by the American Law Institute and the National Congress of Commissioners on Uniform State Laws, except where those provisions conflict with another provision of the Tribes' Code of Justice or are inconsistent with a custom of the Tribes demonstrated by clear proof.

(b) The Tribal Court shall give binding effect to and utilize only the most recent copyrighted version of the UCC, whenever such version is revised and reprinted.

### Sec. 302. Effective Date.

This Chapter shall become effective on January 1, 1992. It applies to transactions entered into and events occurring after such date.

## **Chapter 4. Bank Deposits and Collections**

### **Sections:**

Sec. 401. Applicable Codes. ....	6
Sec. 402. Effective Date.....	6

### **Sec. 401. Applicable Codes.**

(a) Under the authority set forth in Title 6 - Civil Procedure, Chapter 5, Section 501 (a) - (d), the Fort Peck Tribal Court shall, in determining any case over which it has jurisdiction, give effect to and apply the General Provisions and Official Comments of Article 4 - Bank Deposits and Collections, Sections 4-101 through 4 -504, of the Uniform Commercial Code (UCC), as such Code has been adopted by the American Law Institute and the National Congress of Commissioners on Uniform State Laws, except where those provisions conflict with another provision of the Tribes' Code of Justice or are inconsistent with a custom of the Tribes demonstrated by clear proof.

(b) The Tribal Court shall give binding effect to and utilize only the most recent copyrighted version of the UCC, whenever such version is revised and reprinted.

### **Sec. 402. Effective Date.**

This Chapter shall become effective on January 1, 1992. It applies to transactions entered into and events occurring after such date.

## **Chapter 5. Letters of Credit**

### **Sections:**

Sec. 501. Applicable Codes. ....	6
Sec. 502. Effective Date.....	6

### **Sec. 501. Applicable Codes.**

(a) Under the authority set forth in Title 6 - Civil Procedure, Chapter 5, Section 501 (a) - (d), the Fort Peck Tribal Court shall, in determining any case over which it has jurisdiction, give effect to and apply the General Provisions and Official Comments of Article 5 - Letters of Credit, Sections 5-501 through 5-117, of the Uniform Commercial Code (UCC), as such Code has been

adopted by the American Law Institute and the National Congress of Commissioners on Uniform State Laws, except where those provisions conflict with another provision of the Tribes' Code of Justice or are inconsistent with a custom of the Tribes demonstrated by clear proof.

(b) The Tribal Court shall give binding effect to and utilize only the most recent copyrighted version of the UCC whenever such version is revised and reprinted.

### **Sec. 502. Effective Date.**

This Chapter shall become effective on January 1, 1992. It applies to transactions entered into and events occurring after such date.

## **Chapter 6. Bulk Transfers**

### **Sections:**

Sec. 601. Applicable Codes. ....	6
Sec. 602. Effective Date. ....	6

### **Sec. 601. Applicable Codes.**

(a) Under the authority set forth in Title 6 - Civil Procedure, Chapter 5, Section 501 (a) - (d), the Fort Peck Tribal Court shall, in determining any case over which it has jurisdiction, give effect to and apply the General Provisions and Official Comments of Article 6 - Letters of Credit, Sections 6-101 through 6-111, of the Uniform Commercial Code (UCC), as such Code has been adopted by the American Law Institute and National Congress of Commissioners on Uniform State Laws, except where those provisions conflict with another provision of the Tribes' Code of Justice or are inconsistent with a custom of the Tribes demonstrated by clear proof.

(b) The Tribal Court shall give binding effect to and utilize only the most recent copyrighted version of the UCC, whenever such version is revised and reprinted.

### **Sec. 602. Effective Date.**

This Chapter shall become effective on January 1, 1992. It applies to transactions entered into and events occurring after such date.

## **Chapter 7. Warehouse Receipts, Bills of Lading and other Documents of Title**

### **Sections:**

Sec. 701. Applicable Codes. ....	7
Sec. 702. Effective Date.....	7

### **Sec. 701. Applicable Codes.**

(a) Under the authority set forth in Title 6 - Civil Procedure, Chapter 5, Section 501 (a) - (d), the Fort Peck Tribal Court shall, in determining any case over which it has jurisdiction, give effect to and apply the General Provisions and Official Comments of Article 7 - Warehouse Receipts, Bills of Lading and Other Documents of Title, Sections 7-101 through 7-603, of the Uniform Commercial Code (UCC), as such Code has been adopted by the American Law Institute and the National Congress of Commissioners on Uniform State Laws, except where those provisions conflict with another provision of the Tribes' Code of Justice or are inconsistent with a custom of the Tribes demonstrated by clear proof.

(b) The Tribal Court shall give binding effect to and utilize only the most recent copyrighted version of the UCC, whenever such version is revised and reprinted.

### **Sec. 702. Effective Date.**

This Chapter shall be effective on January 1, 1992. It applies to transactions entered into and events occurring after such date.

## **Chapter 8. Repossession of Personal Property**

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### **Sec. 801. Scope.**

This Chapter shall apply to actions to repossess personal property of Indians, and the personal property on trust land on the Reservation, by persons holding a security interest in such property. It shall apply whether or not the transaction occurred or the credit was extended on the Reservation. For purposes of this Title, a security interest shall be an interest in personal property which secures payment or performance of an obligation.

### **Sec. 802. Self-help repossession forbidden.**

No person shall repossess personal property of Indians or from trust land, except with the written permission of the owner of the property, obtained at the time repossession is sought, unless authorized by a Court order issued under this Chapter.

### **Sec. 803. Submission to Jurisdiction.**

Any person bringing suit in Tribal Court seeking repossession of personal property shall be deemed to have submitted to the jurisdiction of the Court with respect to the entire transaction giving rise to the right of repossession, whether or not, the transaction occurred on the Reservation.

### **Sec. 804. Action for Repossession.**

(a) Any person may bring an action in Tribal Court for repossessing of personal property. The action shall name the owner of the property or the person possessing the property, and all persons holding a security interest in the property, if known, as defendants.

(b) A complaint for repossession of the property shall comply with Title 6, Section 101 of this Code, and shall include:

(1) The location of the property sought to be repossessed, if known.

(2) A description of the property in sufficient detail to identify it for the Court or those implementing a repossession order.

(3) A description of the agreement which gives rise to the security interest. A copy of the agreement shall be attached to the complaint.

(4) Allegations of facts showing that the security interest falls within the scope of this Chapter.

(5) Allegations of facts showing that the breach of the agreement which gives rise to the right of repossession.

(6) Where applicable, the total balance due and owing under the agreement.

(c) A complaint for repossession shall be served as provided in Title 6, Section 102, except that service by publication is not permitted on the owner or possessor of the property.

#### **Sec. 805. Hearing on action.**

(a) The hearing required by Title 6, Section 103 shall be held as soon as possible but not less than fifteen (15) days after the complaint is filed. At that hearing, the Court shall hear evidence from the plaintiff and the defendant, and shall determine whether the plaintiff has a security interest in the property, and whether there has been a breach of the agreement giving rise to a right of repossession under the agreement.

(b) If it appears that the plaintiff is entitled to repossess the property, the Court shall enter an order authorizing the plaintiff to repossess the property. If it appears that, notwithstanding the Court order, an attempt by plaintiff to repossess the property will lead to a breach of the peace, the Court may order the property seized by the BIA police. The Court may stay execution of the order pending final disposition of plaintiff's claims and defendant's counterclaims, if defendant posts a bond in the sum claimed by plaintiff.

(c) If any defendant makes any claims by the way of counterclaim, setoff or otherwise, or if any other security interest holder makes a claim and the Court finds there is probable cause to believe the claim or claims may be meritorious, the Court may take appropriate action to preserve the property until all claims to it are resolved, including:

(1) Impounding the property in the custody of the Court, or

(2) Requiring a bond to be posted by the plaintiff in an amount sufficient to cover the other parties' claims as a condition to issuing an order for repossession, or

(3) Requiring a commercially reasonable disposition of the property under supervision of the Court, and payment of the proceeds into Court.

These claims shall be finally determined at the trial required by Section 201 of Title 6.

#### **Sec. 806. Disposal of property.**

(a) In all cases where repossession of property is permitted, a return shall be filed with the Court showing what action was taken on the repossession order, and how the property was disposed of by plaintiff. Plaintiff shall fully account for the proceeds from the property.

(b) All repossessed property shall be disposed of in a commercially reasonable manner and the proceeds applied to the claims of the plaintiff including reasonable costs and attorneys' fees if permitted by the security agreement. Any surplus shall be returned to the owner of the property, unless claims are made by others with security interests in the property, in which case the surplus shall be paid into the Court pending disposition of those claims.

(c) Plaintiff may seek a court judgment against the owner of the property for the balance owing, if any, after disposal of the property.

#### **Sec. 807. Emergency repossessions.**

(Repealed as per Tribal Resolution No. 3363-87-10, Dated 10-26-87.)

#### **Sec. 808. Governing procedures.**

(a) Actions for repossession under this Chapter are civil actions. Such actions are governed by Titles 2 and 6 of this Code and applicable rules of procedure of the Tribal Court to the extent consistent with this Chapter.

(b) If the right to repossession of the property is regulated by contract, the Court shall apply and be governed by the terms of the contract unless they are unconscionable, contrary to law, or inconsistent with this Chapter.

#### **Sec. 809. Civil liability.**

Any person who violates Section 802 of this Chapter and any business whose employee violates such section shall be civilly liable to the

owner of the property repossessed and to the person to whom credit was extended for any loss caused by failure to comply with such sections; provided that, the owner and person to whom credit was extended shall have the right to recover as liquidated damages an amount not less than ten percent (10%) of the principal amount of the original secured debt.

**Chapter 9. Secured Transactions; Sales of Accounts and Chattel Paper**

**Sections:**

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 Sec. 902. Effective Date.....9

**Sec. 901. Applicable Codes.**

(a) Under the authority set forth in Title 6 - Civil Procedure, Chapter 5, Section 501 (a) - (d), the Fort Peck Tribal Court shall, in determining any case over which it has jurisdiction, give effect to and apply the General Provisions and Official Comments of Article 9 - Secured Transactions; Sales of Accounts and Chattle Paper, Sections 9-101 through 9-507, of the Uniform Commercial Code (UCC), as such Code has been adopted by the American Law Institute and the National Congress of Commissioners on Uniform State Laws, except where those provisions conflict with another provision of the Tribes' Code of Justice or are inconsistent with a custom of the Tribes demonstrated by clear proof. As provided by this Section of the Code:

Section 9-503 of the Tribes' Code shall read:

Except as otherwise provided by Chapter 8 of this Title, or otherwise agreed, a secured party has on default, the right to take possession of the collateral. In taking possession, a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides, the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal, a secured party

may render equipment unusable, and may dispose of collateral on the debtor's premises under 9-504.

(b) The Tribal Court shall give binding effect to and utilize only the most recent copyrighted version of the UCC, whenever such version is revised and reprinted.

**Sec. 902. Effective Date.**

This Chapter shall become effective on January 1, 1992. It applies to transactions entered into and events occurring after such date.

**Chapter 10. Nonprofit Corporations**

**Sections:**

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**Sec. 1001. Scope.**

The provisions of this Chapter shall apply to all corporations organized hereunder, or which elect to accept the provisions of this Chapter if such corporation was previously incorporated under prior Tribal or State provisions.

**Sec. 1002. Permissible Purposes.**

Corporations may be organized under this Chapter for any lawful purpose or purposes including, but not limited to, one or more of the following: educational; scientific; research; literary; musical; social; athletic; patriotic; political; civil; professional; commercial; mutual improvement; or promotion of the Arts.

**Sec. 1003. Definitions.**

As used in this Ordinance, the terms:

(a) "Corporation or Domestic Corporation: - means an entity organized and incorporated subject to the provisions of this Chapter.

(b) "Not for Profit Corporation" - means a corporation exempt from taxation under Section 501 (c) of the Internal Revenue Code of 1954; or a corporation no part of the income of which is distributable to its members, directors, or officers; except nothing in this Chapter shall be construed as prohibiting the payment of reasonable compensation for services rendered and the making of distribution upon dissolution or final liquidation as permitted in this Chapter.

(c) "Article of Incorporation": - means the original articles of incorporation and all amendments thereto, including articles of merger or consolidation, and in the case of a corporation created by a special ordinance or resolutions of the Tribal Council, means such special ordinance or resolution and any amendments thereto.

(d) "By-laws" - means the Code or Codes of Rules adopted for the regulation or management of the affairs of a corporation irrespective of the names or names by which such rules are designated.

(e) "Member" - means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or by-laws.

(f) "Board of Directors" - means the group of persons vested with the management of the affairs of a corporation or other Tribally recognized organization irrespective of the names by which such group is designated.

(g) "Insolvent" - means that a corporation is unable to pay its debts as they become due in the usual course of its affairs.

(h) "Treasurer" - means the Corporate Treasurer or the agent or agents designated by him/her to perform any function vested in the Treasurer by this Ordinance.

(i) "Reservation" - means the Fort Peck Assiniboine and Sioux Reservation.

(j) "The Court" - means except where otherwise specified, the Assiniboine and Sioux Tribal Court.

(k) "Secretary/Accountant" - means the person appointed by the Tribal Executive Board to serve in the capacity of Tribal Secretary/Accountant as per the provisions of the Assiniboine and Sioux Tribal Constitution and By-Laws.

#### **Sec. 1004. General Powers.**

Each corporation shall have the power:

(a) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(b) If it so elects, to sue and be sued, complain and defendant, in its corporate name;

(c) To have a corporate seal which may be altered at pleasure and to use the same by causing it, or a facsimile thereof, to be impressed or affixed in any other manner reproduced;

(d) To purchase, take, receive, lease, take by gift or bequest or otherwise acquire, own, hold, improved, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;

(e) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(f) To lend money to and otherwise assist its employees other than its officers and directors;

(g) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, corporations, whether or not, incorporated under this Chapter and whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof or any other Indian Tribe;

(h) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchise and income;

(i) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(j) To conduct its affairs, carry on its operations, hold property, and have offices and exercise the powers granted by this Chapter:

(k) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

(l) To make and alter by-laws, not inconsistent with its articles of incorporation or with the laws, ordinances, and regulations of the Assiniboine and/or Sioux Tribe and the United

States, for the administration and regulation of the affairs of the corporation; and

(m) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for religious, charitable, scientific research, or educational purposes, or for other purposes for which the corporation is organized.

#### **Sec. 1005. Defense of Ultra Vires.**

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(a) In a proceeding by a member or a director against the corporation to enjoin the doing of any act, or the transfer of real or personal property by or to the corporation. If the act or transfer sought to be enjoined is being, or is to be, performed pursuant to any contract to which the corporation is a party, the Court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, as the case may be, compensation for the loss or damages sustained by either of them which may result from the action of the Court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damages sustained.

(b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or directors of the corporation for exceeding their authority; and

(c) In a proceeding by the Tribal Secretary/Accountant as provided in this Chapter, to dissolve the corporation or in a proceeding by the Tribal Secretary/Accountant to enjoin the corporation from the transaction of authorized acts.

#### **Sec. 1006. Corporate Name.**

The Corporate Name:

(a) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation; and

(b) Shall not be the same as, or deceptively similar to the name of any corporation, whether for profit or not for profit organized under this Chapter or any other Chapter or resolution of the Tribe to transact business or conduct affairs in the Reservation.

(c) The right to the exclusive use of a particular corporate name may be reserved by filing an appropriate application with the Tribal Secretary/Accountant. If the Secretary/Accountant finds that such name is available for corporate use, he/she shall reserve such name for the exclusive use by the applicant.

#### **Sec. 1007. Registered Office and Registered Agent.**

(a) Each corporation shall have and continuously maintain on the Reservation a registered office which may be but need not be its principal office, and a registered agent.

(b) A corporation may change its registered office or agent, or both upon filing with the Tribal Secretary/Accountant a statement which meets the requirements of an appropriate form established by the Secretary/Accountant.

#### **Sec. 1008. Registered Agent as an Agent for Service.**

(a) The registered agent appointed by a corporation as provided in this Chapter shall be an agent of such corporation upon whom a process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent on this Reservation or whenever its registered agent cannot, with reasonable diligence, be found at the registered office, then the Tribal Secretary/Accountant shall be an agent of such corporation upon whom any such process, notice, or demand shall be made by delivering to and leaving with them, or with any

clerk having charge of their office, duplicate copies of such process, notice or demand. In the event that any such process, notice or demand is served on the Tribal Secretary/Accountant, he/she shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office.

(c) The Tribal Secretary/Accountant shall keep a record of all processes, notices, and demands served upon him/her under this Section, and shall keep a record therein the time of such service and his/her action with respect thereto.

(d) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

#### **Sec. 1009. Members.**

A corporation may have one or more classes of members or may have no members. If the corporation has members, the manner of election or appointment and the qualifications and rights of the members shall be set forth in the articles of incorporation or the by-laws. If the corporation has no members, that fact shall be set forth in the articles of incorporation. A corporation may issue certificates evidencing membership therein. Members shall not be liable, as such, on corporate obligations.

#### **Sec. 1010. Meetings of Members.**

(a) Meetings of members may be held at such place within or without the Reservation as may be provided in the by-laws or, where not inconsistent with the by-laws, in the notice of the meeting.

(b) An annual meeting of the members shall be held at such time as may be provided in the by-laws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(c) Special meetings of the members may be called by the President, the Board of Directors, or by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the by-laws.

#### **Sec. 1011. Notice of Members Meeting.**

Written or printed notice stating the place, day and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall in the absence of a provision in the by-laws specifying a different period of notice, be delivered not less than ten (10) or more than thirty(30) days before the date of the meeting, either personally or by mail; or at the direction of the president, or the Board of Directors or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his/her address as it appears on the records of the corporation, with postage thereon prepaid.

#### **Sec. 1012. Voting.**

(a) Members shall not be entitled to vote except as the right to vote shall be conferred by the articles of incorporation.

(b) A member may vote in person, or unless the articles of incorporation or the by-laws otherwise provide, may vote by proxy executed in writing by the member or his/her duly authorized representative in-fact. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Where the articles of incorporation or the by-laws so provide, voting on all matters including the election of directors or officers where they are to be elected by the members, may be conducted by mail.

(c) If a corporation has no members or if the members have no right to vote, the directors shall have the sole voting power and shall have all the authority and may take any action herein permitted by members.

#### **Sec. 1013. Quorum.**

(a) The by-laws shall provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meet-

ing of members. The affirmative vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this Chapter, the articles of incorporation or the by-laws.

(b) Unless otherwise provided by the articles of incorporation or the by-laws, the members present at a duly organized meeting may continue to do business until adjournment notwithstanding the withdrawal of enough members to leave less than a quorum.

(c) If a meeting cannot be organized because a quorum had not attended, those present may adjourn the meeting from time to time until a quorum is present, when any business may be transacted that may have been transacted at the meeting as originally called.

#### **Sec. 1014. Board of Directors.**

The affairs of a corporation shall be managed by a Board of Directors. Directors need not be residents of the Reservation or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the by-laws may prescribe other qualifications for Directors.

#### **Sec. 1015. Number, Election, Classification and Removal of Directors.**

(a) The number of directors of a corporation shall be not less than three (3). Subject to such limitation, the number of directors shall be fixed by the by-laws, except as to the number of the first Board of Directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the by-laws, unless the articles of incorporation provide that a change in the number of directors shall be made only amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the

absence of a by-law fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(b) The names and addresses of the members of the first Board of Directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual election of directors or for such period as may be specified in the articles of incorporation or the by-laws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the by-laws. In the absence of a provision fixing the terms of office, the term of office of a director shall be one (1) year.

(c) Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he/she is elected or appointed and until his/her successor shall have been elected or appointed and qualified, except in the case of ex officio directors.

(d) A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or the by-laws, and if none be provided, may be removed at a meeting called expressly for that purpose, with or without cause, by such vote as would suffice for his/her election.

#### **Sec. 1016. Vacancies.**

Any vacancy occurring in the Board of Directors and any directorship to be filled by reason of any increase in the number of directors may be filled by the affirmative vote of a majority of the then members of the Board of Directors, though less than a quorum of the board, unless the articles of incorporation or the by-laws provide that a vacancy or directorship so created shall be filled in the some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his/her predecessor in office.

#### **Sec. 1017. Quorum of Directors.**

A majority of the number of directors fixed by the by-laws, or in the absence of a by-law fixing

the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation, or the by-laws, but in no event shall a quorum consist of less than one-third (1/3) of the number of directors so stated or fixed. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act or a greater number is required by this Chapter or by the articles of incorporation or the by-laws.

**Sec. 1018. Committees.**

In the articles of incorporation or the by-laws so provide, the Board of Directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees, each of which shall consist of two (2) or more directors, which committees, to the extent provided in said resolution, in the articles of incorporation or in the by-laws of the corporation, shall have and exercise the authority of the Board of Directors in the management of the corporation. Other committees not having and exercising the authority of the Board of Directors in the management of the corporation may be designated and appointed by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual director, of any responsibility imposed upon it or him/her by law.

**Sec. 1019. Place and Notice of Directors' Meetings.**

Meetings of the Board of Directors, regular or special, may be held at such place within or without the Reservation, and upon such notice as may be prescribed by the by-laws, or where not inconsistent with the by-laws, by resolution of the Board of Directors, a director's attendance at any meeting shall constitute a waiver of notice of such meeting, excepting such attendance at a meeting by the director for the purpose of objecting to the

transaction of business because the meeting is not lawfully called or convened. Neither the business to be transacted, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of such notice, of such meeting, unless otherwise provided in the articles of incorporation or the by-laws.

**Sec. 1020. Officers.**

(a) The officers of a corporation shall consist of a president, a secretary, and treasurer, and may include one or more vice-presidents, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three (3) years as may be prescribed in the articles of incorporation or the by-laws. In the absence of any such provision, all officers shall be elected or appointed annually by the Board of Directors. If the by-laws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

(b) The articles of incorporation or the by-laws may provide that any one or more officers of the corporation or other organizations shall be ex officio members of the Board of Directors.

(c) The officers of a corporation may be designated by such other titles as may be provided in the articles of incorporation or the by-laws.

(d) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the by-laws, or as may be determined by resolution of the Board of Directors not inconsistent with the by-laws.

**Sec. 1021. Removal of Officers.**

Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint such officer or agent whenever, in their judgment, the best interest of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an

officer or agent shall not itself create contract rights.

**Sec. 1022. Books and Records.**

Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, Board of Directors, and committees having any of the authority of the Board of Directors; and shall keep at its registered office or principle office on the Reservation, a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member having voting rights, or his/her agent or attorney for any proper purpose at any reasonable time.

**Sec. 1023. Shares of Stock and Dividends Prohibited.**

A corporation shall not authorize or issue shares of stock. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation, including pensions, in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation, may make distribution to its members or others as permitted by this Chapter. No such payment benefit or distribution shall be deemed to be a dividend or distribution of income or profit.

**Sec. 1024. Loans to Directors and Officers.**

Although loans may be made by a corporation to its directors or officers, the directors of a corporation who vote for or assent to the making of a loan to a director or an officer of the corporation, and any officer participating in the making of such a loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

**Sec. 1025. Incorporators.**

One (1) or more persons of the age of twenty-one (21) years or more may act as incorporators

of a corporation by signing, certifying, and delivering one (1) original and one (1) copy to the Tribal Secretary/Accountant, articles of incorporation for such corporation.

**Sec. 1026. Articles of Incorporation.**

(a) The articles of incorporation shall set forth:

- (1) The name of the corporation;
- (2) The period of duration, which may be perpetual;
- (3) The purpose or purposes for which the corporation is organized;
- (4) If the corporation is to have no members, a statement to that effect;
- (5) If the corporation is to have members, any provision which the incorporators elect to set forth in the articles of incorporation stating the qualifications and rights of members and conferring, limiting, or denying the right to vote;
- (6) If the directors of any of them are not to be elected or appointed by members, a statement of the manner in which such directors shall be elected or appointed, or that the manner of such election or appointment of such directors shall be provided in the by-laws;
- (7) Any provisions, not inconsistent with this Chapter or any other law or ordinance of the Assiniboine and/or Sioux Tribe which the incorporators elect to set forth in the articles of the corporation, including any provision for distribution of assets on dissolution or final liquidation and any provisions which under this Chapter is required or permitted to be set forth in the bylaws;
- 8) The address, including street and number, if any, of its initial registered office, and the name of its initial registered agent at such address;
- (9) The number of directors constituting the initial Board of Directors, and the names and addresses, including street and number, if any, of the person who are to serve as the initial directors until the first annual meeting or until their successors be elected and qualify; and
- (10) The name and address, including street and number, if any of each incorporator.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Chapter.

(c) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the by-laws shall be controlling. Whenever a provision of the articles of incorporation is inconsistent with a by-law, the provision of the articles of incorporation shall be controlling.

#### **Sec. 1027. Filing of Articles of Incorporation.**

(a) One (1) original and one (1) copy of the articles of incorporation shall be delivered to the Tribal Secretary/Accountant.

(b) If the Tribal Secretary/Accountant finds that the articles of incorporation conform to law, he/she shall, when all fees and charges have been paid as prescribed in this Chapter:

(1) Endorse on the original and the copy of the word "FILED" and the month, day, and year of the filing thereof;

(2) File the original in the office of the Tribal Secretary/Accountant;

(3) Issue a certificate of incorporation to which the Secretary/Accountant shall affix the copy of the original; and

(4) Deliver the certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto, to the incorporators of their representative.

#### **Sec. 1028. Effect of Issuance of Certificate of Incorporation.**

Upon the incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the corporation have been complied with and that the corporation has been incorporated under this Chapter, except as against the Assiniboine and Sioux Tribes in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

#### **Sec. 1029. By-laws.**

In the initial by-laws of a corporation shall be adopted by its Board of Directors. The power to

alter, amend, or repeal the by-laws or adopt new by-laws shall be vested in the Board of Directors unless otherwise provided in the articles of incorporation or the by-laws.

#### **Sec. 1030. Organizational Meeting.**

(a) After the issuance of the certificate of incorporation, an organizational meeting of the Board of Directors named in the articles of incorporation shall be held within the Reservation at the call of a majority of the directors so named for the purpose of adopting by-laws, (unless the power to adopt bylaws has been reserved by the articles of incorporation to the members, in which event the by-laws shall be adopted by the members, electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least five (5) days notice thereof by mail to each director so named; which notice shall state the time and place of the meeting; provided, however, that if all the directors shall waive notice in writing and fix a time and place for said organization meeting, no notice shall be required of such meeting.

(b) A first meeting of the members may be held at the call of the directors, or a majority of them upon at least five (5) days notice, for such purposes as shall be stated in the notice of the meeting.

#### **Sec. 1031. Right to Amend Articles of Incorporation.**

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired; provided that its articles of incorporation as amended contain only such provisions as are lawful under this Chapter.

#### **Sec. 1032. Procedure to Amend Articles of Incorporation.**

Amendments to the articles of incorporation shall be made in the following manner:

(a) Where there are members having voting rights, the Board of Directors shall adopt a resolution setting forth the proposed amendment and directing that it is to be submitted to a vote at a



meeting of members having voting rights, which may be either an annual or special meeting.

(b) Written or printed notice setting forth the proposed amendment or a summary of the changes to be affected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Chapter for the giving of notice of meetings of members. If the meeting to be annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting;

(c) The proposed amendment shall be adopted upon receiving the affirmative vote of at least two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meeting;

(d) Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the Board of Directors upon receiving a vote of a majority of the directors in office; and

(e) Any number of amendments may be submitted and voted upon at any one meeting.

#### **Sec. 1033. Articles of Amendment.**

The articles of amendment shall be executed in duplicate by the corporation; by its president or a vice-president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth:

(a) The name of the corporation;

(b) The amendment so adopted;

(c) Where there are members having voting rights:

(1) A statement setting forth the date of the meeting of the members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meeting; or

(2) A statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(d) Where there are no members, or no members having voting rights, a statement of such

fact, the date of the meeting of the Board of Directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

#### **Sec. 1034. Filing of Articles of Amendment.**

(a) Duplicate originals of the articles of amendment shall be delivered to the Tribal Secretary/Accountant.

(b) If the Tribal Secretary/Accountant finds that the articles of amendment conform to law, they shall, when all fees and charges have been paid as prescribed in this Chapter:

(1) Endorse on each of such duplicate originals the word, "FILED", and the month, day, and year of the filing thereof;

(2) File one of such duplicate originals in their office;

(3) Issue a certificate of amendment to which they shall affix the other duplicate original; and

(4) Deliver the certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto, to the corporation or its representative.

#### **Sec. 1035. Effect of Certificate of Amendment.**

(a) Upon the issuance of the certificate of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(b) No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no suit brought or against such corporation under its former name shall abate for that reason.

#### **Sec. 1036. Voluntary Dissolution.**

(a) Where there are members having voting rights, the Board of Directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of

members having voting rights, which may be either an annual meeting or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time frame and in the manner provided in this Chapter, for the giving of notice of meetings to members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meeting;

(b) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the Board of Directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office; and

(c) Upon adoption of such resolution by the members, or by the Board of Directors where there are no members or members with voting rights, the corporation shall cease to conduct its affairs except insofar as may be necessary for the winding up thereof; shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation and shall proceed to collect its assets and apply and distribute them as provided in this Chapter.

#### **Sec. 1037. Distribution of Assets.**

The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(a) All liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provisions shall be made therefore;

(b) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements;

(c) Assets received and held by the corporation subject to limitations, permitting their use only for charitable, religious, missionary, benevolent, education, or similar purposes, but not held upon a condition requiring return, transfer, or

conveyance by reason of the dissolution, shall be transferred, or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this Chapter;

(d) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws to the extent that the articles of incorporation or by-laws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others; and

(e) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, as may be specified if a plan of distribution is adopted as provided in this Chapter.

#### **Sec. 1038. Plan for Distribution.**

A plan providing for the distribution of assets, not inconsistent with the provisions of this Chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this Chapter requires a plan for distribution, in the following manner:

(a) Where there are members having voting rights, the Board of Directors shall adopt a resolution recommending a plan of distribution and directing that the plan be submitted to a vote at a meeting of members having voting rights, which may be either an annual meeting or a special meeting. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Chapter for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meeting; and

(b) Where there are no members, or no members having voting rights, a plan of distribution shall be adopted at a meeting of the Board of Directors upon receiving the vote of a majority of the directors in office.

**Sec. 1039. Revocation of Voluntary Dissolution Proceedings.**

A corporation may, at any time prior to the issuance of a certificate of dissolution by the Tribal Secretary/Accountant as hereinafter provided, revoke the action previously taken to dissolve the corporation in the following manner:

(a) Where there are members having voting rights, the Board of Directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at the meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes of such meeting, is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such a meeting within the time and in the manner provided in this Chapter for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meeting;

(b) Where there are no members, or no members having voting rights, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the Board of Directors upon receiving the vote of a majority of the directors in office; and

(c) Upon adoption of such resolution by the members, or by the Board of Directors, where there are no members or no members with voting rights, the corporation may thereupon again conduct its affairs. If the articles of dissolution have been delivered to the Tribal Secretary/Accountant, notice of such revocation shall be given to him/her in writing.

**Sec. 1040. Articles of Dissolution.**

If voluntary dissolution proceedings have not been revoked; when all debts, liabilities, and obligations of the corporation shall have been paid and discharged, or adequate provisions shall have been made to do so, and all of the remaining property and assets of the corporation shall have been transferred, conveyed, or distributed in accordance with the provisions of this Chapter, articles of dissolution shall be executed in duplicate by the corporation; by its president or a vice-president, and the corporation seal shall be affixed and attested by its secretary or an assistant secretary, and such statement shall set forth:

(a) The name of the corporation;

(b) Where there are members having voting rights:

(1) A statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds (2/3) of the votes entitled to be cast by members or represented by proxy at such meeting; or

(2) A statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(c) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the Board of Directors at which the resolution to dissolve received the vote of a majority of the directors in office;

(d) That all debts, liabilities, and obligations of the corporation have been paid and discharged or that adequate provision has been made to do so;

(e) That all the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with the provisions of this Chapter; and

(f) That there are no suits pending against the corporation in any Court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

**Sec. 1041. Filing of Articles of Dissolution.**

(a) Duplicate originals of such articles of dissolution shall be delivered to the Tribal Secretary/Accountant.

(b) If the Tribal Secretary/Accountant finds that such articles of dissolution conform to law, he/she shall, when all fees and charges have been paid as prescribed in this Chapter:

(1) Endorse on each of such duplicate originals the word, "FILED", and the month, day, and year of such filing thereof;

(2) File one of such duplicate original in the office of the Secretary/Accountant;

(3) Issue a certificate of dissolution to which he/she shall affix the other duplicate original; and

(4) Deliver the certificate of dissolution, together with the duplicate original of the articles of dissolution affixed, to the representative of the dissolved corporation.

(c) Upon the issuance of such certificate of dissolution, the existence of the corporation shall cease, except for the purposes of suits, other proceedings, and appropriate corporate action by members, directors, and officers, as provided in this Chapter.

**Sec. 1042. Involuntary Dissolution.**

(a) A corporation may be dissolved involuntarily by a decree of the Court in an action instituted by the Tribal Secretary/Accountant in the name of the Assiniboine and Sioux Tribes, when it is made to appear to the Court that:

(1) The franchise of the corporation was procured through fraud; or

(2) The corporation has continued to exceed or abuse the authority conferred upon it by this Chapter; or

(3) The corporation has failed for ninety (90) days to appoint and maintain a registered agent as provided in this Chapter; or

(4) The corporation has failed for ninety (90) days after change of its registered office or registered agent to deliver to the Tribal Secretary/Accountant a statement of such change.

(b) At least thirty (30) days before any action for the involuntary dissolution of a corporation shall be filed by the Tribal Secretary/Accountant,

he/she shall notify the corporation by certified or registered mail addressed to such corporation at its registered office, a notice of intent to file such suit and the reasons therefore. If, before action is filed, the corporation shall submit satisfactory evidence that said franchise was not procured through fraud or that the corporation has not exceeded or abused such authority or shall appoint or maintain a registered agent as provided in this Chapter, or deliver to the Tribal Secretary/Accountant, the required statement of change or registered agent, the Tribal Secretary/Accountant shall not file an action against such a corporation for such cause. If, after action is filed, for a reason stated in paragraph (3) or (4) of the preceding subsection, the corporation shall, as the case may be, appoint or maintain a registered agent as provided in this Chapter, or shall deliver to the Tribal Secretary/Accountant, the required statement of change of registered agent, and shall pay the costs of such action, the action for such cause shall abate.

**Sec. 1043. Jurisdiction of Court to Liquidate Assets and Affairs of Corporation.**

The Assiniboine and Sioux Tribal Court shall have full power to liquidate the assets and affairs of a corporation:

(a) In any action by a member of director when it is made to appear:

(1) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or

(2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(3) That the corporate assets are being misapplied or wasted; or

(4) That the corporation is unable to carry out its purposes.

(b) In an action by a creditor:

(1) When the claim of the creditor has been reduced to judgment and an execution thereon

has been returned unsatisfied and it is established that the corporation is insolvent; or

(2) When the corporation has admitted in writing and the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(c) Upon application by a corporation to have its dissolution continued under the supervision of the Court;

(d) When an action has been commenced by the Tribal Secretary/Accountant to dissolve a corporation and it is made to appear that liquidation of its affairs should precede the entry of a decree of dissolution;

(e) It shall not be necessary to make directors or members parties to any such action or proceeding unless relief is sought against them personally.

#### **Sec. 1044. Procedure in Liquidation of Corporation by Court.**

(a) In proceedings to liquidate the assets and affairs of a corporation, the Court shall have the power to issue injunctions, to appoint receivers pendente lite, with such powers and duties as the Court, from time to time, may direct, and to take such other proceedings as may be required to preserve the corporate assets whenever situated, and carry on the affairs of the corporation until a full hearing can be had.

(b) After a hearing, had upon such notice as the Court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the Court, the Court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority subject to the order of the Court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such power and duties may be increased or diminished at any time during the proceedings.

(c) The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition of the assets shall be applied and distributed as follows:

(1) All costs and expenses of the Court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made to do so;

(2) Assets held by the corporation upon conditions requiring return, transfer, or conveyance, which conditions occurs by reason of dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, missionary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of dissolution, may be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the Court may direct;

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws to the extent that the articles of incorporation or by-laws determine the distributive rights of the members or any class or classes of members, or provide for distribution to others; and

(5) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this Chapter, or where no plan of distribution has been adopted, as the Court may direct.

(d) The Court shall have power to allow, from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct their payment out of the assets of the corporation or the proceeds of any sale of disposition of such assets.

(e) A receiver of a corporation appointed under the provisions of this Section shall have authority

to sue and defend in all courts in his/her own name as receiver of such corporation. The Court appointing such receiver shall, for the purposes of this Chapter, have exclusive jurisdiction of the corporation and its property, wherever situated.

**Sec. 1045. Qualification of Receivers.**

A receiver shall in all cases be a natural person or a domestic corporation authorized to act as receiver, and shall in all cases give such bond as the Court may direct with such sureties as the Court may require.

**Sec. 1046. Filing of Claims in Liquidation Proceedings.**

In proceedings to liquidate the assets and affairs of a corporation, the Court may require all creditors of the corporation to file with the Clerk of Court or with the receiver, in such form as the Court may prescribe, proofs under oath of their respective claims. If the Court requires the filing of claims, it shall fix a date which shall be not less than four (4) months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the Court may extend the time for the filing of claims. Creditors and claimants failing to file proofs or claims on or before the date so fixed may be barred, by order of the Court, from participating in the distribution of the assets of the corporation.

**Sec. 1047. Discontinuance of Liquidation Proceedings.**

The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is made to appear that cause for liquidation no longer exists. In such event, the Court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

**Sec. 1048. Decree of Involuntary Dissolution.**

In proceedings to liquidate the assets and affairs of a corporation, when the costs and ex-

penses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, and all the property and assets have been applied so far as they will to their payment, the Court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

**Sec. 1049. Filing of Decree of Dissolution.**

Whenever the Court shall enter a decree dissolving a corporation, it shall be the duty of the Clerk of Court to cause a certified copy of the decree to be delivered to the Tribal Secretary/Accountant, who shall file the same. No fee shall be charged by the Tribal Secretary/Accountant for the filing.

**Sec. 1050. Deposits with Tribal Secretary/Accountant.**

Upon voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person who are unknown or cannot be found, or who are under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the Tribal Secretary/Accountant and shall be paid over to such person or to his/her legal representative upon proof satisfactory to the Court of his/her right thereto.

**Sec. 1051. Survival of Remedy after Dissolution.**

The dissolution of a corporation or the expiration of its period of duration shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members for any right or claim existing, or any liability incurred, prior to such dissolution is suit or other proceeding thereon is commenced within two (2) years after the date of such dissolution. Any suit or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and

officers shall have the power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two (2) years so as to extend its period of duration.

**Sec. 1052. Annual Report of Corporations.**

(a) Each corporation shall prepare an annual report setting forth:

- (1) The name of the corporation;
- (2) The address of its registered office and the name of its registered agent;
- (3) A brief statement of the character of the affairs which the corporation is actually conducting; and
- (4) The names and respective addresses, including street and number, if any, of the directors and officers of the corporation.

(b) Such annual report shall be made on forms prescribed and furnished by the Tribal Secretary/Accountant and the report information shall be given as of the date of the execution of the report. It shall be executed by the corporation; by its president, a vice-president, secretary, or assistant secretary, treasurer, or assistant treasurer, if the corporation is in the hands of a receiver or receivers, or trustee, it shall be executed by such receiver, receivers, or trustee.

**Sec. 1053. Filing of Annual Report of Corporation.**

Such annual report of a corporation shall be delivered to the Tribal Secretary/Accountant between the first day of January and the first day of March of each year. If the Secretary/Accountant finds that such report conforms to law, he/she shall file the same. If he/she finds that it does not so conform, he/she shall promptly return the same to the corporation for any necessary correction, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinafter provided shall not apply. If such report is corrected to conform to the requirements of this

Chapter and returned to the Tribal Secretary/Accountant in sufficient time to be filed prior to the first day of July of the year in which it is due.

**Sec. 1054. Penalties Imposed Upon Corporations.**

Each corporation that fails or refuses to file its annual report for any year within the time prescribed by this Chapter shall be subject to a penalty of one hundred dollars (\$100.00), to be assessed by the Tribal Secretary/Accountant.

**Sec. 1055. Fees for Filing Documents and Issuing Certificates.**

The Tribal Secretary/Accountant shall charge and collect a reasonable fee for:

- (a) Filing articles of incorporation and issuing a certificate of incorporation;
- (b) Filing articles of amendment and issuing a certificate of amendment;
- (c) Filing a statement of change of address of registered office or change of registered agent, or both;
- (d) Filing of articles of dissolution;
- (e) Filing a statement of election to accept this Chapter and issuing certificate of acceptance;
- (f) Filing any other statement or report, including an annual report of a domestic or foreign corporation;
- (g) Indexing each document filed, except an annual report;
- (h) Furnishing a certified copy of any document, instrument, or paper relating to a corporation;
- (i) Furnishing a certificate as to the existence of a fact relating to a corporation; and

The Tribal Secretary/Accountant is authorized to make regulations providing for reasonable fees for other services not listed in this Section.

**Sec. 1056. Certificate and Certified Copies to be Received in Evidence.**

All certificates issued by the Tribal Secretary/Accountant in accordance with the provisions of this Chapter and all copies of documents filed in his/her office in accordance with the provisions of this Chapter, when certified by

him/her, shall be taken and received in all Tribal Courts, public offices, and official bodies as prima facie evidence of the existence or non-existence of the facts relating to corporations.

**Sec. 1057. Forms to be Furnished by the Tribal Secretary/Accountant.**

All reports required by this Chapter to be filed in the office of the Tribal Secretary/Accountant shall be made on forms which shall be prescribed and furnished by the Tribal Secretary/Accountant. Forms for all other documents to be filed in the office of the Tribal Secretary/Accountant shall be furnished by the Tribal Secretary/Accountant upon request, but their use, unless otherwise specifically prescribed in this Chapter, shall not be mandatory.

**Sec. 1058. Greater Voting Requirements.**

Whenever, to approve of a corporate action, the articles of incorporation require the vote or concurrence of a greater proportion of members or directors than is required by this Chapter, the provisions of the articles of incorporation shall control.

**Sec. 1059. Waiver of Notice.**

Whenever any notice is required to be given to any member or director of a corporation under the provisions of this Chapter, under the provisions of the articles of incorporation, or by-laws of the corporation, a waiver of the notice in writing signed by the person or person entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Presence without objection also waives notice.

**Sec. 1060. Action by Members or Directors without a Meeting.**

Any action required by this Chapter to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors, may be taken without a meeting, if consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect

to the subject matter of the action, or all of the directors, as the case may be. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or documents filed with the Tribal Secretary/Accountant under this Ordinance.

**Sec. 1061. Effect of Invalidity of Part of this Chapter.**

If any portion (s) of this Chapter is/are found to be invalid or unconstitutional by the Tribal Court, such findings shall not affect the remaining portion (s) of this Chapter.

**Sec. 1062. Reservation of Power.**

The Tribal Executive Board shall at all times have the power to prescribe such regulations, provisions and limitations as it may deem advisable and necessary. Such regulations, provisions and limitations shall be binding upon any and all corporations subject to the provisions of this Chapter, and the Tribal Executive Board shall have the power to amend, repeal or modify this Chapter at any time.

**Sec. 1063. Unauthorized Assumption of Corporate Powers.**

All persons who assume to act as a corporation without authority to do so shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

**(PURSUANT TO RESOLUTION NO. 2526-91-8, Approved 12/09/91.)**

**Chapter 11. Corporation Code**

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**Sec. 1101. Citation.**

This Code shall be known as the Fort Peck Tribes Tribal Corporation Code.

**Sec. 1102. Definitions.**

For the purpose of this Code, unless the language or context clearly indicates that a different meaning is intended, the words, terms and phrases defined in this section have the meanings given to them.

Acquiring corporation. "Acquiring corporation" means the tribal or foreign corporation that acquires the shares of a corporation in an exchange.

Address. "Address" means mailing address, including a zip code. In the case of a registered office or principal executive office, the term means the mailing address and the actual office location which shall not be a post office box.

Articles. "Articles" means, in the case of a corporation incorporated under or governed by this Code, articles of incorporation, articles of amendment, a resolution of election to become governed by this Code, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, and articles of dissolution. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the Tribal Secretary or other officer of the Tribe.

Board. "Board" means the board of directors of a corporation.

Class. "Class", when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation. Closely held corporation. "Closely held corporation" means a corporation which does not have more than 35 shareholders.

Constituent Corporation. "Constituent Corporation" means a tribal or foreign corporation that is a party to a merger or exchange.

Corporation. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this Code.

Court. "Court" means the Fort Peck Tribal Court.

Director. "Director" means a member of the board.

Distribution. "Distribution" means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares. A distribution may be in the form of a dividend or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.

Filed with the Tribal Secretary. "Filed with the Tribal Secretary" means that an original of a document meeting the applicable requirements of this Code, signed and accompanied by a filing fee of \$25.00, has been delivered to the Tribal Secretary of the Tribe on the Reservation. The Tribal Secretary shall endorse on the original the word "Filed" and the month, day, year, and time of filing, record the document in the office of the Tribal Secretary, and return the document to the person who delivered it for filing.

Foreign Corporation. "Foreign Corporation" means a corporation organized for profit that is incorporated under laws other than the laws of the Tribe.

Good faith. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

Intentionally. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a law if the person intentionally does the act or causes the result prohibited by the law, or if the person intentionally fails to do the act or cause the result required by the law, even though the person may not know of the existence or constitutionality of the law or the scope or meaning of the terms used in the law.

Know; knowledge. A person “knows” or has “knowledge” of a fact when the person has actual knowledge of it. A person does not “know” or have “knowledge” of a fact merely because the person has reason to know of the fact.

Legal representative. “Legal representative” means a person empowered to act for another person, including, but not limited to, an agent, officer, partner, or associate of, an organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator of the person or estate of a person.

Notice. “Notice” is given by a shareholder of a corporation to the corporation or an officer of the corporation when in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation. In all other cases, “notice” is given to a person when mailed to the person at an address designated by the person or at the last known address of the person, or when communicated to the person orally, or when handed to the person, or when left at the office of the person with a clerk or other person in charge of the office, or if there is no one in charge, when left in a conspicuous place in the office, or if the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein. Notice by mail is given when deposited in the United States mail with sufficient postage affixed. Notice is deemed received when it is given.

Officer. “Officer” means a person elected, appointed, or otherwise designated as an officer by the board, and any other person deemed elected as an officer pursuant to section 1151.

Organization. “Organization” means a tribal or foreign corporation, foreign limited liability company, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

Outstanding shares. “Outstanding shares” means all shares duly issued and not reacquired by a corporation.

Parent. “Parent” of a specified corporation means a corporation that directly, or indirectly through related corporations, owns more than 50 percent of the voting power of the shares entitled to vote for directors of the specified corporation.

Person. “Person” includes a natural person and an organization.

Principal executive office. “Principal executive office” means an office where the elected or appointed chief executive officer of a corporation has an office. If the corporation has no elected or appointed chief executive officer, “principal executive office” means the registered office of the corporation.

Registered office. “Registered office” means the place designated in the articles of a corporation as the registered office of the corporation.

Related corporation. “Related corporation” of a specified corporation means a parent or subsidiary of the specified corporation or another subsidiary of a parent of the specified corporation.

Reservation. “Reservation” means the reservation of the Tribe as is now or hereafter may be recognized by the Secretary of the Interior of the United States of America.

Security. “Security” means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable shares; investment contract; investment metal contract or investment gem contract; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining right, title or lease or in payments out of production under the right, title or lease; or in general, any interest or instrument commonly known as security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. “Security” does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period.

Series. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to its articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.

Share. "Share" means one of the units, however designated, into which the shareholders' proprietary interests in a corporation are divided.

Shareholder. "Shareholder" means a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of whole or fractional shares of the corporation.

Signed. "Signed" means that the signature of a person has been written on a document and, with respect to a document required by this Code 'to be filed with the Tribal Secretary,' means that the document has been signed by a person authorized to do so by this Code, the articles or bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the directors or the holders of the required proportion or number of the voting power of the shares present and entitled to vote. A signature on a document not required by this Code to be filed with the Tribal Secretary may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

Subsidiary. "Subsidiary" of a specified corporation means a corporation having more than 50 percent of the voting power of its shares entitled to vote for directors owned directly, or indirectly through related corporations, by the specified corporation.

Surviving corporation. "Surviving corporation" means the tribal or foreign corporation resulting from a merger.

Transaction statement. "Transaction statement" means the "initial transaction statement" of uncertificated securities sent to:

- (a) The new registered owner, and, if applicable, to the registered pledgee; or
- (b) The registered owner, consistent with procedures of the Uniform Commercial Code of Montana.

Tribal Corporation. "Tribal Corporation" means a corporation that is incorporated under this Code.

Tribal Executive Board. "Tribal Executive Board" means the Tribal Executive Board of the Fort Peck Tribes.

Tribal Secretary. "Tribal Secretary" means the Tribal Secretary for the Fort Peck Tribal Executive Board.

Tribe. "Tribe" means the Fort Peck Tribes.

Trust land. "Trust land" means land held in trust by the United States government for the benefit of the Tribe.

Vote. "Vote" includes authorization by written action.

Written action. "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the persons signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

## **Supchapter A. Application**

### **Sec. 1103 Reserved.**

### **Sec. 1104. Reservation of Right.**

The Tribe reserves the right to amend or repeal the provisions of this Code. A corporation incorporated under or governed by this Code is subject to this reserved right.

### **Sec. 1105. Corporations Wholly Owned by the Tribe.**

The provisions of sections 1101 through 11136 shall apply to all corporations incorporated under this Code and wholly owned, directly or indirectly, by the Tribe and shall override any other provisions in this Code to the contrary. In the case of tribal corporations wholly owned, directly or indirectly, by the Tribe, all provisions of this Code are subject to the provisions of sections 1101 through 11136.

**Sec. 1106. Sovereign Immunity of the Tribe Not Waived.**

By the adoption of this Code, the Tribe does not waive its sovereign immunity or consent to suit in any court, federal, tribal or state, and neither the adoption of this Code, nor the incorporation of any corporation hereunder, shall be construed to be a waiver of the sovereign immunity of the Tribe or a consent to suit against the Tribe in any such court.

**Subchapter B. Incorporation; Articles**

**Sec. 1107. Purposes.**

A corporation may be incorporated under this Code for any business purpose or purposes, unless some other Code of the Tribe requires incorporation for any of those purposes under a different law. Unless otherwise provided in its articles, a corporation has general business purposes.

**Sec. 1108. Incorporators.**

One or more enrolled members of the Tribe of full age may act as incorporators of a corporation by filing with the Tribal Secretary articles of incorporation for the corporation.

**Sec. 1109. Articles.**

**Subdivision 1. Required provisions.** The articles of incorporation shall contain:

- (a) The name of the corporation;
- (b) The address of the registered office of the corporation and the name of its registered agent, if any, at that address;
- (c) The aggregate number of shares that the corporation has authority to issue; and
- (d) The name and address of each incorporator.

**Subdivision 2. Provisions that may be modified only in articles.** The following provisions govern a corporation unless modified in the articles:

- (a) A corporation has general business purposes;
- (b) A corporation has perpetual existence and certain powers;
- (c) The power to adopt, amend, or repeal the bylaws is vested in the board;

(d) A corporation must allow cumulative voting for directors;

(e) The affirmative vote of a majority of directors present is required for an action of the board;

(f) A written action by the board taken without a meeting must be signed by all directors;

(g) The board may authorize the issuance of securities and rights to purchase securities;

(h) All shares are common shares entitled to vote and are of one class and one series;

(i) All shares have equal rights and preferences in all matters not otherwise provided for by the board;

(j) The par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes;

(k) The board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits, divisions, or combinations, and determine the value of nonmonetary consideration;

(l) Shares of a class or series must not be issued to holders of shares of another class or series to effectuate share dividends or splits, divisions, or combinations, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued;

(m) A corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board;

(n) A shareholder has no preemptive rights, unless otherwise provided by the board;

(o) The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except where this Code requires the affirmative vote of a majority of the voting power of all shares entitled to vote;

(p) Shares of a corporation acquired by the corporation may be reissued;

(q) Each share has one vote unless otherwise provided in the terms of the share;

(r) A corporation may issue shares for a consideration less than the par value, if any, of the shares; and

(s) The board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval (section 1157).

Subdivision 3. Provisions that may be modified either in articles or in bylaws. The following provisions govern a corporation unless modified either in the articles or in the bylaws:

(a) Directors serve for an indefinite term that expires at the next regular meeting of shareholders (section 1131);

(b) The compensation of directors is fixed by the board (section 1133);

(c) A certain method must be used for removal of directors (section 1137);

(d) A certain method must be used for filling board vacancies (section 1138);

(e) If the board fails to select a place for a board meeting, it must be held at the principal executive office (section 1139, subdivision 1);

(f) The notice of a board meeting need not state the purpose of the meeting (section 1139, subdivision 3);

(g) A majority of the board is a quorum for a board meeting (section 1141);

(h) A committee shall consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present (section 1144 subdivision 2);

(i) The board may establish a special litigation committee (section 1144);

(j) The chief executive officer and chief financial officer have specified duties, until the board determines otherwise (section 1148);

(k) Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so (section 1154);

(l) The board may establish uncertificated shares (section 1162, subdivision 7);

(m) Regular meetings of shareholders need not be held, unless demanded by shareholders holding at least ten percent of the voting power under certain conditions (section 1167);

(n) In all instances where a specific minimum notice period has not otherwise been fixed by law, not less than ten days notice is required for a

meeting of shareholders (section 1169, subdivision 2);

(o) The number of shares required for a quorum at a shareholders meeting is a majority of the voting power of the shares entitled to vote at the meeting (section 1173);

(p) The board may fix a date up to 60 days before the date of a shareholders meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting (section 1174, subdivision 1);

(q) Indemnification of certain persons is required (section 1187); and

(r) The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement (section 1188, subdivision 1).

Subdivision 4. Optional provisions; specific subjects. The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board, fixing a greater than majority director or shareholder vote, or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a director's personal liability, in the bylaws:

(a) The members of the first board may be named in the articles (section 1128 subdivision 1);

(b) A manner for increasing or decreasing the number of directors may be provided (section 1129);

(c) Additional qualifications for directors may be imposed (section 1130);

(d) Directors may be classified (section 1134);

(e) The day or date, time, and place of board meetings may be fixed (section 1139, subdivision 1);

(f) Absent directors may be permitted to give written consent or opposition to a proposal (section 1140);

(g) A larger than majority vote may be required for board action (section 1142);

(h) Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the chief executive officer (section 1148, subdivision 2);

(i) Additional officers may be designated (section 1149);

(j) Additional powers, rights, duties, and responsibilities may be given to officers (section 1150);

(k) A method for filling vacant offices may be specified (section 1153, subdivision 3);

(l) A certain officer or agent may be authorized to sign share certificates (section 1162, subdivision 2);

(m) The transfer or registration of transfer of securities may be restricted (section 1166);

(n) The day or date, time, and place of regular shareholder meetings may be fixed (section 1167, subdivision 3);

(o) Certain persons may be authorized to call special meetings of shareholders (section 1168, subdivision 1);

(p) Notices of shareholder meetings may be required to contain certain information (section 1169, subdivision 3);

(q) A larger than majority vote may be required for shareholder action (section 1171);

(r) Voting rights may be granted in or pursuant to the articles to persons who are not shareholders (section 1174, subdivision 4);

(s) Corporate actions giving rise to dissenter rights may be designated (section 1183, subdivision 1, clause (e));

(t) The rights and priorities of persons to receive distributions may be established (section 1188); and

(u) A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles (section 1145, subdivision 4).

Subdivision 5. Optional provisions: generally. The articles may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the corporation.

Subdivision 6. Powers need not be stated. It is not necessary to set forth in the articles any of the corporate powers granted by this Code.

## **Sec. 1110. Corporate Name.**

### **Subdivision 1. Requirements; prohibitions.**

The corporate name:

(a) Shall be in the language of the Tribe, or in the English language or in any other language expressed in English letters or characters;

(b) Shall contain the word "corporation," "incorporated," or "limited," or shall contain an abbreviation of one or more of these words, or the word "company" or the abbreviation "Co." if that word or abbreviation is not immediately preceded by the word "and" or the character "&;"

(c) Shall not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal business purpose;

(d) Shall be distinguishable upon the records in the office of the Tribal Secretary from the name of a tribal corporation or other legal entity, whether tribal or foreign, authorized or registered to do business on the Reservation or, whether or not authorized or registered to do business on the Reservation is well known on the Reservation, whether profit or nonprofit, or a name the right to which is, at the time of incorporation, reserved or provided for in section 1111, unless there is filed with the articles one of the following:

(1) The written consent of the tribal corporation or other legal entity authorized or registered to do business on the Reservation or the holder of a reserved name or a name filed by or registered with the Tribal Secretary having a name that is not distinguishable;

(2) A certified copy of a final decree of the court establishing the prior right of the applicant to the use of the name on the Reservation, or establishing that the corporation or other legal entity with the name that is not distinguishable has been incorporated or on file with the Tribal Secretary for at least three years prior thereto, and has been totally inactive, provided notice of a hearing on the matter has been given to such corporation or entity, if possible.



**Subdivision 2. Names continued.** Subdivision 1, clause (d) does not affect the right of a tribal corporation existing on the effective date of this Code, or a foreign corporation authorized to do business on the Reservation on that date to continue the use of its name.

**Subdivision 3. Determination.** The Tribal Secretary shall determine whether a name is “distinguishable” from another name for purposes of this section and section 1111.

**Subdivision 4. Other laws affecting use of names.** This section and section 1111 do not abrogate or limit any law of unfair competition or unfair practices, nor any Trademark Code, nor the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks, or an other rights to the exclusive use of names or symbols, nor derogate the common law or the principles of equity.

**Subdivision 5. Use of name by successor corporation.** A corporation that is merged with another tribal or foreign corporation, or that is incorporated by the reorganization of one or more tribal or foreign corporations, or that acquires by sale, lease, or other disposition to or exchange with a tribal corporation all or substantially all of the assets of another tribal or foreign corporation including its name, may have the same name as that used on the Reservation by any of the other corporations, if the other corporation was incorporated under the laws of the Tribe, or is authorized to transact business on the Reservation.

**Subdivision 6. Injunction.** The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence, but the court may, upon application of the Tribe or of a person interested or affected, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the Tribal Secretary and a certificate of incorporation issued.

### **Sec. 1111. Reserved Name.**

**Subdivision 1. Who may reserve.** The exclusive right to the use of a corporate name otherwise permitted by section 1110 may be reserved by:

(a) A person doing business on the Reservation under that name;

(b) A person intending to incorporate under this Code;

(c) A tribal corporation intending to change its name;

(d) A foreign corporation intending to make application for a certificate of authority to transact business on the Reservation;

(e) A foreign corporation authorized to transact business on the Reservation and intending to change its name;

(f) A person intending to incorporate a foreign corporation and intending to have the foreign corporation make application for a certificate of authority to transact business on the Reservation; or

(g) A foreign corporation doing business under that name or a name deceptively similar to that name in one or more states of the United States and not described in clause (d), (e), or (f).

**Subdivision 2. Method of reservation.** The reservation shall be made by filing with the Tribal Secretary a request that the name be reserved. If the name is available for use by the applicant, the Tribal Secretary shall reserve the name for the exclusive use of the applicant for a period of 12 months. The reservation may be renewed for successive 12-month periods.

**Subdivision 3. Transfer of reservation.** The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the Tribal Secretary a notice of the transfer and specifying the name and address of the transferee.

### **Sec. 1112. Registered Office; Registered Agent.**

**Subdivision 1. Registered office.** A corporation shall continuously maintain a registered office. A registered office need not be the same as the principal place of business or the principal executive office of the corporation.

**Subdivision 2. Registered agent.** A corporation may designate in its articles a registered

agent. The registered agent may be a natural person residing on the Reservation, or a tribal corporation. The registered agent must maintain an office that is identical with the registered office.

**Sec. 1113. Change of Registered Office or Registered Agent; Change of Name of Registered Agent.**

**Subdivision 1. Statement.** A corporation may change its registered office, designate or change its registered agent, or state a change in the name of its registered agent, by filing with the Tribal Secretary a statement containing:

- (a) The name of the corporation;
- (b) If the address of its registered office is to be changed, the new address of its registered office;
- (c) If its registered agent is to be designated or changed, the name of its new registered agent;
- (d) If the name of its registered agent is to be changed, the name of its registered agent as changed;
- (e) A statement that the address of its registered office and the address of the office of its registered agent, as changed, will be identical; and
- (f) A statement that the change of registered office or registered agent was authorized by resolution approved by the affirmative vote of a majority of the directors present.

**Subdivision 2. Resignation of agent.** A registered agent of a corporation may resign by filing with the Tribal Secretary a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its principal executive office or to a legal representative of the corporation. The appointment of the agent terminates 30 days after the notice is filed with the Tribal Secretary.

**Subdivision 3. Change of business address or name of agent.** If the office address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each corporation represented by that agent by filing with the Tribal Secretary a statement as required in subdivision 1, except that it need be signed only by the registered agent, need not be responsive to clause (e) or (f), and must state that a copy

of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.

**Sec. 1114. Amendment of Articles.**

The articles of a corporation may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be included in the articles, except that when articles are amended to restate them, the name and address of each incorporator may be omitted. Unless otherwise provided in this Code, the articles may be amended or modified only in accordance with sections 1115 to 1118. An amendment which merely restates the then existing articles of incorporation, as amended, is not an amendment for the purposes of section 1135, subdivision 2, or 1161, subdivision 9.

**Sec. 1115. Procedure for Amendment Before Issuance of Shares.**

Before the issuance of shares by a corporation, the articles may be amended pursuant to section 1126 by the incorporators or by the board. The articles may be amended by the board to change a statement pursuant to section 1156, subdivision 3, establishing or fixing the rights and preferences of a class or series of shares before the issuance of any shares of that class or series.

**Sec. 1116. Procedure for Amendment After Issuance of Shares.**

**Subdivision 1. Manner of amendment.** After the issuance of shares by the corporation, the articles may be amended in the manner set forth in this section.

**Subdivision 2. Submission to shareholders.** A resolution approved by the affirmative vote of a majority of the directors present, or proposed by a shareholder or shareholders holding three percent or more of the voting power of the shares entitled to vote, that sets forth the proposed amendment shall be submitted to a vote at the next regular or special meeting of the shareholders of which notice has not yet been given but still can be timely given. Any number of amendments

may be submitted to the shareholders and voted upon at one meeting, but the same or substantially the same amendment proposed by a shareholder or shareholders need not be submitted to the shareholders or be voted upon at more than one meeting during a 15-month period. The resolution may amend the articles in their entirety to restate and supersede the original articles and all amendments to them. The provisions of this subdivision regarding shareholder-proposed amendments do not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated thereunder, in which case the federal securities laws or rules promulgated thereunder shall govern.

**Subdivision 3. Notice.** Written notice of the shareholders' meeting setting forth the substance of the proposed amendment shall be given to each shareholder in the manner provided in section 1169 for the giving of notice of meetings of shareholders.

**Subdivision 4. Approval by shareholders.**

(a) The proposed amendment is adopted when approved by the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote, except as provided in paragraphs (b) and (c) and subdivision 5.

(b) For a closely held corporation, if the articles provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles is the larger of:

(1) The specified proportion or number or, in the absence of a specific provision, the affirmative vote necessary to transact the type of business described in the proposed amendment at a meeting immediately before the effectiveness of the proposed amendment; or

(2) The specified proportion or number that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.

(c) For corporations other than closely held corporations, if the articles provide for a larger proportion or number to transact a specified type of business at a meeting, the affirmative vote of that larger proportion or number is necessary to amend the articles to decrease the proportion or number necessary to transact the business.

**Subdivision 5. Certain restatements.** An amendment that merely restates the existing articles, as amended, may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the shareholders as provided in subdivisions 2, 3, and 4.

**Sec. 1117. Class or Series Voting on Amendments.**

The holders of the outstanding shares of a class or series are entitled to vote as a class or series upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles, if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of the class or series;

(b) Effect an exchange, reclassification, or cancellation of all or part of the shares of the class or series;

(c) Effect an exchange, or create a right of exchange, of all or any part of the share of another class or series for the shares of the class or series;

(d) Change the rights or preferences of the shares of the class or series;

(e) Change the shares of the class or series, whether with or without par value, in the same or a different number of shares, either with or without par value, of the same or another class or series;

(f) Create a new class or series of shares having rights and preferences prior and superior to the shares of that class or series, or increase the rights and preferences or the number of authorized shares, of a class or series having rights and preferences prior or superior to the shares of that class or series;

(g) Divide the shares of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the shares of each series, or authorize the board to do so;

(h) Limit or deny any existing preemptive rights of the shares of the class or series or

(i) Cancel or otherwise affect distributions on the shares of the class or series that have accrued but have not been declared.

### **Sec. 1118. Articles of Amendment.**

When an amendment has been adopted, articles of amendment shall be prepared that contain:

(a) The name of the corporation;

(b) The amendment adopted;

(c) With respect to an amendment restating the articles, a statement that the amendment restating the articles correctly sets forth without change the corresponding provisions of the articles as previously amended if the amendment was approved only by the board;

(d) If the amendment provides for but does not establish the manner for effecting an exchange, reclassification, division, combination, or cancellation of issued shares, a statement of the manner in which it will be effected; and

(e) A statement that the amendment has been adopted pursuant to this Code.

### **Sec. 1119. Effect of Amendment.**

**Subdivision 1. Effect on cause of action.** An amendment does not affect an existing cause of action in favor of or against the corporation, nor a pending suit to which the corporation is a party, nor the existing rights of persons other than shareholders.

**Subdivision 2. Effect of change of name.** If the corporate name is changed by the amendment, a suit brought by or against the corporation under its former name does not abate for that reason.

**Subdivision 3. Effect of amendments restating articles.** When effective under section 1121, an amendment restating the articles in their entirety supersedes the original articles and all amendments to the original articles.

### **Sec. 1120. Filing Articles.**

Articles of incorporation and articles of amendment shall be filed with the Tribal Secretary.

### **Sec. 1121. Effective Date of Articles.**

Articles of incorporation are effective and corporate existence begins when the articles of incorporation are filed with the Tribal Secretary accompanied by a payment of \$125.00, which includes a \$100.00 incorporation fee in addition to the \$25.00 filing fee. Articles of amendment and articles of merger are effective when filed with the Tribal Secretary or at another time within 30 days after filing if the articles of amendment so provide. Articles of merger must be accompanied by a fee of \$125.00, which includes a \$100.00 merger fee in addition to the \$25.00 filing fee.

### **Sec. 1122. Presumption; Certificate of Incorporation.**

When the articles of incorporation have been filed with the Tribal Secretary and the required fee has been paid to the Tribal Secretary, it is presumed that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated, and the Tribal Secretary shall issue a certificate of incorporation to the corporation, but this presumption does not apply against the Tribe in a proceeding to cancel or revoke the certificate of incorporation or to compel the involuntary dissolution of the corporation.

## **Subchapter C. Powers**

### **Sec. 1123. Powers.**

**Subdivision 1. Generally, limitations.** A corporation has the powers set forth in this section, subject to any limitations provided in any other law of the Tribe or in its articles.

**Subdivision 2. Duration.** A corporation has perpetual duration.

**Subdivision 3. Legal capacity.** A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.

**Subdivision 4. Property ownership.** A corporation may purchase, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

**Subdivision 5. Property disposition.** A corporation may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest therein, wherever situated.

**Subdivision 6. Trading in securities; obligations.** A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of and otherwise use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any tribal or foreign government or instrumentality thereof.

**Subdivision 7. Contracts; mortgages.** A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises and income.

**Subdivision 8. Investment.** A corporation may invest and reinvest its funds.

**Subdivision 9. Holding property as security.** A corporation may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the corporation, as security for the payment of money loaned, advanced, or invested.

**Subdivision 10. Location.** A corporation may conduct its business, carry on its operations, have offices, and exercise the powers granted by this Code anywhere in the universe.

**Subdivision 11. Donations.** A corporation may make donations, irrespective of corporate benefit, for the public welfare; for social, community, charitable, religious, educational, scientific, civic, literary, and for similar or related purposes.

**Subdivision 12. Pensions; benefits.** A corporation may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and

carry out, wholly or partially at the expense of the corporation employee or incentive benefit plans, trusts, and provisions to or for the benefit of, any or all of its and its related corporations' officers, directors, employees, and agents and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

**Subdivision 13. Participating in management.** A corporation may participate in any capacity in the promotion, organization, ownership, management, and operation of an organization or in any transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control with or to others.

**Subdivision 14. Insurance.** A corporation may provide for its benefit life insurance and other insurance with respect to the services of any or all of its officers, directors, employees, and agents, or on the life of a shareholder for the purpose of acquiring at the death of the shareholder any or all shares in the corporation owned by the shareholder.

**Subdivision 15. Corporate seal.** A corporation may have, alter at pleasure, and use a corporate seal as provided in section 1124.

**Subdivision 16. Bylaws.** A corporation may adopt, amend, and repeal bylaws relating to the management of the business or the regulation of the affairs of the corporation as provided in section 1127.

**Subdivision 17. Committees.** A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided in section 1144 and fix their compensation.

**Subdivision 18. Officers; employees; agents.** A corporation may elect or appoint officers, employees, and agents of the corporation, and define their duties as provided in sections 1147 to 1155 and fix their compensation.

**Subdivision 19. Securities.** A corporation may issue securities and rights to purchase securities as provided in sections 1156 to 1165.

**Subdivision 20. Loans; guaranties; sureties.** A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provide in section 1185.

**Subdivision 21. Advances.** A corporation may make advances to its directors, officers and employees and those of its subsidiaries as provided in section 1186.

**Subdivision 22. Indemnification.** A corporation shall indemnify those persons identified in section 1187 against certain expenses and liabilities only as provided in section 1187 and may indemnify other persons.

**Subdivision 23. Assumed names.** A corporation may conduct all or part of its business under one or more assumed names, provided each assumed name is registered with the Tribal Secretary.

**Subdivision 24. Other powers.** A corporation may have and exercise all other powers necessary or convenient to effect any or all of the business purposes for which the corporation is incorporated.

**Subdivision 25. Trust Land.** Any corporation which holds an interest in trust land may not encumber that interest without the prior approval of the Tribal Council and the Bureau of Indian Affairs.

**Subdivision 26. Sovereign Immunity of the Tribe.** Consent to suit by a corporation shall in no way extend to the Tribe, nor shall a consent to suit by a corporation in any way be deemed a waiver of any of the rights, privileges and immunities of the Tribe.

#### **Sec. 1124. Corporate Seal.**

**Subdivision 1. Seal not required.** A corporation may, but need not, have a corporate seal, and the use or nonuse of a corporate seal does not affect the validity, recordability, or enforceability of a document or act. If a corporation has a corporate seal, the use of the seal by the corporation on a document is not necessary.

**Subdivision 2. Required words; use.** If a corporation has a corporate seal, the seal may consist of a mechanical imprinting device, or a rubber stamp with a facsimile of the seal affixed thereon, or a facsimile or reproduction of either. The seal need include only the word “Seal,” but it may also include a part or all of the name of the corporation and a combination, derivation, or abbreviation of either or both of the phrases “a Tribal Corporation – Fort Peck Tribes” and “Corporate Seal.” If a corporate seal is used, it or a facsimile of it may be affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on any document.

#### **Sec. 1125. Effect of Lack of Power; Ultra Vires.**

The doing, continuing, or performing by a corporation of an act, or an executed or wholly or partially executory contract, conveyance or transfer to or by the corporation, if otherwise lawful, is not invalid because the corporation was without the power to do, continue, or perform the act, contract, conveyance, or transfer, unless the lack of power is established in the court:

(a) In a proceeding by a shareholder against the corporation to enjoin the doing, continuing, or performing of the act, contract, conveyance, or transfer. If the unauthorized act, continuation, or performance sought to be enjoined is being, or to be, performed or made pursuant to a contract to which the corporation is a party, the court may, if just and reasonable in the circumstances, set aside and enjoin the performance of the contract and in so doing may allow to the corporation or to the other parties to the contract compensation for the loss or damage sustained as a result of the action of the court in setting aside and enjoining the performance of the contract;

(b) In a proceeding by or in the name of the corporation, whether acting directly or through a legal representative, or through shareholders in a representative or derivative suit, against the incumbent or former officers or directors of the corporation for exceeding or otherwise violating their authority, or against a person having actual knowledge of the lack of power; or

(c) In a proceeding by the Tribal Executive Board, as provided in section 11114, to dissolve the corporation, or in a proceeding by the Tribal Executive Board to enjoin the corporation from the transaction of unauthorized business.

#### **Subchapter D. Organization; By-Laws**

##### **Sec. 1126. Organization.**

**Subdivision 1. Role of incorporators.** If the first board is not named in the articles, the incorporators may elect the first board or may act as directors with all of the powers, rights, duties, and liabilities of directors, until directors are elected or until shares are issued, whichever occurs first.

**Subdivision 2. Meeting.** After the issuance of the certificate of incorporation, the incorporators or the directors named in the articles shall either hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the corporation, including, without limitation, amending the articles, electing directors, adopting bylaws, electing officers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a corporate seal, approving forms of certificates or transaction statements for shares of the corporation, adopting a fiscal year for the corporation, accepting subscriptions for and issuing shares of the corporation, and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting.

##### **Sec. 1127. Bylaws.**

**Subdivision 1. Generally.** A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management of the business or the regulation of the affairs of the corporation not inconsistent with law or the articles.

**Subdivision 2. Power of board.** Initial bylaws may be adopted pursuant to section 1126 by the

incorporators or by the first board. Unless reserved by the articles to the shareholders, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the shareholders, exercisable in the manner provided in subdivision 3, to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. After the adoption of the initial bylaws, the board shall not adopt, amend, or repeal a bylaw fixing a quorum for meetings of shareholders, prescribing procedures for removing directors or filling vacancies in the board, or fixing the number of directors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaw to increase the number of directors.

**Subdivision 3. Power of shareholders; procedure.** If a shareholder or shareholders holding three percent or more of the voting power of the shares entitled to vote propose a resolution for action by the shareholders to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board and the resolution sets forth the provision or provisions proposed for adoption, amendment, or repeal, the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in section 1116, subdivisions 2 to 4, for amendment of the articles. The provisions of this subdivision regarding shareholder-proposed amendments shall not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated thereunder, in which case the federal securities laws or rules promulgated thereunder shall govern.

#### **Subchapter E. Board**

##### **Sec. 1128. Board.**

**Subdivision 1. Board to manage.** The business and affairs of a corporation shall be managed by or under the direction of a board, subject to the provisions of subdivision 2 and section 1179. The members of the first board may be named in the articles or elected by the incorporators pursuant to section 1126 or by the shareholders.

**Subdivision 2. Shareholder management.** The holders of the shares entitled to vote for directors of the corporation may, by unanimous affirmative vote, take any action that this Code requires or permits the board to take. As to an action taken by the shareholders in that manner:

(a) The directors have no duties, liabilities, or responsibilities as directors under this Code with respect to or arising from the action;

(b) The shareholders collectively and individually have all of the duties, liabilities, and responsibilities of directors under this Code with respect to and arising from the action;

(c) If the action relates to a matter required or permitted by this Code or by any other law to be approved or adopted by the board, either with or without approval or adoption by the shareholders, the action is deemed to have been approved or adopted by the board; and

(d) A requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the board is satisfied by a statement that the shareholders have taken the action under this subdivision.

**Sec. 1129. Number.**

The board shall consist of one or more directors. The number of directors shall be fixed by or in the manner provided in the articles or bylaws. The number of directors may be increased or, subject to section 1137, decreased at any time by amendment to or in the manner provided in the articles or bylaws.

**Sec. 1130. Qualifications; Election.**

Directors shall be natural persons. The method of election and any additional qualifications for directors may be imposed by or in the manner provided in the articles or bylaws. A director need not be a member of the Tribe unless the articles of incorporation or bylaws so prescribe.

**Sec. 1131. Terms.**

Unless fixed terms are provided for in the articles or bylaws, a director serves for an indefinite term that expires at the next regular meeting of

the shareholders. A fixed term of a director shall not exceed five years. A director holds office for the term for which the director was elected and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the director.

**Sec. 1132. Acts Not Void or Voidable.**

The expiration of a director's term with or without the election of a qualified successor does not make prior or subsequent acts of the officers or the board void or voidable.

**Sec. 1133. Compensation.**

Subject to any limitations in the articles or bylaws, the board may fix the compensation of directors.

**Sec. 1134. Classification of Directors.**

Directors may be divided into classes as provided in the articles or bylaws.

**Sec. 1135. Cumulative Voting for Directors.**

**Subdivision 1. Voting rights.** Unless the articles provide that there shall be no cumulative voting, and except as provided in section 1137, subdivision 5, each shareholder entitled to vote for directors has the right to cumulate those votes in the election of directors by giving written notice of intent to cumulate those votes to any officer of the corporation before the meeting, or to the presiding officer at the meeting at which the election is to occur at any time before the election of directors at the meeting, in which case:

(a) The presiding officer at the meeting shall announce, before the election of directors, that shareholders shall cumulate their votes; and

(b) Each shareholder shall cumulate those votes either by casting for one candidate the number of votes equal to the number of directors to be elected multiplied by the number of votes represented by the shares, or by distributing all of those votes on the same principle among any number of candidates.

**Subdivision 2. Modifications.** No amendment to the articles or bylaws which has the effect of



denying, limiting, or modifying the right to cumulative voting for directors provided in this section shall be adopted if the votes of a proportion of the voting power sufficient to elect a director at an election of the entire board under cumulative voting are cast against the amendment.

**Sec. 1136. Resignation.**

A director may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective time is specified in the notice.

**Sec. 1137. Removal of Directors.**

**Subdivision 1. Modification.** The provisions of this section apply unless modified by the articles, the bylaws, or an agreement described in section 1179.

**Subdivision 2. Removal by directors.** A director may be removed at any time, with or without cause, if:

(a) The director was named by the board to fill a vacancy;

(b) The shareholders have not elected directors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and

(c) A majority of the remaining directors present affirmatively vote to remove the director.

**Subdivision 3. Removal by shareholders.** One or all of the directors may be removed at any time, with or without cause, by the affirmative vote of the holders of the proportion or number of the voting power of the shares of the classes or series the director represents sufficient to elect them, except as provided in subdivision 4.

**Subdivision 4. Exception for corporations with cumulative voting.** In a corporation having cumulative voting, unless the entire board is removed simultaneously, a director is not removed from the board if there are cast against removal of the director the votes of a proportion of the voting power sufficient to elect the director at an election of the entire board under cumulative voting.

**Subdivision 5. Election of replacements.** New directors may be elected at a meeting at

which directors are removed. If the corporation allows cumulative voting and a shareholder notifies the presiding officer at any time prior to the election of new directors of intent to cumulate the votes of the shareholder, the presiding officer shall announce before the election that cumulative voting is in effect, and shareholders shall cumulate their votes as provided in section 1135, clause (b).

**Sec. 1138. Vacancies.**

Unless different rules for filling vacancies are provided for in the articles or bylaws:

(a)(1) Vacancies on the board resulting from the death, resignation, removal, or disqualification of a director may be filled by the affirmative vote of a majority of the remaining directors, even though less than a quorum; and

(2) Vacancies on the board resulting from newly created directorships may be filled by the affirmative vote of a majority of the directors serving at the time of the increase; and

(b) Each director elected under this section to fill a vacancy holds office until a qualified successor is elected by the shareholders at the next regular or special meeting of the shareholders.

**Sec. 1139. Board Meetings.**

**Subdivision 1. Time; place.** Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the Reservation that the board may select or by any means described in subdivision 2. If the board fails to select a place for a meeting, the meeting shall be held at the principal executive office, unless the articles or bylaws provide otherwise.

**Subdivision 2. Electronic communications.**

(a) A conference among directors by any means of communication through which the directors may simultaneously hear each other during the conference constitutes a board meeting, if the same notice is given of the conference as would be required by subdivision 3 for a meeting, and if the number of directors participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a meeting

by that means constitutes presence in person at the meeting.

(b) A director may participate in a board meeting not described in paragraph (a) by any means of communication through which the director, other directors so participating, and all directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

**Subdivision 3. Calling meetings; notice.** Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving ten days' notice to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or bylaws require it.

**Subdivision 4. Previously scheduled meetings.** If the day or date, time, and place of a board meeting have been provided in the articles or bylaws, or announced at a previous meeting of the board, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

**Subdivision 5. Waiver of notice.** A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except where the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting.

#### **Sec. 1140. Absent Directors.**

If the articles or bylaws so provide, a director may give advance written consent or opposition to a proposal to be acted on at a board meeting. If the director is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition shall be counted as a vote in favor of or against the proposal and shall be entered in the minutes or other

record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or objected.

#### **Sec. 1141. Quorum.**

A majority, or a larger or smaller proportion or number provided in the articles or bylaws, of the directors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the directors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment, even though the withdrawal of a number of directors originally present leaves less than the proportion or number otherwise required for a quorum.

#### **Sec. 1142. Act of the Board.**

The board shall take action by the affirmative vote of a majority of directors present at a duly held meeting, except where this Code or the articles require the affirmative vote of a larger proportion or number. If the articles require a larger proportion or number than is required by this Code for a particular action, the articles shall control.

#### **Sec. 1143. Action without Meeting.**

**Subdivision 1. Method.** An action required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles so provide, any action, other than an action requiring shareholder approval, may be taken by written action signed by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.

**Subdivision 2. Effective time.** The written action is effective when signed by the required number of directors, unless a different effective time is provided in the written action.

**Subdivision 3. Notice; liability.** When written action is permitted to be taken by less than all directors, all directors shall be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions taken thereby.

#### **Sec. 1144. Committees.**

**Subdivision 1. Generally.** A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the corporation only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.

**Subdivision 2. Membership.** Committee members shall be natural persons. Unless the articles or bylaws provide for a different membership or manner of appointment, a committee shall consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present.

**Subdivision 4. Procedure.** Sections 1139 to 1143 apply to committees and members of committees to the same extent as those sections apply to the board and directors.

**Subdivision 5. Minutes.** Minutes, if any, of committee meetings shall be made available upon request to members of the committee and to any director.

**Subdivision 6. Standard of conduct.** The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a director with the standard of conduct set forth in section 1145.

**Subdivision 7. Committee members deemed directors.** Committee members are deemed to be directors for purposes of sections 1145, 1146, and 1187.

#### **Sec. 1145. Standard of Conduct.**

**Subdivision 1. Standard; liability.** A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the corporation.

#### **Subdivision 2. Reliance.**

(a) A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or

(3) A committee of the board upon which the director does not serve, duly established in accordance with section 1144, as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.

(b) Paragraph (a) does not apply to a director who has knowledge concerning the matter in question that makes the reliance otherwise permitted by paragraph (a) unwarranted.

**Subdivision 3. Presumption of assent; dissent.** A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless the director:

(a) Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting, in which case the director shall not be considered to be present at the meeting for any purpose of this Code;

(b) Votes against the action at the meeting; or

(c) Is prohibited by section 1146 from voting on the action.

**Subdivision 4. Elimination or limitation of liability.** A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles. The articles shall not eliminate or limit the liability of a director:

(a) For any breach of the director's duty of loyalty to the corporation or its shareholders;

(b) For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

(c) Under section 1191;

(d) For any transaction from which the director derived an improper personal benefit; or

(e) For any act or omission occurring prior to the date when the provision in the articles eliminating or limiting liability becomes effective.

#### **Sec. 1146. Director Conflicts of Interest.**

**Subdivision 1. Conflict; procedure when conflict arises.** A contract or other transaction between a corporation and one or more of its directors, or between a corporation and an organization in or of which one or more of its directors are directors, officers, or legal representatives or have a material financial interest, is not void or voidable because the director or directors or the other organizations are parties or because the director or directors are present at the meeting of the shareholders or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if:

(a) The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;

(b) The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the shareholders and the contract or transaction is approved in good faith by (1) the holders of two-thirds of the voting power of the shares entitled to

vote which are owned by persons other than the interested director or directors, or (2) the unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote;

(c) The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, but the interested director or directors shall not be counted in determining the presence of a quorum and shall not vote; or

(d) The contract or transaction is a distribution described in section 1188, subdivision 1, or a merger or exchange described in section 1192, subdivision 1 or 2.

**Subdivision 2. Material financial interest.** For purposes of this section:

(a) A director does not have a material financial interest in a resolution fixing the compensation of the director or fixing the compensation of another director as a director, officer, employee, or agent of the corporation, even though the first director is also receiving compensation from the corporation; and

(b) A director has a material financial interest in each organization in which the director, or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters of the director, or any combination of them have a material financial interest.

**Subdivision 3. Compensation agreements.** During any tender offer or request or invitation for tenders of any class or series of shares of a publicly held corporation, other than an offer, request, or invitation by the publicly held corporation, the publicly held corporation shall not enter into or amend, directly or indirectly, agreements containing provisions, whether or not dependent on the occurrence of any event or contingency, that increase, directly or indirectly, the current or future compensation of any officer or director of the publicly held corporation. This subdivision does not prohibit routine increases in compensation, or other routine compensation agreements,

undertaken in the ordinary course of the publicly held corporation's business.

## **Subchapter F. Officers**

### **Sec. 1147. Officers Required.**

A corporation shall have one or more natural persons exercising the functions of the offices, however designated, of chief executive officer and chief financial officer.

### **Sec. 1148. Duties of Required Officers.**

#### **Subdivision 1. Presumption; modification.**

Unless the articles, the bylaws, or a resolution adopted by the board and not inconsistent with the articles or bylaws, provide otherwise, the chief executive officer and chief financial officer have the duties specified in this section.

**Subdivision 2. Chief executive officer.** The chief executive officer shall:

- (a) Have general active management of the business of the corporation;
- (b) When present, preside at all meetings of the board and of the shareholders;
- (c) See that all orders and resolutions of the board are carried into effect;
- (d) Sign and deliver in the name of the corporation any deeds, mortgages, bonds, contracts or other instruments pertaining to the business of the corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or bylaws or by the board to some other officer or agent of the corporation;
- (e) Maintain records of and, whenever necessary, certify all proceedings of the board and the shareholders; and
- (f) Perform other duties prescribed by the board.

**Subdivision 3. Chief financial officer.** The chief financial officer shall:

- (a) Keep accurate financial records for the corporation;
- (b) Deposit all money, drafts, and checks in the name of and to the credit of the corporation in the banks and depositories designated by the board;

(c) Endorse for deposit all notes, checks, and drafts received by the corporation as ordered by the board, making proper vouchers therefor;

(d) Disburse corporate funds and issue checks and drafts in the name of the corporation, as ordered by the board;

(e) Render to the chief executive officer and the board, whenever requested, an account of all transactions by the chief financial officer and of the financial condition of the corporation; and

(f) Perform other duties prescribed by the board or by the chief executive officer.

### **Sec. 1149. Other Officers.**

The board may elect or appoint, in a manner set forth in the articles or bylaws or in a resolution approved by the affirmative vote of a majority of the directors present, any other officers or agents the board deems necessary for the operation and management of the corporation, each of whom shall have the powers, rights, duties, responsibilities, and terms in office provided for in the articles or bylaws or determined by the board.

### **Sec. 1150. Multiple Offices.**

Any number of offices or functions of those offices may be held or exercised by the same person. If a document must be signed by persons holding different offices or functions and a person holds or exercises more than one of those offices or functions, that person may sign the document in more than one capacity, but only if the document indicates each capacity in which the person signs.

### **Sec. 1151. Officers Deemed Elected.**

In the absence of an election or appointment of officers by the board, the person or persons exercising the principal functions of the chief executive officer or the chief financial officer are deemed to have been elected to those offices, except for the purpose of determining the location of the principal executive office, which in that case is the registered office of the corporation.

**Sec. 1152. Contract Rights.**

The election or appointment of a person as an officer or agent does not, of itself, create contract rights. A corporation may enter into a contract with an officer or agent for a period of time if, in the board's judgment, the contract would be in the best interests of the corporation. The fact that the contract may be for a term longer than the terms of the directors who authorized or approved the contract does not make the contract void or voidable.

**Sec. 1153. Resignation; Removal; Vacancies.**

**Subdivision 1. Resignation.** An officer may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective date is specified in the notice.

**Subdivision 2. Removal.** An officer may be removed at any time, with or without cause by a resolution approved by the affirmative vote of a majority of the directors present, subject to the provisions of a shareholder control agreement. The removal is without prejudice to any contractual rights of the officer.

**Subdivision 3. Vacancy.** A vacancy in an office because of death, resignation, removal, disqualification, or other cause may, or in the case of a vacancy in the office of chief executive officer or chief financial officer shall, be filled for the unexpired portion of the term in the manner provided in the articles or bylaws, or determined by the board, or pursuant to section 1151.

**Sec. 1154. Delegation.**

Unless prohibited by the articles or bylaws or by a resolution approved by the affirmative vote of a majority of the directors present, an officer elected or appointed by the board may, without the approval of the board, delegate some or all of the duties and powers of an office to other persons. An officer who delegates the duties or powers of an office remains subject to the standard of conduct for an officer with respect to the discharge of all duties and powers so delegated.

**Sec. 1155. Standard of Conduct.**

An officer shall discharge the duties of an office in good faith, in a manner the officer reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section 1154 is deemed an officer for purposes of this section and sections 1182 and 1187.

**Subchapter G. Shares; Shareholders****Sec. 1156. Authorized Shares.**

**Subdivision 1. Board may authorize.** Subject to any restrictions in the articles, a corporation may issue securities and rights to purchase securities only when authorized by the board.

**Subdivision 2. Terms of shares.** All the shares of a corporation:

(a) Shall be of one class and one series, unless the articles establish, or authorize the board to establish, more than one class or series;

(b) Shall be common shares entitled to vote and shall have equal rights and preferences in all matters not otherwise provided for by the board, unless and to the extent that the articles have fixed the relative rights and preferences of different classes and series; and

(c) Shall have, unless a different par value is specified in the articles, a par value of one cent per share, solely for the purpose of a law, statute or rule imposing a tax or fee based upon the capitalization of a corporation, and a par value fixed by the board for the purpose of a statute or rule requiring the shares of the corporation to have a par value.

**Subdivision 3. Procedure for fixing terms.**

(a) Subject to any restrictions in the articles, the power granted in subdivision 2 may be exercised by a resolution or resolutions approved by the affirmative vote of a majority of the directors present establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or

series. Any of the rights and preferences of a class or series:

(1) May be made dependent upon facts ascertainable outside the articles, or outside the resolution or resolutions establishing the class or series, provided that the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles or in the resolution or resolutions establishing the class or series; and

(2) May incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the issuing corporation in connection with the establishment of the class or series if the corporation retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

(b) A statement setting forth the name of the corporation and the text of the resolution and certifying the adoption of the resolution and the date of adoption shall be filed with the Tribal Secretary before the issuance of any shares for which the resolution creates rights or preferences not set forth in the articles; provided, however, where the shareholders have received notice of the creation of shares with rights or preferences not set forth in the articles before the issuance of the shares, the statement may be filed any time within one year after the issuance of the shares. The resolution is effective when the statement has been filed with the Tribal Secretary; or, if it is not required to be filed with the Tribal Secretary before the issuance of shares, on the date of its adoption by the directors.

(c) A statement filed with the Tribal Secretary in accordance with paragraph (b) is not considered an amendment of the articles for purposes of sections 1117 and 1183.

**Subdivision 4. Specific terms.** Without limiting the authority granted in this section, a corporation may issue shares of a class or series:

(a) Subject to the right of the corporation to redeem any of those shares at the price fixed for their redemption by the articles or by the board or at a price determined in the manner specified by the articles or by the board;

(b) Entitling the shareholders to cumulative, partially cumulative, or noncumulative distributions in the amounts fixed by the articles or by the board or in amounts determined in the manner specified by the articles or by the board;

(c) Having preference over any class or series of shares for the payment of distributions of any or all kinds;

(d) Convertible into shares of any other class or any series of the same or another class on the terms fixed by the articles or by the board or on terms determined in the manner specified by the articles or by the board; or

(e) Having full, partial, or no voting rights, except as provided in section 1117.

### **Sec. 1157. Share Dividends, Divisions, and Combinations.**

**Subdivision 1. Power to effect.** A corporation may effect a share dividend or a division or combination of its shares as provided in this section. As used in this section, the terms “division” and “combination” mean dividing or combining shares of any class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.

**Subdivision 2. When shareholder approval required; filing of articles of amendment.**

(a) Articles of amendment must be adopted by the board and the shareholders under sections 1116 and 1117 to effect a division or combination if, as a result of the proposed division or combination:

(1) The rights or preferences of the holders of outstanding shares of any class or series will be adversely affected; or

(2) The percentage of authorized shares remaining unissued after the division or combination will exceed the percentage of authorized shares that were unissued before the division or combination.

For purposes of this section, an increase or decrease in the relative voting right of the shares that are the subject of the division or combination that arises solely from the increase or decrease in the number of the shares outstanding is not an adverse effect on the outstanding shares of any class

or series and any increase in the percentage of authorized shares remaining unissued arising solely from the elimination of fraction shares under section 1164 must be disregarded.

(b) If a division or combination is effected under this subdivision, articles of amendment must be prepared that contain the information required by section 1118.

**Subdivision 3. By action of board alone; filing of articles of amendment.**

(a) Subject to the restrictions provided in subdivision 2 or any restrictions in the articles, a share dividend, division, or combination may be effected by action of the board alone, without the approval of shareholders under sections 1116 and 1117. In effecting division or combination under this subdivision, the board may amend the articles to increase or decrease the par value of shares, increase or decrease the number of authorized shares, and make any other change necessary or appropriate to assure that the rights or preferences of the holders of outstanding shares of any class or series will not be adversely affected by the division or combination.

(b) If a division or combination that includes an amendment of the articles is effected under this subdivision, then articles of amendment must be prepared that contain the information required by section 1118 and a statement that the amendment will not adversely affect the rights or preferences of the holders of outstanding shares of any class or series and will not result in the percentage of authorized shares that remains unissued after the division or combination exceeding the percentage of authorized shares that were unissued before the division or combination.

**Sec. 1158. Subscriptions for Shares.**

**Subdivision 1. Signed writing.** A subscription for shares, whether made before or after the incorporation of a corporation, is not enforceable against the subscriber unless it is in writing and signed by the subscriber.

**Subdivision 2. Irrevocable period.** A subscription for shares is irrevocable for a period of six months, unless the subscription agreement

provides for, or unless all of the subscribers consent to, an earlier revocation.

**Subdivision 3. Payment; installments.** A subscription for shares, whether made before or after the incorporation of a corporation, shall be paid in full at the time or times or in the installments, if any, specified in the subscription agreement. In the absence of a provision in the subscription agreement specifying the time at which the subscription is to be paid, the subscription shall be paid at the time or times determined by the board but a call made by the board for payment on subscriptions shall be uniform for all shares of the same class or for all shares of the same series.

**Subdivision 4. Method of collection; forfeiture; cancellation or sale for account of subscriber.**

(a) Unless otherwise provided in the subscription agreement, in the event of default in the payment of an installment or call when due, the corporation may proceed to collect the amount due in the same manner as a debt due the corporation.

(b) If the amount due on a subscription for shares remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent subscriber, the shares subscribed for may be offered for sale by the corporation for a price in money equaling or exceeding the sum of the full balance owed by the delinquent subscriber plus the expenses incidental to the sale. If the shares subscribed for are sold pursuant to this paragraph, the corporation shall pay to the delinquent subscriber or to the delinquent subscriber's legal representative the lesser of

(i) The excess of net proceeds realized by the corporation over the sum of the amount owed by the delinquent subscriber plus the expenses incidental to the sale, and

(ii) The amount actually paid by the delinquent subscriber. If the shares subscribed for are not sold pursuant to this paragraph, the corporation may collect the amount due in the same manner as a debt due the corporation or cancel the subscription in accordance with paragraph (c).



(c) If the amount due on a subscription for shares remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent subscriber and the shares subscribed for by the delinquent subscriber have not been sold pursuant to paragraph (b), the corporation may cancel the subscription, in which event the shares subscribed for must be restored to the status of authorized but unissued shares, the corporation may retain the portion of the subscription price actually paid that does not exceed ten percent of the subscription price, and the corporation shall refund to the delinquent subscriber or the delinquent subscriber's legal representative that portion of the subscription price actually paid which exceeds ten percent of the subscription price.

**Sec. 1159. Consideration for Shares; Value and Payment; Liability.**

**Subdivision 1. Consideration; procedure.** Subject to any restrictions in the articles:

(a) Shares may be issued for any consideration, including, without limitation, money or other tangible or intangible property received by the corporation or to be received by the corporation under a written agreement, or services rendered to the corporation or to be rendered to the corporation under a written agreement, as authorized by resolution approved by the affirmative vote of a majority of the directors present, or approved by the affirmative vote of the holders of a majority of the voting power of the shares present, valuing all nonmonetary consideration and establishing a price in money or other consideration, or a minimum price, or a general formula or method by which the price will be determined; and

(b) Upon authorization in accordance with section 1157, the corporation may, without any new or additional consideration, issue its own shares in exchange for or in conversion of its outstanding shares, or issue its own shares pro-rata to its shareholders or the shareholders of one or more classes or series, to effectuate share dividends, divisions, or combinations. No shares of a

class or series, shares of which are then outstanding, shall be issued to the holders of shares of another class or series (except in exchange for or in conversion of outstanding shares of the other class or series), unless the issuance either is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.

**Subdivision 2. Value; liability.** The determinations of the board or the shareholders as to the amount or fair value or the fairness to the corporation of the consideration received or to be received by the corporation for its shares or the terms of payment, as well as the agreement to issue shares for that consideration, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances, and, unless otherwise required by the articles, the consideration may be less than the par value, if any, of the shares. Directors or shareholders who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving an issue of shares for a consideration that is unfair to the corporation, or overvalue property or services received or to be received by the corporation as consideration for shares issued, are jointly and severally liable to the corporation for the benefit of the then shareholders who did not consent to and are damaged by the action, to the extent of the damages of those shareholders. A director or shareholder against whom a claim is asserted pursuant to this subdivision, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other directors or shareholders who are liable under this section.

**Subdivision 3. Payment; liability; contribution; statute of limitations.**

(a) A corporation shall issue only shares that are nonassessable or that are assessable but are issued with the unanimous consent of the shareholders. "Nonassessable" shares are shares for which the agreed consideration has been fully paid, delivered, or rendered to the corporation.

Consideration in the form of a promissory note, a check, or a written agreement to transfer property or render services to a corporation in the future is fully paid when the note, check, or written agreement is delivered to the corporation.

(b) If shares are issued in violation of paragraph (a), the following persons are jointly and severally liable to the corporation for the difference between the agreed consideration for the shares and the consideration actually received by the corporation:

(1) A director or shareholder who was present and entitled to vote but who failed to vote against the issuance of the shares knowing of the violation;

(2) The person to whom the shares were issued; and

(3) A successor or transferee of the interest in the corporation of a person described in clause (1) or (2), including a purchaser of shares, a subsequent assignee, successor, or transferee, a pledgee, a holder of any other security interest in the assets of the corporation or shares granted by the person described in clause (1) or (2), or a legal representative of or for the person or estate of the person, which successor, transferee, purchaser, assignee, pledgee, holder, or representative acquired the interest knowing of the violation.

(c)(1) A pledgee or holder of any other security interest in all or any shares that have been issued in violation of paragraph (a) is not liable under paragraph (b) if all those shares are surrendered to the corporation. The surrender does not impair any rights of the pledgee or holder of any other security interest against the pledgor or person granting the security interest.

(2) A pledgee, holder of any other security interest, or legal representative is liable under paragraph (b) only in that capacity. The liability of the person under paragraph (b) is limited to the assets held in that capacity for the person or estate of the person described in clause (1) or (2) of paragraph (b).

(3) Each person liable under paragraph (b) has a full right of contribution on an equitable basis from all other persons liable under paragraph (b) for the same transaction.

(4) An action shall not be maintained against a person under paragraph (b) unless commenced within two years from the date on which shares are issued in violation of paragraph (a).

#### **Sec. 1160. Rights to Purchase.**

**Subdivision 1. Definition.** “Right to purchase” means the right, however designated, pursuant to the terms of a security or agreement, entitling a person to subscribe to, purchase, or acquire securities of a corporation, whether by the exchange or conversion of other securities, or by the exercise of options, warrants, or other rights, or otherwise, but excluding preemptive rights.

**Subdivision 2. Transferability; separability.** Rights to purchase may be either transferable or nontransferable and either separable or inseparable from other securities of the corporation, as the board may determine under this section.

**Subdivision 3. Issuance permitted.** A corporation may issue rights to purchase after the terms, provisions, and conditions of the rights to purchase to be issued, including the conversion basis or the price at which securities may be purchased or subscribed for, are fixed by the board, subject to any restrictions in the articles.

**Subdivision 4. Terms set forth.** The instrument evidencing the right to purchase or, if no instrument exists, a transaction statement, shall set forth in full, summarize, or incorporate by reference all the terms, provisions, and conditions applicable to the right to purchase.

#### **Sec. 1161. Preemptive Rights.**

**Subdivision 1. Presumption; modification.** Unless denied or limited in the articles or by the board pursuant to section 1156, subdivision 2, clause (b), a shareholder of a corporation has the preemptive rights provided in this section.

**Subdivision 2. Definition.** A preemptive right is the right of a shareholder to acquire a certain fraction of the unissued securities or rights to purchase securities of a corporation before the corporation may offer them to other persons.

**Subdivision 3. When right accrues.** A shareholder has a preemptive right whenever the corporation proposes to issue new or additional

shares or rights to purchase shares of the same series as the series held by the shareholder or, if a class of shares has no series, the same class as the class held by the shareholder, or new or additional securities other than shares, or rights to purchase securities other than shares, that are exchangeable for, convertible into, or carry a right to acquire new or additional shares of the same series as the series held by the shareholder or, if a class of shares has no series, the same class as the class held by the shareholder.

**Subdivision 4. Exemptions.** A shareholder does not have a preemptive right to acquire securities or rights to purchase securities that are:

(a) Issued for a consideration other than money;

(b) Issued pursuant to a plan of merger or exchange;

(c) Issued pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote;

(d) Issued upon exercise of previously issued rights to purchase securities of the corporation:

(e) Issued pursuant to a public offering of the corporation's securities or rights to purchase securities. For purposes of this clause, "public offering" means an offering of the corporation's securities or rights to purchase securities if the resale or other distribution of those securities or rights to purchase securities is not restricted by Tribal, state or federal securities laws; or

(f) Issued pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a law of this Tribe or a statute of the United States.

**Subdivision 5. Fraction to be acquired.** The fraction of the new issue that each shareholder may acquire by exercise of a preemptive right is the ratio that the number of shares of that class or series owned by the shareholder before the new issue bears to the total number of shares of that class or series issued and outstanding before the new issue.

**Subdivision 6. Waiver.** A shareholder may waive a preemptive right in writing. The waiver is binding upon the shareholder whether or not

consideration has been given for the waiver. Unless otherwise provided in the waiver, a waiver of preemptive rights is effective only for the proposed issuance described in the waiver.

**Subdivision 7. Notice.** When proposing the issuance of securities with respect to which shareholders have preemptive rights under this section, the board shall cause notice to be given to each shareholder entitled to preemptive rights. The notice shall be given at least ten days before the date by which the shareholder must exercise a preemptive right and shall contain:

(a) The number or amount of securities with respect to which the shareholder has a preemptive right, and the method used to determine that number or amount;

(b) The price and other terms and conditions upon which the shareholder may purchase them; and

(c) The time within which and the method by which the shareholder must exercise the right.

**Subdivision 8. Issuance to others.** Securities that are subject to preemptive rights but not acquired by shareholders in the exercise of those rights may, for a period not exceeding one year after the date fixed by the board for the exercise of those preemptive rights, be issued to persons the board determines, at a price not less than, and on terms no more favorable to the purchaser than, those offered to the shareholders. Securities that are not issued during that one year period shall, at the expiration of the period, again become subject to preemptive rights of shareholders.

**Subdivision 9. Modification.** No amendment to the articles which has the effect of denying, limiting, or modifying the preemptive rights provided in this section shall be adopted if the votes of a proportion of the voting power sufficient to elect a director at an election of the entire board under cumulative voting are cast against the amendment.

## **Sec. 1162. Share Certificates; Issuance and Contents; Uncertified Shares.**

**Subdivision 1. Certificated; uncertificated.** The shares of a corporation shall be either certificated shares or uncertificated shares. Each

holder of certificated shares issued in accordance with section 1159, subdivision 3, paragraph (a) is entitled to a certificate of shares.

**Subdivision 2. Certificates; signature required.** Certificates shall be signed by an agent or officer authorized in the articles or bylaws to sign share certificates or, in the absence of an authorization, by an officer.

**Subdivision 3. Signature valid.** If a person signs or has a facsimile signature placed upon a certificate while an officer, transfer agent, or registrar of a corporation, the certificate may be issued by the corporation, even if the person has ceased to have that capacity before the certificate is issued, with the same effect as if the person had that capacity at the date of its issue.

**Subdivision 4. Form of certificate.** A certificate representing shares of a corporation shall contain on its face:

- (a) The name of the corporation;
- (b) A statement that the corporation is incorporated under the laws of the Fort Peck Tribes;
- (c) The name of the person to whom it is issued; and
- (d) The number and class of shares, and the designation of the series, if any, that the certificate represents.

**Subdivision 5. Limitations set forth.** A certificate representing shares issued by a corporation authorized to issue shares of more than one class or series shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to an shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the shares of each class or series authorized to be issued, so far as they have been determined, and the authority of the board to determine the relative rights and preferences of subsequent classes or series.

**Subdivision 6. Prima facie evidence.** A certificate signed as provided in subdivision 2 is prima facie evidence of the ownership of the shares referred to in the certificate.

**Subdivision 7. Uncertificated shares.** Unless uncertificated shares are prohibited by the articles

or bylaws, a resolution approved by the affirmative vote of a majority of the directors present may provide that some or all of any or all classes and series of its shares will be uncertificated shares. The resolution does not apply to shares represented by a certificate until the certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the new shareholder the information required by this section to be stated on certificates. Except as otherwise expressly provided by statute, the rights and obligations of the holders of certificated and uncertificated shares of the same class and series are identical.

### **Sec. 1163. Lost Share Certificates; Replacement.**

**Subdivision 1. Issuance.** A new share certificate may be issued to replace one that is alleged to have been lost, stolen, or destroyed. The owner must

- (i) Notify the issuer within a reasonable time after having notice of the loss and request a replacement before the issuer has notice that the security has been acquired by a bona fide purchaser;
- (ii) File with the issuer a sufficient indemnity bond; and
- (iii) Satisfy any other reasonable requirements imposed by the issuer.

Subdivision 2. Not overissue. The issuance of a new certificate under this section does not constitute an overissue of the shares it represents.

### **Sec. 1164. Fractional Shares.**

**Subdivision 1. Issuance; alternative exchange.** A corporation may issue fractions of a share originally or upon transfer. If it does not issue fractions of a share, it shall in connection with an original issuance of shares:

- (a) Arrange for the disposition of fractional interests by those entitled to them;
- (b) Pay in money the fair value of fractions of a share as of the time when persons entitled to receive the fractions are determined; or

(c) Issue scrip or warrants in registered or bearer form that entitle the holder to receive a certificate for a full share upon the surrender of the scrip or warrants aggregating a full share.

**Subdivision 2. Restrictions; rights.** A corporation shall not pay money for fractional shares if that action would result in the cancellation of more than 20 percent of the outstanding shares of a class. A determination by the board of the fair value of fractions of a share is conclusive in the absence of fraud. A certificate or a transaction statement for a fractional share does, but scrip or warrants do not unless they provide otherwise, entitle the shareholder to exercise voting rights or to receive distributions. The board may cause scrip or warrants to be issued subject to the condition that they become void if not exchanged for full shares before a specified date, or that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds distributed to the holder of the scrip or warrants, or to any other condition or set of conditions the board may impose.

#### **Sec. 1165. Liability of Subscribers and Shareholders With Respect to Shares .**

A subscriber for shares or a shareholder of a corporation is under no obligation to the corporation or its creditors with respect to the shares subscribed for or owned, except to pay to the corporation the full consideration for which the shares are issued or to be issued.

#### **Sec. 1166. Restriction on Transfer or Registration of Securities.**

**Subdivision 1. How imposed.** A restriction on the transfer or registration of transfer of securities of a corporation may be imposed in the articles, in the bylaws, by a resolution adopted by the shareholders, or by an agreement among or other written action by a number of shareholders or holders of other securities or among them and the corporation. A restriction is not binding with respect to securities issued prior to the adoption of the restriction, unless the holders of those securities are parties to the agreement or voted in favor of the restriction.

**Subdivision 2. Restrictions permitted.** A written restriction on the transfer or registration of transfer of securities of a corporation that is not manifestly unreasonable under the circumstances and is noted conspicuously on the face or back of the certificate or transaction statement may be enforced against the holder of the restricted securities or a successor or transferee of the holder, including a pledgee or a legal representative. Unless noted conspicuously on the face or back of the certificate or transaction statement, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction. A restriction under this section is deemed to be noted conspicuously and is effective if the existence of the restriction is stated on the certificate and reference is made to a separate document creating or describing the restriction.

#### **Sec. 1167. Regular Meetings of Shareholders.**

**Subdivision 1. Frequency.** Regular meetings of shareholders may be held on an annual or other less frequent periodic basis, but need not be held unless required by the articles or bylaws or by subdivision 2.

**Subdivision 2. Demand by shareholder.** If a regular meeting of shareholders has not been held during the immediately preceding 15 months, shareholders holding at least ten percent of the voting power of all shares entitled to vote may demand a regular meeting of shareholders by written notice of demand given to the chief executive officer or the chief financial officer of the corporation. Within 30 days after receipt of the demand by one of those officers, the board shall cause a regular meeting of shareholders to be called and held on notice no later than 90 days after receipt of the demand, all at the expense of the corporation. If the board fails to cause a regular meeting to be called and held as required by this subdivision, the shareholder or shareholders making the demand may call the regular meeting by giving notice as required by section 1169, all at the expense of the corporation.

**Subdivision 3. Time; place.** A regular meeting, if any, shall be held on the day or date and at

the time and place fixed by, or in a manner authorized by, the articles or bylaws, except that a meeting called by or at the demand of a shareholder pursuant to subdivision 2 shall be held on the Reservation.

**Subdivision 4. Elections required; other business.** At each regular meeting of shareholders there shall be an election of qualified successors for directors who serve for an indefinite term or whose terms have expired or are due to expire within six months after the date of the meeting. No other particular business is required to be transacted at a regular meeting. Any business appropriate for action by the shareholders may be transacted at a regular meeting.

#### **Sec. 1168. Special Meetings of Shareholders.**

**Subdivision 1. Who may call.** Special meetings of the shareholders may be called for any purpose or purposes at any time, by:

- (a) The chief executive officer;
- (b) The chief financial officer;
- (c) Two or more directors;
- (d) A person authorized in the articles or bylaws to call special meetings; or
- (e) A shareholder or shareholders holding ten percent or more of the voting power of all shares entitled to vote, except that a special meeting for the purpose of considering any action to directly or indirectly facilitate or effect a business combination, including any action to change or otherwise affect the composition of the board of directors for that purpose, must be called by 25 percent or more of the voting power of all shares entitled to vote.

**Subdivision 2. Demand by shareholders.** A shareholder or shareholders holding the voting power specified in subdivision 1, paragraph (e), may demand a special meeting of shareholders by written notice of demand given to the chief executive officer or chief financial officer of the corporation and containing the purposes of the meeting. Within 30 days after receipt of the demand by one of those officers, the board shall cause a special meeting of shareholders to be called and held on notice no later than 90 days after receipt

of the demand, all at the expense of the corporation. If the board fails to cause a special meeting to be called and held as required by this subdivision, the shareholder or shareholders making the demand may call the meeting by giving notice as required by section 1169, all at the expense of the corporation.

**Subdivision 3. Time; place.** Special meetings shall be held on the date and at the time and place fixed by the chief executive officer, the chief financial officer, the board, or a person authorized by the articles or bylaws to call a meeting, except that a special meeting called by or at the demand of a shareholder or shareholders pursuant to subdivision 2 shall be held on the Reservation.

**Subdivision 4. Business limited.** The business transacted at a special meeting is limited to the purposes stated in the notice of the meeting. Any business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the corporation, unless all of the shareholders have waived notice of the meeting in accordance with section 1169 subdivision 4.

#### **Sec. 1169. Notice.**

**Subdivision 1. To whom given.** Except as otherwise provided in this Code, notice of all meetings of shareholders shall be given to every holder of shares entitled to vote, unless:

(a) The meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment; or

(b) The following have been mailed by first class mail to a shareholder at the address in the corporate records and returned undeliverable:

(1) Two consecutive annual meeting notices and notices of any special meetings held during the period between the two annual meetings; or

(2) All payments of dividends sent during a 12-month period, provided there are at least two sent during the 12-month period. An action or meeting that is taken or held without notice under clause (2) has the same force and effect as if notice was given. If the shareholder delivers a written notice of the shareholder's current address to

the corporation, the notice requirement is reinstated.

**Subdivision 2. When given.** In all instances where a specific minimum notice period has not otherwise been fixed by law, the notice shall be given at least ten days before the date of the meeting, or a shorter time provided in the articles or bylaws, and not more than 60 days before the date of the meeting.

**Subdivision 3. Contents.** The notice shall contain the date, time, and place of the meeting, and any other information required by this Code. In the case of a special meeting, the notice shall contain a statement of the purposes of the meeting. The notice may also contain any other information required by the articles or bylaws or deemed necessary or desirable by the board or by any other person or persons calling the meeting.

**Subdivision 4. Waiver, objections.** A shareholder may waive notice of a meeting of shareholders. A waiver of notice by a shareholder entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a shareholder at a meeting is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

#### **Sec. 1170. Electronic Communications.**

**Subdivision 1. Electronic conferences.** If and to the extent authorized in the bylaws or by the board of a closely held corporation, a conference among shareholders by any means of communication through which the shareholders may simultaneously hear each other during the conference constitutes a regular or special meeting of shareholders, if the same notice is given of the conference to every holder of shares entitled to vote as would be required by this Code for a meeting, and if the number of shares held by the shareholders

participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a conference by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 1176 are met.

**Subdivision 2. Participation by electronic means.** If and to the extent authorized in the bylaws or by the board of a closely held corporation, a shareholder may participate in a regular or special meeting of shareholders not described in subdivision 1 by any means of communication through which the shareholder, other shareholders so participating, and all shareholders physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 1176 are met.

**Subdivision 3. Waiver.** Waiver of notice of a meeting by means of communication described in subdivisions 1 and 2 may be given in the manner provided in section 1169, subdivision 4. Participation in a meeting by means of communication described in subdivisions 1 and 2 is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

#### **Sec. 1171. Act of the Shareholders.**

**Subdivision 1. Majority required.** The shareholders shall take action by the affirmative vote of the holders of the greater of

(1) A majority of the voting power of the shares present and entitled to vote on that item of business, or

(2) A majority of the voting power of the minimum number of the shares entitled to vote that would constitute a quorum for the transaction of business at the meeting, except where this Code or the articles require a larger proportion or number. If the articles require a larger proportion

or number than is required by this Code for a particular action, the articles control.

**Subdivision 2. Voting by class.** In any case where a class or series of shares is entitled by this Code, the articles, the bylaws, or the terms of the shares to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the holders of the same proportion of the shares present of that class or series, or of the total outstanding shares of that class or series, as the proportion required pursuant to subdivision 1, unless the articles require a larger proportion. Unless otherwise stated in the articles or bylaws in the case of voting as a class, the minimum percentage of the total number of shares of the class or series which must be present shall be equal to the minimum percentage of all outstanding shares entitled to vote required to be present under section 1173.

#### **Sec. 1172. Action Without a Meeting.**

An action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting by written action signed by all of the shareholders entitled to vote on that action. The written action is effective when it has been signed by all of those shareholders, unless a different effective time is provided in the written action.

#### **Sec. 1173. Quorum.**

The holders of a majority of the voting power of the shares entitled to vote at a meeting are a quorum for the transaction of business, unless a larger or smaller proportion or number is provided in the articles or bylaws. If a quorum is present when a duly called or held meeting is convened, the shareholders present may continue to transact business until adjournment, even though the withdrawal of a number of shareholders originally present leaves less than the proportion or number otherwise required for a quorum.

#### **Sec. 1174. Voting Rights.**

**Subdivision 1. Determination.** The board may fix a date not more than 60 days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of shareholders as the date

for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only shareholders on that date are entitled to notice of and permitted to vote at that meeting of shareholders.

**Subdivision 2. Certification of beneficial owner.** A resolution approved by the affirmative vote of a majority of the directors present may establish procedure whereby a shareholder may certify in writing to the corporation that all or a portion of the shares registered in the name of the shareholder are held for the account of one or more beneficial owners. Upon receipt by the corporation of the writing, the persons specified as beneficial owners, rather than the actual shareholder, are deemed the shareholders for the purposes specified in the writing.

**Subdivision 3. One vote per share.** Unless otherwise provided in the articles or in the terms of the shares, a shareholder has one vote for each share held.

**Subdivision 4. Nonshareholders.** The articles may give or prescribe the manner of giving a creditor, security holder, or other person a right to vote under this section.

**Subdivision 5. Jointly owned shares.** Shares owned by two or more shareholders may be voted by any one of them unless the corporation receives written notice from any one of them denying the authority of that person to vote those shares.

**Subdivision 6. Manner of voting; presumption.** Except as provided in subdivision 5, a holder of shares entitled to vote may vote any portion of the shares in any way the shareholder chooses. If a shareholder votes without designating the proportion or number of shares voted in a particular way, the shareholder is deemed to have voted all of the shares in that way.

#### **Sec. 1175. Voting of Shares by Organizations and Legal Representatives.**

**Subdivision 1. Shares held by other corporation.** Shares of a corporation registered in the name of another tribal or foreign corporation may be voted by the chief executive officer or another legal representative of that corporation.



**Subdivision 2. Shares held by subsidiary.** Except as provided in subdivision 3, shares of a corporation registered in the name of a subsidiary are not entitled to vote on any matter.

**Subdivision 3. Shares controlled in fiduciary capacity.** Shares of a corporation in the name of or under the control of the corporation or a subsidiary in a fiduciary capacity are not entitled to vote on any matter, except to the extent that the settlor or beneficial owner possesses and exercises a right to vote or gives the corporation binding instructions on how to vote the shares.

**Subdivision 4. Voting by certain representatives.** Shares under the control of a person in a capacity as a personal representative, an administrator, executor, guardian, conservator, or attorney-in-fact may be voted by the person, either in person or by proxy, without registration of those shares in the name of the person. Shares registered in the name of a trustee of a trust or in the name of a custodian may be voted by the person, either in person or by proxy, but a trustee of a trust or a custodian shall not vote shares held by the person unless they are registered in the name of the person.

**Subdivision 5. Voting by trustee in bankruptcy or receiver.** Shares registered in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver either in person or by proxy. Shares under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without registering the shares in the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed.

**Subdivision 6. Shares held by other organizations.** Shares registered in the name of an organization not described in subdivisions 1 to 5 may be voted either in person or by proxy by the legal representative of that organization.

**Subdivision 7. Pledged shares.** A shareholder whose shares are pledged may vote those shares until the shares are registered in the name of the pledgee. If the corporation pledges its own shares

under section 1189, subdivision 1, the corporation shall not be entitled to vote the shares at a meeting or otherwise.

## **Sec. 1176. Proxies.**

**Subdivision 1. Authorization.** A shareholder may cast or authorize the casting of a vote by filing a written appointment of a proxy with an officer of the corporation at or before the meeting at which the appointment is to be effective. A written appointment of a proxy may be signed by the shareholder or authorized by the shareholder by transmission of a telegram, cablegram, or other means of electronic transmission, provided that the telegram, cablegram, or other means of electronic transmission must set forth or be submitted with information from which it can be determined that the telegram, cablegram, or other electronic transmission was authorized by the shareholder. Any reproduction of the writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, provided that the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission. An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed or otherwise authorized by any one of them, unless the corporation receives from any one of those shareholders written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.

**Subdivision 2. Duration.** The appointment of a proxy is valid for 11 months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest in the shares or in the corporation.

**Subdivision 3. Termination.** An appointment may be terminated at will, unless the appointment is coupled with an interest, in which case it shall not be terminated except in accordance with the terms of an agreement, if any, between the parties to the appointment. Termination may be made by

filing written notice of the termination of the appointment with an officer of the corporation, or by filing a new written appointment of a proxy with an officer of the corporation. Termination in either manner revokes all prior proxy appointments and is effective when filed with an officer of the corporation.

**Subdivision 4. Revocation by death, incapacity.** The death or incapacity of a person appointing a proxy does not revoke the authority of the proxy, unless written notice of the death or incapacity is received by an officer of the corporation before the proxy exercises the authority under that appointment.

**Subdivision 5. Multiple proxies.** Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a shareholder:

(a) Any one of them may vote the shares on each item of business in accordance with specific instructions contained in the appointment; and

(b) If no specific instructions are contained in the appointment with respect to voting the shares on a particular item of business, the shares shall be voted as a majority of the proxies determine. If the proxies are equally divided, the shares shall not be voted.

**Subdivision 6. Vote of proxy accepted; liability.** Unless the appointment of a proxy contains a restriction, limitation, or specific reservation of authority, the corporation may accept a vote or action taken by a person named in the appointment. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the shareholder or beneficial owner for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

**Subdivision 7. Limited authority.** If a proxy is given authority by a shareholder to vote on less than all items of business considered at a meeting of shareholders, the shareholder is considered to be present and entitled to vote by the proxy for purposes of section 1171, subdivision 1, only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a shareholder who abstains

with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subdivision.

### **Sec. 1177. Voting Trusts.**

**Subdivision 1. Authorization; period; termination.** Shares in a corporation may be transferred to a trustee pursuant to written agreement, for the purpose of conferring on the trustee the right to vote and otherwise represent the beneficial owner of those shares for a period not exceeding 15 years, except that if the agreement is made in connection with an indebtedness of the corporation, the voting trust may extend until the indebtedness is discharged. Unless otherwise specified in the agreement, the voting trust may be terminated at any time by the beneficial owners of a majority of the voting power of the shares held by the trustee. A copy of the agreement shall be filed with the corporation.

**Subdivision 2. Voting by trustees.** Unless otherwise provided in the trust agreement, if there are two or more trustees, the manner of voting is determined as provided in section 1174, subdivision 5.

### **Sec. 1178. Shareholder Voting Agreements.**

A written agreement among persons who are then shareholders or subscribers for shares to be issued, relating to the voting of their shares, is valid and specifically enforceable by and against the parties to the agreement. The agreement may override the provisions of section 1176 regarding proxies and is not subject to the provisions of section 1177 regarding voting trusts.

### **Sec. 1179. Shareholder Control Agreements.**

**Subdivision 1. Authorized.** A written agreement among the shareholders of a corporation and the subscribers for shares to be issued, relating to the control of any phase of the business and affairs of the corporation, its liquidation and dissolution, or the relations among shareholders of or subscribers to shares of the corporation is valid and specifically enforceable as provided in subdivision 2.

**Subdivision 2. Method of approval; enforceability; copies.**

(a) A written agreement among persons described in subdivision 1 that relates to the control of or the liquidation and dissolution of the corporation, the relations among them, or any phase of the business and affairs of the corporation, including, without limitation, the management of its business, the declaration and payment of distributions, the election of directors or officers, the employment of shareholders by the corporation, or the arbitration of disputes, is valid and specifically enforceable, if the agreement is signed by all persons who are then the shareholders of the corporation, whether or not the shareholders all have voting shares, and the subscribers for shares, whether or not voting shares, to be issued.

(b) The agreement is enforceable by the persons described in subdivision 1 who are parties to it and is binding upon and enforceable against only those persons and other persons having knowledge of the existence of the agreement. A copy of the agreement shall be filed with the corporation. The existence and location of a copy of the agreement shall be noted conspicuously on the face or back of each certificate for shares issued by the corporation and on each transaction statement.

(c) A shareholder, a beneficial owner of shares, or another person having a security interest in shares has the right upon written demand to obtain a copy of the agreement from the corporation at the expense of the corporation.

**Subdivision 3. Liability.** The effect of an agreement authorized by this section is to relieve the board and the director or directors in their capacities as directors of, and to impose upon the parties to the agreement, the liability for acts or omissions imposed by law upon directors to the extent that and so long as the discretion or powers of the directors in the management of the business and affairs of the corporation are exercised by the shareholders under a provision in the agreement. A shareholder is not liable pursuant to this subdivision by virtue of a shareholder vote, if the shareholder had no right to vote on the action.

**Subdivision 4. Other agreements.** This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among shareholders or between the shareholders and the corporation with respect to any of the matters described in this section.

**Sec. 1180. Books and Records; Inspection.**

**Subdivision 1. Share register, dates of issuance.**

(a) A corporation shall keep at its principal executive office, or at another place or places within the United States determined by the board, a share register not more than one year old, containing the names and addresses of the shareholders and the number and classes of shares held by each shareholder.

(b) A corporation shall also keep, at its principal executive office, or at another place or places within the United States determined by the board, a record of the date on which certificates or transaction statements representing shares were issued.

**Subdivision 2. Other documents required.** A corporation shall keep at its principal executive office, or, if its principal executive office is outside the Reservation, shall make available at its registered office within ten days after receipt by an officer of the corporation of a written demand for them made by a person described in subdivision 4, originals or copies of:

(a) Records of all proceedings of shareholders for the last three years;

(b) Records of all proceedings of the board for the last three years;

(c) Its articles and all amendments currently in effect;

(d) Its bylaws and all amendments currently in effect;

(e) Financial statements required by section 1181 and the financial statement for the most recent interim period prepared in the course of the operation of the corporation for distribution to the shareholders or to a governmental agency as a matter a public record;

(f) Reports made to shareholders generally within the last three years;

(g) A statement of the names and usual business addresses of its directors and principal officers;

(h) Voting trust agreements described in section 1177;

(i) Shareholder control agreements described in section 1179; and

(j) A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under section 1156, subdivision 3.

**Subdivision 3. Financial records.** A corporation shall keep appropriate and complete financial records.

**Subdivision 4. Right to inspect.**

(a) A shareholder, beneficial owner, or a holder of a voting trust certificate of a corporation that is not a publicly held corporation has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time:

(1) The share register; and

(2) All documents referred to in subdivision 2.

(b) A shareholder, beneficial owner, or a holder of a voting trust certificate of a corporation that is not a publicly held corporation has a right, upon written demand, to examine and copy, in person or by a legal representative, other corporate records at any reasonable time only if the shareholder, beneficial owner, or holder of a voting trust certificate demonstrates a proper purpose for the examination.

(c) A shareholder, beneficial owner, or a holder of a voting trust certificate of a publicly held corporation has, upon written demand stating the purpose and acknowledged before the Tribal Secretary, a right at any reasonable time to examine and copy the corporation's share register and other corporate records reasonably related to the stated purpose and described with reasonable particularity in the written demand upon demonstrating the stated purpose to be a proper purpose. The acknowledged or verified demand must be directed to the corporation at its registered office

on the Reservation or at its principal place of business.

(d) For purposes of this section, a "proper purpose" is one reasonably related to the person's interest as a shareholder, beneficial owner, or holder of a voting trust certificate of the corporation.

**Subdivision 5. Protective orders.** On application of the corporation, the court may issue a protective order permitting the corporation to withhold portions of the records of proceedings of the board for a reasonable period of time, not to exceed 12 months, in order to prevent premature disclosure of confidential information which would be likely to cause competitive injury to the corporation. A protective order may be renewed for successive reasonable periods of time, each not to exceed 12 months and in total not to exceed 36 months, for good cause shown. In the event a protective order is issued, the statute of limitations for any action which the shareholder, beneficial owner, or holder of a voting trust certificate might bring as a result of information withheld automatically extends for the period of delay. If the court does not issue a protective order with respect to any portion of the records of proceedings as requested by the corporation, it shall award reasonable expenses, including attorney's fees and disbursements, to the shareholder, beneficial owner, or holder of a voting trust certificate. This subdivision does not limit the right of the court to grant other protective orders or impose other reasonable restrictions on the nature of the corporate records that may be copied or examined under subdivision 4 or the use or distribution of the records by the demanding shareholder, beneficial owner, or holder of a voting trust certificate.

**Subdivision 6. Other use prohibited.** A shareholder, beneficial owner, or holder of a voting trust certificate who has gained access under this section to any corporate record including the share register may not use or furnish to another for use the corporate record or a portion of the contents for any purpose other than a proper purpose. Upon application of the corporation, the court may issue a protective order or order other

relief as may be necessary to enforce the provisions of this subdivision.

**Subdivision 7. Cost of copies.** Copies of the share register and all documents referred to in subdivision 2, if required to be furnished under this section, shall be furnished at the expense of the corporation. In all other cases, the corporation may charge the requesting party a reasonable fee to cover the expenses of providing the copy.

**Subdivision 8. Computerized records.** The records maintained by a corporation, including its share register, financial records, and minute books, may utilize any information storage technique, including, for example, punched holes, printed or magnetized spots, or micro-images, even though that makes them illegible visually, if the records can be converted accurately and within a reasonable time, into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A corporation shall convert any of the records referred to in subdivision 4 upon the request of a person entitled to inspect them, and the expense of the conversion shall be borne by the person who bears the expense of copying pursuant to subdivision 7. A copy of the conversion is admissible in evidence, and shall be accepted for all other purposes, to the same extent as the existing or original records would be if they were legible visually.

### **Sec. 1181. Financial Statements.**

A corporation shall, upon written request by a shareholder, furnish annual financial statements, including at least a balance sheet as of the end of each fiscal year and a statement of income for the fiscal year, which shall be prepared on the basis of accounting methods reasonable in the circumstances and may be consolidated statements of the corporation and one or more of its subsidiaries. In the case of statements audited by a public accountant, each copy shall be accompanied by a report setting forth the opinion of the accountant on the statements; in other cases, each copy shall be accompanied by a statement of the chief financial officer or other person in charge of the corporation's financial records stating the reasonable

belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances, describing the basis of presentation, and describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

### **Sec. 1182. Equitable Remedies.**

If a corporation or an officer or director of the corporation violates a provision of this Code, the court may, in an action brought by a shareholder of the corporation, grant any equitable relief it deems just and reasonable in the circumstances and award expenses, including attorneys' fees and disbursements, to the shareholder.

### **Sec. 1183. Rights of Dissenting Shareholders.**

**Subdivision 1. Actions creating rights.** A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) An amendment of the articles that materially and adversely affects the rights or preferences of the shares of the dissenting shareholder in that it:

(1) Alters or abolishes a preferential right of the shares;

(2) Creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of the shares;

(3) Alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares;

(4) Excludes or limits the right of a shareholder to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights;

(b) A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation not made in the usual or regular

course of its business, but not including a disposition in dissolution described in section 11105, subdivision 2, or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;

(c) A plan of merger, whether or not under this Code, to which the corporation is a party, except as provided in subdivision 3;

(d) A plan of exchange, whether or not under this Code, to which the corporation is a party as the corporation whose shares will be acquired by the acquiring corporation, if the shares of the shareholder are entitled to be voted on the plan; or

(e) Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.

**Subdivision 2. Beneficial owners.**

(a) A shareholder shall not assert dissenters' rights as to less than all of the shares registered in the name of the shareholder, unless the shareholder dissents with respect to all the shares that are beneficially owned by another person but registered in the name of the shareholder and discloses the name and address of each beneficial owner on whose behalf the shareholder dissents. In that event, the rights of the dissenter shall be determined as if the shares as to which the shareholder has dissented and the other shares were registered in the names of different shareholders.

(b) A beneficial owner of shares who is not the shareholder may assert dissenters' rights with respect to shares held on behalf of the beneficial owner, and shall be treated as a dissenting shareholder under the terms of this section and section 1184, if the beneficial owner submits to the corporation at the time of or before the assertion of the rights a written consent of the shareholder.

**Subdivision 3. Rights not to apply.** The right to obtain payment under this section does not apply to a shareholder of the surviving corporation

in a merger, if the shares of the shareholder are not entitled to be voted on the merger.

**Subdivision 4. Other rights.** The shareholders of a corporation who have a right under this section to obtain payment for their shares do not have a right at law or in equity to have a corporate action described in subdivision 1 set aside or rescinded, except when the corporate action is fraudulent with regard to the complaining shareholder or the corporation.

**Sec. 1184. Procedures for Asserting Dissenter's Rights.**

**Subdivision 1. Definitions.**

(a) For purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Corporation" means the issuer of the shares held by a dissenter before the corporate action referred to in section 1183, subdivision 1 or the successor by merger of that issuer.

(c) "Fair value of the shares" means the value of the shares of a corporation immediately before the effective date of the corporate action referred to in section 1183, subdivision 1.

(d) "Interest" means interest commencing five days after the effective date of the corporate action referred to in section 1183, subdivision 1, up to and including the date of payment, calculated at the rate provided by the laws of the Tribe for interest on verdicts and judgments, or if the laws of the Tribe do not establish a rate, then at the rate provided by the laws of the State of Montana for interest on verdicts and judgments.

**Subdivision 2. Notice of action.** If a corporation calls a shareholder meeting at which any action described in section 1183, subdivision 1 is to be voted upon, the notice of the meeting shall inform each shareholder of the right to dissent and shall include a copy of section 1183 and this section and a brief description of the procedure to be followed under these sections.

**Subdivision 3. Notice of dissent.** If the proposed action must be approved by the shareholders, a shareholder who wishes to exercise dissenters' rights must file with the corporation before the vote on the proposed action a written notice

of intent to demand the fair value of the shares owned by the shareholder and must not vote the shares in favor of the proposed action.

**Subdivision 4. Notice of procedure; deposit of shares.**

(a) After the proposed action has been approved by the board and, if necessary, the shareholders, the corporation shall send to all shareholders who have complied with subdivision 3 and to all shareholders entitled to dissent if no shareholder vote was required, a notice that contains:

(1) The address to which a demand for payment and certificates of certificated shares must be sent in order to obtain payment and the date by which they must be received;

(2) Any restrictions on transfer of uncertificated shares that will apply after the demand for payment is received;

(3) A form to be used to certify the date on which the shareholder, or the beneficial owner on whose behalf the shareholder dissents, acquired the shares or an interest in them and to demand payment; and

(4) A copy of section 1183 and this section and a brief description of the procedures to be followed under these sections.

(b) In order to receive the fair value of the shares, a dissenting shareholder must demand payment and deposit certificated shares or comply with any restrictions on transfer of uncertificated shares within 30 days after the notice was given, but the dissenter retains all other rights of a shareholder until the proposed action takes effect.

**Subdivision 5. Payment; return of shares.**

(a) After the corporate action takes effect, or after the corporation receives a valid demand for payment, whichever is later, the corporation shall remit to each dissenting shareholder who has complied with subdivisions 3 and 4 the amount the corporation estimates to be the fair value of the shares, plus interest, accompanied by:

(1) The corporation's closing balance sheet and statement of income for a fiscal year ending not more than 16 months before the effective date

of the corporate action, together with the latest available interim financial statements;

(2) An estimate by the corporation of the fair value of the shares and a brief description of the method used to reach the estimate; and

(3) A copy of section 1183 and this section, and a brief description of the procedure to be followed in demanding supplemental payment.

(b) The corporation may withhold the remittance described in paragraph (a) from a person who was not a shareholder on the date the action dissented from was first announced to the public or who is dissenting on behalf of a person who was not a beneficial owner on that date. If the dissenter has complied with subdivisions 3 and 4, the corporation shall forward to the dissenter the materials described in paragraph (a), a statement of the reason for withholding the remittance, and an offer to pay to the dissenter the amount listed in the materials if the dissenter agrees to accept that amount in full satisfaction. The dissenter may decline the offer and demand payment under subdivision 6. Failure to do so entitles the dissenter only to the amount offered. If the dissenter makes demand, subdivisions 7 and 8 apply.

(c) If the corporation fails to remit payment within 60 days of the deposit of certificates or the imposition of transfer restrictions on uncertificated shares, it shall return all deposited certificates and cancel all transfer restrictions. However, the corporation may again give notice under subdivision 4 and require deposit or restrict transfer at a later time.

**Subdivision 6. Supplemental payment; demand.** If a dissenter believes that the amount remitted under subdivision 5 is less than the fair value of the shares plus interest, the dissenter may give written notice to the corporation of the dissenter's own estimate of the fair value of the shares, plus interest, within 30 days after the corporation mails the remittance under subdivision 5, and demand payment of the difference. Otherwise, a dissenter is entitled only to the amount remitted by the corporation.

**Subdivision 7. Petition; determination.** If the corporation receives a demand under subdivision

6, it shall, within 60 days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after discussion with the corporation or file in court a petition requesting that the court determine the fair value of the shares, plus interest. The petition shall name as parties all dissenters who have demanded payment under subdivision 6 and who have not reached agreement with the corporation. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court deems proper, to receive evidence on and recommend the amount of the fair value of the shares. The court shall determine whether the shareholder or shareholders in question have fully complied with the requirements of this section, and shall determine the fair value of the shares, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the corporation or by a dissenter. The fair value of the shares as determined by the court is binding on all shareholders, wherever located. A dissenter is entitled to judgment for the amount by which the fair value of the shares as determined by the court, plus interest, exceeds the amount, if any, remitted under subdivision 5, but shall not be liable to the corporation for the amount, if any, by which the amount, if any, remitted to the dissenter under subdivision 5 exceeds the fair value of the shares as determined by the court, plus interest.

**Subdivision 8. Costs; fees; expenses.**

(a) The court shall determine the costs and expenses of a proceeding under subdivision 7, including the reasonable expenses and compensation of any appraisers appointed by the court, and shall assess those costs and expenses against the corporation, except that the court may assess part or all of those costs and expenses against a dissenter whose action in demanding payment under subdivision 6 is found to be arbitrary, vexatious, or not in good faith.

(b) If the court finds that the corporation has failed to comply substantially with this section, the court may assess all fees and expenses of any

experts or attorneys as the court deems equitable. These fees and expenses may also be assessed against a person who has acted arbitrarily, vexatiously, or not in good faith in bringing the proceeding, and may be awarded to a party injured by those actions.

(c) The court may award, in its discretion, fees and expenses to an attorney for the dissenters out of the amount awarded to the dissenters, if any.

**Subchapter H. Loans; Obligations; Distributions**

**Sec. 1185. Loans; Guarantees; Suretyship.**

**Subdivision 1. Prerequisites.** A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the directors present and:

(a) Is in the usual and regular course of business of the corporation;

(b) Is with, or for the benefit of, a related corporation, an organization in which the corporation has a financial interest, an organization with which the corporation has a business relationship, or an organization to which the corporation has the power to make donations;

(c) Is with, or for the benefit of, an officer or other employee of the corporation or a subsidiary, including an officer or employee who is a director of the corporation or a subsidiary, and may reasonably be expected, in the judgment of the board, to benefit the corporation; or

(d) Has been approved by:

(1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested person or persons, or

(2) The unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote.

**Subdivision 2. Interest; security.** A loan, guaranty, surety contract, or other financial assistance under subdivision 1 may be with or without interest and may be unsecured or may be secured



in any manner, including, without limitation, a grant of a security interest in shares of the corporation.

Subdivision 3. Banking authority not granted. This section does not grant any authority to act as a bank or to carry on the business of banking.

#### **Sec. 1186. Advances.**

A corporation may, without a vote of the directors, advance money to its directors, officers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

#### **Sec. 1187. Indemnification.**

##### **Subdivision 1. Definitions.**

(a) For purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Corporation" includes a tribal or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(c) "Official capacity" means

(1) With respect to a director, the position of director in a corporation,

(2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation, and

(3) With respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, officer, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a director, officer, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

(d) "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.

(e) "Special legal counsel" means counsel who has not represented the corporation or a related corporation, or a director, officer, member of a committee of the board, or employee, whose indemnification is in issue.

##### **Subdivision 2. Indemnification mandatory; standard.**

(a) Subject to the provisions of subdivision 4, a corporation shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

(1) Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions;

(2) Acted in good faith;

(3) Received no improper personal benefit and section 1146, if applicable, has been satisfied;

(4) In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and

(5) In the case of acts or omissions occurring in the official capacity described in subdivision 1, paragraph (c), clause (1) or (2), reasonably believed that the conduct was in the best interests of the corporation, or in the case of acts or omissions occurring in the official capacity described in

subdivision 1, paragraph (c), clause (3), reasonably believed that the conduct was not opposed to the best interests of the corporation. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the corporation if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

(b) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in this subdivision.

**Subdivision 3. Advances.** Subject to the provisions of subdivision 4, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the corporation, to payment or reimbursement by the corporation of reasonable expenses, including attorneys' fees and disbursements, incurred by the person in advance of the final disposition of the proceeding,

(a) Upon receipt by the corporation of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in subdivision 2 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the corporation, if it is ultimately determined that the criteria for indemnification have not been satisfied, and

(b) After a determination that the facts then known to those making the determination would not preclude indemnification under this section. The written undertaking required by clause (a) is an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.

**Subdivision 4. Prohibition or limit on indemnification or advances.** The articles or bylaws either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions

contained in subdivisions 2 and 3 including, without limitation, monetary limits on indemnification or advances of expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring prior to the effective date of a provision in the articles or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.

**Subdivision 5. Reimbursement to witnesses.** This section does not require, or limit the ability of, a corporation to reimburse expenses, including attorneys' fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

**Subdivision 6. Determination of eligibility.**

(a) All determinations of whether indemnification of a person is required because the criteria set forth in subdivision 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 shall be made:

(1) By the board by a majority of a quorum; directors who are at the time parties to the proceeding shall not be counted for determining either a majority or the presence of a quorum;

(2) If a quorum under clause (1) cannot be obtained, by a majority of a committee of the board, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board including directors who are parties;

(3) If a determination is not made under clause (1) or (2), by special legal counsel, selected either by a majority of the board or a committee by vote pursuant to clause (1) or (2) or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board including directors who are parties;

(4) If a determination is not made under clauses (1) to (3), by the shareholders, excluding the votes of shares held by parties to the proceeding; or

(5) If an adverse determination is made under clauses (1) to (4) or under paragraph (b), or if no determination is made under clauses (1) to (4) or under paragraph (b) within 60 days after (i) the later to occur of the termination of a proceeding or a written request for indemnification to the corporation or (ii) a written request for an advance of expenses, as the case may be, by the court, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires. The person seeking indemnification or payment or reimbursement of expenses pursuant to this clause has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

(b) With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a director, officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, the determination whether indemnification of this person is required because the criteria set forth in subdivision 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 may be made by an annually appointed committee of the board, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.

**Subdivision 7. Insurance.** A corporation may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the corporation would have been required to indemnify the person against the liability under the provisions of this section.

**Subdivision 8. Disclosure.** A corporation that indemnifies or advances expenses to a person in accordance with this section in connection with a

proceeding by or on behalf of the corporation shall report to the shareholders in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of shareholders.

**Subdivision 9. Indemnification of other persons.** Nothing in this section shall be construed to limit the power of the corporation to indemnify other persons by contract or otherwise.

## **Sec. 1188. Distributions.**

**Subdivision 1. When permitted.** The board may authorize and cause the corporation to make a distribution only if the board determines, in accordance with subdivision 2, that the corporation will be able to pay its debts in the ordinary course of business after making the distribution and the board does not know before the distribution is made that the determination was or has become erroneous, and the corporation may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution. The effect of a distribution on the ability of the corporation to pay its debts in the ordinary course of business after making the distribution shall be measured in accordance with subdivision 3. The right of the board to authorize, and the corporation to make, distributions may be prohibited, limited, or restricted by, or the rights and priorities of persons to receive distributions may be established by, the articles or bylaws or an agreement.

**Subdivision 2. Determination presumed proper.** A determination that the corporation will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 1145 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. No liability under section 1145 or 1191 will accrue if the requirements of this subdivision have been met.

**Subdivision 3. Effect measured.**

(a) In the case of a distribution made by a corporation in connection with a purchase, redemption, or other acquisition of its shares, the effect of the distribution shall be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the corporation, or as of the date on which the shareholder ceases to be a shareholder of the corporation with respect to the shares, whichever is the earliest.

(b) The effect of any other distribution shall be measured as of the date of its authorization if payment occurs 120 days or less following the date of authorization or as of the date of payment if payment occurs more than 120 days following the date of authorization.

(c) Indebtedness of a corporation incurred or issued in a distribution in accordance with this section to a shareholder who as a result of the transaction is no longer a shareholder is on a parity with the indebtedness of the corporation to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the corporation or a related corporation, or subject to any other agreement between the corporation and the shareholder.

(d) Sections 1188 to 1191 supersede all other laws of the Tribe with respect to distributions.

#### Subdivision 4. Restrictions.

(a) A distribution may be made to the holders of a class or series of shares only if:

(1) All amounts payable to the holders of shares having a preference for the payment of that kind of distribution, other than those holders who give notice to the corporation of their agreement to waive their rights to that payment, are paid; and

(2) The payment of the distribution does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights, unless the distribution is made to those shareholders in the order and to the extent of their respective priorities or the holders of shares who do not receive distributions in that order give notice to the corporation of their agreement to waive their rights

to that distribution. A determination that the payment of the distribution does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 1145 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation, or other methods, reasonable in the circumstances. Liability under section 1145 or 1191 will not arise if the requirements of this paragraph are met.

(b) If the money or property available for distribution is insufficient to satisfy all preferences, the distributions shall be made pro-rata according to the order of priority of preferences by classes and by series within those classes unless those holders who do not receive distributions in that order give notice to the corporation of their agreement to waive their rights to that distribution.

### **Sec. 1189. Power to Acquire Shares.**

**Subdivision 1. When permitted; status of shares.** A corporation may acquire its own shares, subject to section 1188 and subdivision 3. If the corporation pledges the shares to secure payment of the redemption price thereof, then the corporation shall not be deemed to have acquired the shares for the purposes of this subdivision until the pledge is released. Shares acquired by a corporation constitute authorized but unissued shares of the corporation, unless the articles provide that they shall not be reissued, in which case the number of authorized shares is reduced by the number of shares acquired.

**Subdivision 2. Statement of cancellation.** If the number of authorized shares of a corporation is reduced by an acquisition of its shares, the corporation shall, no later than the time it makes its next annual report to shareholders or, if no report is made, no later than three months after the end of the fiscal year in which the acquisition occurs, file with the Tribal Secretary a statement of cancellation showing the reduction in the authorized shares. The statement shall contain:

- (a) The name of the corporation;
- (b) The number of acquired shares canceled, itemized by classes and series; and
- (c) The aggregate number of authorized shares itemized by classes and series, after giving effect to the cancellation.

**Subdivision 3. Limitation on share purchases.** A publicly held corporation shall not, directly or indirectly, purchase or agree to purchase any shares entitled to vote from a person (or two or more persons who act as a partnership, limited partnership, syndicate, or other group pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise for the purpose of acquiring, owning, or voting shares of the publicly held corporation) who beneficially owns more than five percent of the voting power of the publicly held corporation for more than the market value thereof if the shares have been beneficially owned by the person for less than two years, unless the purchase or agreement to purchase is approved at a meeting of shareholders by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote or the publicly held corporation makes an offer, of at least equal value per share, to all holders of shares of the class or series and to all holders of any class or series into which the securities may be converted. For purposes of determining the period that shares have been beneficially owned by a person:

(1) Shares acquired by the person by gift from a donor are deemed to have first become beneficially owned by the person when the shares were acquired by the donor;

(2) Shares acquired by a trust from the settlor of the trust, or shares acquired from the trust by a beneficiary of the trust, are deemed to have first become beneficially owned by the trust or the beneficiary when the shares were acquired by the settlor; and

(3) Shares acquired by an estate or personal representative as a result of the death or incapacity of a person, or shares acquired from the estate or personal representative by an heir, devisee, or beneficiary of the deceased or incapacitated person, are deemed to have first become beneficially

owned by the estate, personal representative, heir, devisee, or beneficiary when the shares were acquired by the deceased or incapacitated person.

### **Sec. 1190. Liability of Shareholders for Illegal Distributions.**

**Subdivision 1. Liability.** A shareholder who receives a distribution made in violation of the provisions of section 1188 is liable to the corporation, its receiver or other person winding up its affairs, or a director under section 1191, subdivision 2, but only to the extent that the distribution received by the shareholder exceeded the amount that properly could have been paid under section 1188.

**Subdivision 2. Statute of limitations.** An action shall not be commenced under this section more than two years from the date of the distribution.

### **Sec. 1191. Liability of Directors for Illegal Distributions.**

**Subdivision 1. Liability.** In addition to any other liabilities, a director who is present at a meeting and fails to vote against, or who consents in writing to, a distribution made in violation of section 1188 or a restriction contained in the articles or bylaws or an agreement, and who fails to comply with the standard of conduct provided in section 1145, is liable to the corporation jointly and severally with all other directors so liable and to other directors under subdivision 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 1188.

**Subdivision 2. Contribution from shareholders.** A director against whom an action is brought under this section with respect to a distribution may implead in that action all shareholders who received the distribution and may compel pro-rata contribution from them in that action to the extent provided in section 1190, subdivision 1.

**Subdivision 3. Impleader, contribution from directors.** A director against whom an action is brought under this section with respect to a distribution may implead in that action all other directors who voted for or consented in writing to the

distribution and may compel pro-rata contribution from them in that action.

**Subdivision 4. Statute of limitations.** An action shall not be commenced under this section more than two years from the date of the distribution.

### **Subchapter I. Merger, Exchange, Transfer**

#### **Sec. 1192. Merger, Exchange, Transfer.**

**Subdivision 1. Merger.** Any two or more corporations may merge, resulting in a single corporation, with or without a business purpose, pursuant to a plan of merger approved in the manner provided in sections 1193 to 1199.

**Subdivision 2. Exchange.** A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation pursuant to a plan of exchange approved in the manner provided in sections 1193 to 1195, and 1197 to 1199.

**Subdivision 3. Transfer.** A corporation may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the manner provided in section 11100.

**Subdivision 4. Reserved.**

#### **Sec. 1193. Plan of Merger or Exchange.**

**Subdivision 1. Contents of plan.** A plan of merger or exchange shall contain:

(a) The names of the corporations proposing to merge or participate in an exchange, and:

(1) In the case of a merger, the name of the surviving corporation;

(2) In the case of an exchange, the name of the acquiring corporation;

(b) The terms and conditions of the proposed merger or exchange;

(c)(1) In the case of a merger, the manner and basis of converting the shares of the constituent corporations into securities of the surviving corporation or of any other corporation, or, in whole or in part, into money or other property; or

(2) In the case of an exchange, the manner and basis of exchanging the shares to be acquired for securities of the acquiring corporation or any other corporation or, in whole or part, into money or other property;

(d) In the case of a merger, a statement of any amendments to the articles of the surviving corporation proposed as part of the merger; and

(e) Any other provisions with respect to the proposed merger or exchange that are deemed necessary or desirable.

**Subdivision 2. Other agreements.** The procedure authorized by this section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a negotiated agreement with the shareholders or otherwise.

#### **Sec. 1194. Plan Approval.**

**Subdivision 1. Board approval; notice to shareholders.** A resolution containing the plan of merger or exchange shall be approved by the affirmative vote of a majority of the directors present at a meeting of the board of each constituent corporation and shall then be submitted at a regular or a special meeting to the shareholders of

(i) Each constituent corporation, in the case of a plan of merger, and

(ii) The corporation whose shares will be acquired by the acquiring corporation in the exchange, in the case of a plan of exchange. If shareholders holding any class or series of stock of the corporation are entitled to vote on the plan of merger or exchange pursuant to this section, written notice shall be given to every shareholder of a corporation, whether or not entitled to vote at the meeting, not less than 14 days nor more than 60 days before the meeting, in the manner provided in section 1169 for notice of meetings of shareholders. The written notice shall state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange shall be included in or enclosed with the notice.

#### **Subdivision 2. Approval by shareholders.**

(a) At the meeting a vote of the shareholders shall be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote.

Except as provided in paragraph (b), a class or series of shares of the corporation is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles, entitle the class or series of shares to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

(b) A class or series of shares of the corporation is not entitled to vote as a class or series solely because the plan of merger or exchange effects a cancellation of the shares of the class or series if the plan of merger or exchange effects a cancellation of all shares of the corporation of all classes and series that are outstanding immediately prior to the merger or exchange and shareholders of shares of that class or series are entitled to obtain payment for the fair value of their shares under section 1183 in the event of the merger or exchange.

**Subdivision 3. When approval by shareholders not required.** Notwithstanding the provisions of subdivisions 1 and 2, submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation is not required if:

(a) The articles of the corporation will not be amended in the transaction;

(b) Each holder of shares of the corporation that were outstanding immediately before the effective date of the transaction will hold the same number of shares with identical rights immediately thereafter;

(c) The number of shares of the corporation entitled to vote immediately after the merger, plus the number of shares of the corporation entitled to vote issuable on conversion of securities other than shares or on the exercise of rights to purchase securities issued by virtue of the terms of the transaction, will not exceed by more than 20 percent, the number of shares of the corporation entitled to vote immediately before the transaction; and

(d) The number of participating shares of the corporation immediately after the merger, plus the number of participating shares of the corporation issuable on conversion, or on the exercise of

rights to purchase, securities issued in the transaction, will not exceed by more than 20 percent, the number of participating shares of the corporation immediately before the transaction. "Participating shares" are outstanding shares of the corporation that entitle their holders to participate without limitation in distributions by the corporation.

### **Sec. 1195. Articles of Merger or Exchange; Certificate.**

**Subdivision 1. Contents of articles.** Upon receiving the approval required by section 1194, articles of merger or exchange shall be prepared that contain:

(a) The plan of merger or exchange; and

(b) A statement that the plan has been approved by each corporation pursuant to this Code.

**Subdivision 2. Articles signed, filed.** The articles of merger or exchange shall be signed on behalf of each constituent corporation and filed with the Tribal Secretary.

**Subdivision 3. Certificate.** The Tribal Secretary shall issue a certificate of merger to the surviving corporation or its legal representative and a certificate of exchange to the acquiring corporation or its legal representative.

### **Sec. 1196. Merger of Subsidiary.**

**Subdivision 1. When authorized; contents of plan.** A parent owning at least 90 percent of the outstanding shares of each class and series of a subsidiary directly, or indirectly through related corporations, may merge the subsidiary into itself or into any other subsidiary at least 90 percent of the outstanding shares of each class and series of which is owned by the parent directly, or indirectly through related corporations, without a vote of the shareholders of itself or any subsidiary or may merge itself, or itself and one or more of the subsidiaries, into one of the subsidiaries under this section. A resolution approved by the affirmative vote of a majority of the directors of the parent present shall set forth a plan of merger that contains:

(a) The name of the subsidiary or subsidiaries, the name of the parent and the name of the surviving corporation;

(b) The manner and basis of converting the shares of the subsidiary or subsidiaries or parent into securities of the parent, subsidiary, or of another corporation or, in whole or in part, into money or other property;

(c) If the parent is a constituent corporation but is not the surviving corporation in the merger, a provision for the pro-rata issuance of shares of the surviving corporation to the holders of shares of the parent on surrender of any certificates for shares of the parent; and

(d) If the surviving corporation is a subsidiary, a statement of any amendments to the articles of the surviving corporation that will be part of the merger. If the parent is a constituent corporation but is not the surviving corporation in the merger, the resolution is not effective unless it is also approved by the affirmative vote of the holders of a majority of the voting power of all shares of the parent entitled to vote at a regular or special meeting held in accordance with section 1194 if the parent is a tribal corporation or in accordance with the laws under which it is incorporated if the parent is a foreign corporation.

**Subdivision 2. Notice to shareholders of subsidiary.** A copy of the plan of merger shall be mailed to each shareholder, other than the parent and any subsidiary, of each subsidiary that is a constituent corporation in the merger.

**Subdivision 3. Articles of merger, contents of articles.** Articles of merger shall be prepared that contain:

(a) The plan of merger;

(b) The number of outstanding shares of each class and series of each subsidiary that is a constituent corporation in the merger and the number of shares of each class and series of the subsidiary or subsidiaries owned by the parent directly, or indirectly through related corporations;

(c) The date a copy of the plan of merger was mailed to shareholders, other than the parent or a subsidiary, of each subsidiary that is a constituent corporation in the merger; and

(d) A statement that the plan of merger has been approved by the parent under this section.

**Subdivision 4. Articles signed, filed.** Within 30 days after a copy of the plan of merger is mailed to shareholders of each subsidiary that is a constituent corporation to the merger, or upon waiver of the mailing by the holders of all outstanding shares of each subsidiary that is a constituent corporation to the merger, the articles of merger shall be signed on behalf of the parent and filed with the Tribal Secretary.

**Subdivision 5. Certificate.** The Tribal Secretary shall issue a certificate of merger to the parent or its legal representative or, if the parent is a constituent corporation but is not the surviving corporation in the merger, to the surviving corporation or its legal representative.

**Subdivision 6. Rights of dissenting shareholders.** In the event all of the stock of one or more tribal subsidiaries of the parent that is a constituent party to a merger under this section is not owned by the parent directly, or indirectly through related corporations, immediately prior to the merger, the shareholders of each tribal subsidiary have dissenters' rights under section 1183, without regard to sections 1183, subdivision 3, and 1184. If the parent is a constituent corporation but is not the surviving corporation in the merger, and the articles of incorporation of the surviving corporation immediately after the merger differ from the articles of incorporation of the parent immediately prior to the merger in a manner that would entitle a shareholder of the parent to dissenters' rights under section 1183, subdivision 1, paragraph (a), if the articles of incorporation of the surviving corporation constituted an amendment to the articles of incorporation of the parent, that shareholder of the parent has dissenters' rights as provided under sections 1183 and 1184. Except as provided in this subdivision, sections 1183 and 1184 do not apply to any merger effected under this section.

**Subdivision 7. Nonexclusivity.** A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 1193, 1194, and



1195 instead of this section, in which case this section does not apply.

### **Sec. 1197. Abandonment.**

**Subdivision 1. By shareholders or plan.** After a plan of merger or exchange has been approved by the shareholders entitled to vote on the approval of the plan as provided in section 1194 and before the effective date of the plan, it may be abandoned:

(a) If the shareholders of each of the constituent corporations entitled to vote on the approval of the plan as provided in section 1194 have approved the abandonment at a meeting by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote and, if the shareholders of a constituent corporation are not entitled to vote on the approval of the plan under section 1194, the board of directors of the constituent corporation has approved the abandonment by the affirmative vote of a majority of the directors present;

(b) If the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or

(c) Pursuant to subdivision 2.

**Subdivision 2. By board.** A plan of merger or exchange may be abandoned, before the effective date of the plan, by a resolution of the board of directors of any constituent corporation abandoning the plan of merger or exchange approved by the affirmative vote of a majority of the directors present, subject to the contract rights of any other person under the plan.

**Subdivision 3. Filing of articles.** If articles of merger or exchange have been filed with the Tribal Secretary, but have not yet become effective, the constituent corporations, in the case of abandonment under subdivision 1, clause (a), the constituent corporations or any one of them, in the case of abandonment under subdivision 1, clause (b), or the abandoning corporation in the case of abandonment under subdivision 2, shall file with the Tribal Secretary articles of abandonment that contain:

(a) The names of the constituent corporations;

(b) The provision of this section under which the plan is abandoned; and

(c) If the plan is abandoned under subdivision 2, the text of the resolution approved by the affirmative vote of a majority of the directors present abandoning the plan.

### **Sec. 1198. Effective Date of Merger or Exchange; Effect.**

**Subdivision 1. Effective date.** A merger or exchange is effective when the articles of merger or exchange are filed with the Tribal Secretary or on a later date specified in the articles of merger or exchange.

**Subdivision 2. Effect on corporation.** When a merger becomes effective:

(a) The constituent corporations become a single corporation, the surviving corporation;

(b) The separate existence of all constituent corporations except the surviving corporation ceases;

(c) The surviving corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a corporation incorporated under this Code;

(d) The surviving corporation possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent corporations. All property, real, personal, and mixed, and all debts due on any account, including subscriptions to shares, and all other choses in action, and every other interest of or belonging to or due to each of the constituent corporations vests in the surviving corporation without any further act or deed. Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent corporation by its current officers or, if the corporation no longer exists, by its last officers. The title to any real estate or any interest therein vested in any of the constituent corporations does not revert nor in any way become impaired by reason of the merger;

(e) The surviving corporation is responsible and liable for all the liabilities and obligations of each of the constituent corporations. A claim of

or against or a pending proceeding by or against a constituent corporation may be prosecuted as if the merger had not taken place, or the surviving corporation may be substituted in the place of the constituent corporation.

Neither the rights of creditors nor any liens upon the property of a constituent corporation are impaired by the merger; and

(f) The articles of the surviving corporation are deemed to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

**Subdivision 3. Effect on shareholders.** When a merger or exchange becomes effective, the shares of the corporation or corporations to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are deemed to be exchanged in the case of an exchange. The holders of those shares are entitled only to the securities money, or other property into which those shares have been converted or for which those shares have been exchanged in accordance with the plan, subject to any dissenter's rights under section 1183.

### **Sec. 1199. Merger or Exchange With Foreign Corporation.**

**Subdivision 1. When permitted.** A tribal corporation may merge with or participate in an exchange with a foreign corporation by following the procedures set forth in this section, if:

(1) With respect to a merger, the merger is permitted by the laws of the jurisdiction under which the foreign corporation is incorporated; and

(2) With respect to an exchange, the corporation whose shares will be acquired is a tribal corporation, whether or not the exchange is permitted by the laws of the jurisdiction under which the foreign corporation is incorporated.

**Subdivision 2. Laws applicable before transaction.** Each tribal corporation shall comply with the provisions of sections 1192 to 1199 with respect to the merger or exchange of shares of corporations and each foreign corporation shall com-

ply with the applicable provisions of the laws under which it was incorporated or by which it is governed.

**Subdivision 3. Tribal surviving corporation.** If the surviving corporation in a merger will be a tribal corporation, it shall comply with all the provisions of this Code.

**Subdivision 4. Foreign surviving corporation.** If the surviving corporation in a merger will be a foreign corporation and will transact business on the Reservation, it shall comply with any laws of the Tribe regarding qualification by a foreign corporation to do business on the Reservation. In every case the surviving corporation shall file with the Tribal Secretary:

(a) An agreement that it may be served with process on the Reservation in a proceeding for the enforcement of an obligation of a constituent corporation and in a proceeding for the enforcement of the rights of a dissenting shareholder of a constituent corporation against the surviving corporation;

(b) An irrevocable appointment of the Tribal Secretary as its agent to accept service of process in any proceeding, and an address to which process may be forwarded; and

(c) An agreement that it will promptly pay to the dissenting shareholders of each tribal constituent corporation the amount, if any, to which they are entitled under section 1184.

### **Sec. 11100. Transfer of Assets; When Permitted.**

**Subdivision 1. Shareholder approval; when not required.** A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business and grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, in which case no shareholder approval is required.

**Subdivision 2. Shareholder approval; when required.** A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, when approved at a regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote. Written notice of the meeting shall be given to all shareholders whether or not they are entitled to vote at the meeting. The written notice shall state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation.

**Subdivision 3. Signing of documents.** Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current officers or, if the corporation no longer exists, by its last officers.

**Subdivision 4. Transferee liability.** The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this Code or other laws of the Tribe.

## **Subchapter J. Dissolution**

### **Sec. 11101. Methods of Dissolution.**

A corporation may be dissolved:

- (a) By the incorporators pursuant to section 11102;
- (b) By the shareholders pursuant to sections 11103 to 11107; or
- (c) By order of the court pursuant to sections 11110 to 11118.

### **Sec. 11102. Voluntary Dissolution by Incorporators.**

**Subdivision 1. Manner.** A corporation that has not issued shares may be dissolved by the incorporators in the manner set forth in this section.

Subdivision 2. Articles of dissolution.

(a) A majority of the incorporators shall sign articles of dissolution containing:

- (1) The name of the corporation;
- (2) The date of incorporation;
- (3) A statement that shares have not been issued;

(4) A statement that all consideration received from subscribers for shares to be issued, less expenses incurred in the organization of the corporation, has been returned to the subscribers; and

(5) A statement that no debts remain unpaid.

(b) The articles of dissolution shall be filed with the Tribal Secretary.

**Subdivision 3. Effective date.** When the articles of dissolution have been filed with the Tribal Secretary, the corporation is dissolved.

**Subdivision 4. Certificate.** The Tribal Secretary shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:

- (a) The name of the corporation;
- (b) The date and time the articles of dissolution were filed with the Tribal Secretary; and
- (c) A statement that the corporation is dissolved.

### **Sec. 11103. Voluntary Dissolution by Shareholders.**

**Subdivision J. Manner.** A corporation may be dissolved by the shareholders when authorized in the manner set forth in this section.

**Subdivision 2. Notice; approval.**

(a) Written notice shall be given to each shareholder, whether or not entitled to vote at a meeting of shareholders, within the time and in the manner provided in section 1169 for notice of meetings of shareholders and whether the meeting is a regular or a special meeting, shall state

that a purpose of the meeting is to consider dissolving the corporation.

(b) The proposed dissolution shall be submitted for approval at a meeting of shareholders. If the proposed dissolution is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution shall be commenced.

#### **Sec. 11104. Filing Notice of Intent to Dissolve; Effect.**

**Subdivision 1. Contents.** If dissolution of the corporation is approved pursuant to section 11103, subdivision 2, the corporation shall file with the Tribal Secretary a notice of intent to dissolve. The notice shall contain:

(a) The name of the corporation;

(b) The date and place of the meeting at which the resolution was approved pursuant to section 11103, subdivision 2; and

(c) A statement that the requisite vote of the shareholders was received, or that all shareholders entitled to vote signed a written action.

**Subdivision 2. Winding up.** When the notice of intent to dissolve has been filed with the Tribal Secretary, and subject to section 11108, the corporation shall cease to carry on its business, except to the extent necessary for the winding up of the corporation. The shareholders shall retain the right to revoke the dissolution proceedings in accordance with section 11108 and the right to remove directors or fill vacancies on the board. The corporate existence continues to the extent necessary to wind up the affairs of the corporation until the dissolution proceedings are revoked or articles of dissolution are filed with the Tribal Secretary.

**Subdivision 3. Remedies continued.** The filing with the Tribal Secretary of a notice of intent to dissolve does not affect any remedy in favor of the corporation or any remedy against it or its directors, officers, or shareholders in those capacities, except as provided in sections 11106, 11107, and 11120.

#### **Sec. 11105. Procedure in Dissolution.**

**Subdivision 1. Collection; payment.** When a notice of intent to dissolve has been filed with the Tribal Secretary, the board, or the officers acting under the direction of the board shall proceed as soon as possible:

(a) To collect or make provision for the collection of all known debts due or owing to the corporation, including unpaid subscriptions for shares;

(b) Except as provided in sections 11106, 11107, and 11120, to pay or make provision for the payment of all known debts, obligations, and liabilities of the corporation according to their priorities; and

(c) To give notice to creditors and claimants under section 11106 or to proceed under section 11107.

**Subdivision 2. Transfer of assets.** Notwithstanding the provisions of section 11100, when a notice of intent to dissolve has been filed with the Tribal Secretary, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the shareholders.

**Subdivision 3. Distribution to shareholders.** All tangible or intangible property, including money, remaining after the discharge of the debts, obligations, and liabilities of the corporation shall be distributed to the shareholders in accordance with section 1188, subdivision 4.

#### **Sec. 11106. Dissolution Procedure for Corporations That Give Notice to Creditors and Claimants.**

**Subdivision 1. When permitted; how given.** When a notice of intent to dissolve has been filed with the Tribal Secretary, the corporation may give notice of the filing to each creditor of and claimant against the corporation known or unknown, present or future, and contingent or non-contingent. If notice to creditors and claimants is given, it must be given by publishing the notice once each week for four successive weeks in a legal newspaper on the Reservation and by giving written notice to known creditors and claimants.

**Subdivision 2. Contents.** The notice to creditors and claimants shall contain:

(a) A statement that the corporation is in the process of dissolving;

(b) A statement that the corporation has filed with the Tribal Secretary a notice of intent to dissolve;

(c) The date of filing the notice of intent to dissolve;

(d) The address of the office to which written claims against the corporation must be presented; and

(e) The date by which all the claims must be received, which shall be the later of 90 days after published notice or, with respect to a particular known creditor or claimant, 90 days after the date on which written notice was given to that creditor or claimant. Published notice is deemed given on the date of first publication for the purpose of determining this date.

**Subdivision 3. Claims against corporations that give notice.**

(a) A corporation that gives notice to creditors and claimants has 30 days from the receipt of each claim filed according to the procedures set forth by the corporation on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it. A claim not expressly rejected in this manner is deemed accepted.

(b) A creditor or claimant to whom notice is given and whose claim is rejected by the corporation has 60 days from the date of rejection, 180 days from the date the corporation filed with the Tribal Secretary the notice of intent to dissolve, or 90 days after the date on which notice was given to the creditor or claimant, whichever is longer, to pursue any other remedies with respect to the claim.

(c) A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 11120.

(d) A creditor or claimant whose claim is rejected by the corporation under paragraph (b) is

barred from suing on that claim or otherwise realizing upon or enforcing it, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in paragraph (b).

**Subdivision 4. Articles of dissolution; when filed.** Articles of dissolution for a corporation that has given notice to creditors and claimants under this section must be filed with the Tribal Secretary after:

(1) The 90-day period in subdivision 2, paragraph (e), has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or

(2) The longest of the periods described in subdivision 3, paragraph (b), has expired and there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision 3, paragraph (b).

**Subdivision 5. Contents of articles.** The articles of dissolution must state:

(1) The last date on which the notice was given and:

(i) That the payment of all creditors and claimants filing a claim within the 90-day period in subdivision 2, paragraph (e), has been made or provided for; or

(ii) The date on which the longest of the periods described in subdivision 3, paragraph (b), expired;

(2) that the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with section 1188, subdivision 4, or that adequate provision has been made for that distribution; and

(3) that there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision 3, paragraph (b), or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

**Sec. 11107. Dissolution Procedure for Corporations That Do Not Give Notice.**

**Subdivision 1. Articles of dissolution; when filed.** Articles of dissolution for a corporation that has not given notice to creditors and claimants in the manner provided in section 11106 must be filed with the Tribal Secretary after:

(1) The payment of claims of all known creditors and claimants has been made or provided for; or

(2) At least two years have elapsed from the date of filing the notice of intent to dissolve.

**Subdivision 2. Contents of articles.** The articles of dissolution must state:

(1) If articles of dissolution are being filed pursuant to subdivision 1, clause (1), that all known debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made for payment or discharge;

(2) That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with section 1188, subdivision 4, or that adequate provision has been made for that distribution; and

(3) That there are no pending legal, administrative, or arbitration proceedings by or against the corporation, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

**Subdivision 3. Claims against corporations that do not give notice.**

(a) If the corporation has paid or provided for all known creditors or claimants at the time articles of dissolution are filed. A creditor or claimant who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it.

(b) If the corporation has not paid or provided for all known creditors and claimants at the time articles of dissolution are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two

years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 11120.

**Sec. 11108. Revocation of Dissolution Proceedings.**

**Subdivision 1. Generally.** Dissolution proceedings commenced pursuant to section 11103 may be revoked prior to filing of articles of dissolution.

**Subdivision 2. Notice to shareholders; approval.** Written notice shall be given to every shareholder entitled to vote at a shareholders' meeting within the time and in the manner provided in section 1169 for notice of meetings of shareholders and shall state that a purpose of the meeting is to consider the advisability of revoking the dissolution proceedings. The proposed revocation shall be submitted to the shareholders at the meeting. If the proposed revocation is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution proceedings are revoked.

**Subdivision 3. Effective date; effect.** Revocation of dissolution proceedings is effective when a notice of revocation is filed with the Tribal Secretary. The corporation may thereafter resume business.

**Sec. 11109. Effective Date of Dissolution; Certificate.**

**Subdivision 1. Effective date.** When the articles of dissolution have been filed with the Tribal Secretary, the corporation is dissolved.

**Subdivision 2. Certificate.** The Tribal Secretary shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:

(1) The name of the corporation;

(2) The date and time the articles of dissolution were filed with the Tribal Secretary; and

(3) A statement that the corporation is dissolved.

**Sec. 11110. Supervised Voluntary Dissolution.**

After the notice of intent to dissolve has been filed with the Tribal Secretary and before a certificate of dissolution has been issued, the corporation or, for good cause shown, a shareholder or creditor may apply to the court to have the dissolution conducted or continued under the supervision of the court as provided in sections 11111 to 11120.

**Sec. 11111. Judicial Intervention; Equitable Remedies or Dissolution.**

**Subdivision 1. When permitted.** The court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:

(a) In a supervised voluntary dissolution pursuant to section 11110;

(b) In an action by a shareholder when it is established that:

(1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock;

(2) The directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders, directors, or officers, or as employees of a closely held corporation;

(3) The shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;

(4) The corporate assets are being misapplied or wasted; or

(5) The period of duration as provided in the articles has expired and has not been extended as provided in section 11123;

(c) In an action by a creditor when:

(1) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or

(2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or

(d) In an action by the Tribal Executive Board to dissolve the corporation in accordance with section 11114 when it is established that a decree of dissolution is appropriate.

**Subdivision 2. Buy-out on motion.** In an action under subdivision 1, clause (b), involving a closely held corporation at the time the action is commenced and in which one or more of the circumstances described in that clause is established, the court may, upon motion of a corporation or a shareholder or beneficial owner of shares of the corporation, order the sale by a plaintiff or a defendant of all shares of the corporation held by the plaintiff or defendant to either the corporation or the moving shareholders, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under all of the circumstances of the case.

The purchase price of any shares so sold shall be the fair value of the shares as of the date of the commencement of the action or as of another date found equitable by the court, provided that, if the shares in question are then subject to sale and purchase pursuant to the bylaws of the corporation, a shareholder control agreement, the terms of the shares, or otherwise, the court shall order the sale for the price and on the terms set forth in them, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.

Within five days after the entry of the order, the corporation shall provide each selling shareholder or beneficial owner with the information it is required to provide under section 1184, subdivision 5, paragraph (a).

If the parties are unable to agree on fair value within 40 days of entry of the order, the court shall determine the fair value of the shares under

the provisions of section 1184 subdivision 7, and may allow interest or costs as provided in section 1184, subdivisions 1 and 8.

The purchase price shall be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within 40 days of entry of the order, as ordered by the court. Upon entry of an order for the sale of shares under this subdivision and provided that the corporation or the moving shareholders post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that the full purchase price of the shares, plus such additional costs, expenses, and fees as may be awarded will be paid when due and payable, the selling shareholders shall no longer have any rights or status as shareholders, officers, or directors, except the right to receive the fair value of their shares plus such other amounts as might be awarded.

**Subdivision 3. Condition of corporation.** In determining whether to order equitable relief, dissolution, or a buy-out, the court shall take into consideration the financial condition of the corporation but shall not refuse to order equitable relief, dissolution, or a buy-out solely on the ground that the corporation has accumulated or current operating profits.

**Subdivision 4. Considerations in granting relief involving closely held corporations.** In determining whether to order equitable relief, dissolution, or a buy-out, the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other.

**Subdivision 5. Dissolution as remedy.** In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief, a buy-out, or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision 1, clause (b) or (c). Lesser relief may be ordered in any case

where it would be appropriate under all the facts and circumstances of the case.

**Subdivision 6. Expenses.** If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

Subdivision 7. Venue; parties. Proceedings under this section shall be brought in the court. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally.

### **Sec. 1112. Procedure in Involuntary or Supervised Voluntary Dissolution.**

**Subdivision 1. Action before hearing.** In dissolution proceedings the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be held.

**Subdivision 2. Action after hearing.** After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the corporate assets, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. A receiver has authority, subject to the order of the court, to continue the business of the corporation and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the corporation either at public or private sale.

**Subdivision 3. Discharge of obligations.** The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the following order of priority to the payment and discharge of:

(a) The costs and expenses of the proceedings, including attorneys' fees and disbursements;

(b) Debts, taxes and assessments due the Tribe, its subdivisions, the United States, states



and their subdivisions, and other tribes and their subdivisions, in that order;

(c) Claims duly proved and allowed to employees under the provisions of any applicable workers' compensation act; provided, that claims under this clause shall not be allowed if the corporation carried workers' compensation insurance, as provided by law, at the time the injury was sustained;

(d) Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and

(e) Other claims duly proved and allowed.

**Subdivision 4. Remainder to shareholders.** After payment of the expenses of receivership and claims of creditors duly proved, the remaining assets, if any, shall be distributed to the shareholders in accordance with section 1188, subdivision 4.

### **Sec. 11113. Qualifications of Receivers; Powers.**

**Subdivision 1. Qualifications.** A receiver shall be a natural person or a tribal corporation or a foreign corporation authorized to transact business on the Reservation. A receiver shall give bond as directed by the court with the sureties required by the court.

**Subdivision 2. Powers.** A receiver may sue and defend in the court as receiver of the corporation. The court appointing the receiver has exclusive jurisdiction of the corporation and its property.

### **Sec. 11114. Action by Tribal Executive Board.**

**Subdivision 1. When permitted.** A corporation may be dissolved involuntarily by a decree of the court in an action filed by the Tribal Executive Board when it is established that:

(a) The articles and certificate of incorporation were procured through fraud;

(b) The corporation was incorporated for a purpose not permitted by section 1107;

(c) The corporation failed to comply with the requirements of sections 1103 to 1122 essential to incorporation under or election to become governed by this Code;

(d) The corporation has flagrantly violated a provision of this Code, or has violated a provision of this Code more than once, or has violated more than one provision of this Code; or

(e) The corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate franchise, privileges, or enterprise.

**Subdivision 2. Notice to corporation; correction.** An action shall not be commenced under this section until 30 days after notice to the corporation by the Tribal Executive Board of the reason for the filing of the action. If the reason for filing the action is an act that the corporation has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the Tribal Executive Board shall give the corporation 30 additional days in which to effect the correction before filing the action.

### **Sec. 11115. Filing Claims in Proceedings to Dissolve.**

**Subdivision 1. In proceedings referred to in section 11111** to dissolve a corporation, the court may require all creditors and claimants of the corporation to file their claims under oath with the Tribal Secretary or with the receiver in a form prescribed by the court.

**Subdivision 2. If the court requires the filing of claims,** it shall fix a date, which shall be not less than 120 days from the date of the order, as the last day for the filing of claims, and shall prescribe the notice of the fixed date that shall be given to creditors and claimants. Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the property or assets of the corporation.

**Sec. 11116. Discontinuance of Dissolution Proceedings.**

The involuntary or supervised voluntary dissolution of a corporation shall be discontinued at any time during the dissolution proceedings when it is established that cause for dissolution no longer exists. When this is established, the court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the corporation all its remaining property and assets.

**Sec. 11117. Decree of Dissolution.**

**Subdivision 1. When entered.** In an involuntary or supervised voluntary dissolution after the costs and expenses of the proceedings and all debts, obligations, and liabilities of the corporation have been paid or discharged and all of its remaining property and assets have been distributed to its shareholders or, if its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts, obligations, and liabilities, when all the property and assets have been applied so far as they will go to their payment according to the priorities set forth in section 11112, the court shall enter a decree dissolving the corporation.

**Subdivision 2. Effective date.** When the decree dissolving the corporation has been entered, the corporation is dissolved.

**Sec. 11118. Filing Decree.**

After the court enters a decree dissolving a corporation, the Tribal Secretary shall file a certified copy of the decree in his office. The Tribal Secretary shall not charge a fee for filing the decree.

**Sec. 11119. Deposit With Tribal Treasurer of Amount Due Certain Shareholders.**

Upon dissolution of a corporation, the portion of the assets distributable to a shareholder who is unknown or cannot be found, or who is under disability, if there is no person legally competent to receive the distributive portion, shall be reduced to money and deposited with the Tribal Treasurer. The amount deposited is appropriated to the Tribal Treasurer and shall be paid over to the shareholder or a legal representative, upon proof

satisfactory to the tribal treasurer of a right to payment.

**Sec. 11120. Claims Barred; Exceptions.**

**Subdivision 1. Claims barred.** Except as provided in this section, a creditor or claimant whose claims are barred under section 11106, 11107, or 11115 includes a person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, and all those claiming through or under the creditor or claimant.

**Subdivision 2. Claims reopened.** At any time within one year after articles of dissolution have been filed with the Tribal Secretary pursuant to section 11106 or 11107, subdivision 1, clause (2), or a decree of dissolution has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to the court to allow a claim:

(a) Against the corporation to the extent of undistributed assets; or

(b) If the undistributed assets are not sufficient to satisfy the claim, against a shareholder, whose liability shall be limited to a portion of the claim that is equal to the portion of the distributions to shareholders in liquidation or dissolution received by the shareholder, but in no event may a shareholder's liability exceed the amount which that shareholder actually received in the dissolution.

Subdivision 3. Obligations incurred during dissolution proceedings. All known contractual debts, obligations, and liabilities incurred in the course of winding up the corporation's affairs shall be paid or provided for by the corporation before the distribution of assets to a shareholder. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy before the expiration of the applicable statute of limitations against the officers and directors of the corporation who are responsible for, but who fail to cause the corporation to pay or make provision for payment of the debts, obligations, and liabilities or against shareholders to the extent permitted under section 1191.

This subdivision does not apply to dissolution under the supervision or order of the court.

**Sec. 11121. Right to Sue or Defend After Dissolution.**

After a corporation has been dissolved, any of its former officers, directors, or shareholders may assert or defend, in the name of the corporation, any claim by or against the corporation.

**Sec. 11122. Omitted Assets.**

Title to assets remaining after payment of all debts, obligations, or liabilities and after distributions to shareholders may be transferred by the court to any person entitled to those assets.

**Subchapter K. Extension**

**Sec. 11123. Extension After Duration Expired.**

**Subdivision 1. Extension by amendment.** A corporation whose period of duration as provided in the articles has expired and which has continued to do business despite that expiration may reinstate its articles and extend the period of corporate duration, including making the duration perpetual, at any time after the date of expiration by filing an amendment to the articles as set forth in this section.

**Subdivision 2. Contents of amendment.** An amendment to the articles shall be approved by the affirmative vote of a majority of the directors present and shall include:

(a) The date the period of duration expired under the articles;

(b) A statement that the period of duration will be perpetual or, if some shorter period is to be provided, the date to which the period of duration is extended; and

(c) A statement that the corporation has been in continuous operation since before the date of expiration of its original period of duration.

**Subdivision 3. Approval by shareholders.** The amendment to the articles shall be presented, after notice, to a meeting of the shareholders. The amendment is adopted when approved by the shareholders pursuant to section 1116.

**Subdivision 4. Filing.** Articles of amendment conforming to section 1118 shall be filed with the Tribal Secretary.

**Sec. 11124. Effect of Extension.**

Filing with the Tribal Secretary of articles of amendment extending the period of duration of a corporation:

(a) Relates back to the date of expiration of the original period of duration of the corporation as provided in the articles;

(b) Validates contracts or other acts within the authority of the articles, and the corporation is liable for those contracts or acts; and

(c) Restores to the corporation all the assets and rights of the corporation to the extent they were held by the corporation before expiration of its original period of duration, except those sold or otherwise distributed after that time.

**Subchapter L. Corporate Registration**

**Sec. 11125 Fort Peck Tribal Corporate Registration.**

**Subdivision 1. Information required.** A tribal corporation shall once each calendar year file with the Tribal Secretary a registration containing:

(a) The name of the corporation;

(b) The address of its principal executive office, if different from the registered office address:

(c) The address of its registered office;

(d) The name of its registered agent;

(e) The name and business address of the officer or other person exercising the principal functions of the chief executive officer of the corporation; and

(f) The signature of a person authorized to sign the registration on behalf of the corporation.

**Subdivision 2. Information public.** The information required by subdivision 1 is public data.

**Subdivision 3. Loss of good standing.** A corporation that fails to file a registration pursuant to the requirements of subdivision 1 loses its good standing. The corporation may regain its good standing by filing a single annual registration and paying a \$25.00 fee.

**Subdivision 4. Notice of repeated violation.**

If a corporation fails for three consecutive years to file a registration pursuant to the requirements of subdivision 1, the Tribal Secretary shall give notice by first class mail to the corporation at its registered office that it has violated this section and is subject to dissolution by the office of the Tribal Secretary if the delinquent registration is not filed pursuant to subdivision 1 and the \$25.00 fee paid within 60 days after the mailing of the notice. For purposes of this subdivision, “delinquent registration” means a single annual registration.

**Subdivision 5. Penalty.**

(a) A corporation that has failed for three consecutive years to file a registration pursuant to the requirements of subdivision 1, has been notified of the failure pursuant to subdivision 4, and has failed to file the delinquent registration during the 60-day period described in subdivision 4, shall be dissolved by the Tribal Secretary as described in paragraph (b).

(b) Immediately after the expiration of the 60-day period described in paragraph (a), if the corporation has not filed the delinquent registration, the Tribal Secretary shall issue a certificate of involuntary dissolution, and a copy of the certificate shall be filed in the office of the Tribal Secretary. The original certificate shall be sent to the registered office of the corporation. The Tribal Secretary shall annually inform the Tribal Executive Board and the Tribal Treasurer of the names of corporations dissolved under this section during the preceding year. A corporation dissolved in this manner is not entitled to the benefits of section 11120. The liability, if any, of the shareholders of a corporation dissolved in this manner shall be determined and limited in accordance with section 1190, except that the shareholders shall have no liability to any director of the corporation under section 1191, subdivision 2.

**Subdivision 6. Reinstatement.** A corporation may retroactively reinstate its corporate existence after statutory dissolution by filing a single annual registration and paying a \$25.00 fee. Filing the annual registration with the Tribal Secretary:

(1) Returns the corporation to active status as of the date of the statutory dissolution;

(2) Validates contracts or other acts within the authority of the articles, and the corporation is liable for those contracts or acts; and

(3) Restores to the corporation all assets and rights of the corporation and its shareholders to the extent they were held by the corporation and its shareholders before the statutory dissolution occurred, except to the extent that assets or rights were affected by acts occurring after the dissolution or sold or otherwise distributed after that time.

**Subchapter M. Actions Against Corporations  
Sec. 11126. Service of Process on Corporation.**

**Subdivision 1. Who may be served.** A process, notice, or demand required or permitted by law to be served upon a corporation may be served either upon the registered agent, if any, of the corporation named in the articles, or upon an officer of the corporation, or upon the Tribal Secretary as provided in this section.

**Subdivision 2. Service on Tribal Secretary; when permitted.** If a corporation has appointed and maintained a registered agent on the Reservation but neither its registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to appoint or maintain a registered agent on the Reservation and an officer of the corporation cannot be found at the registered office, then the Tribal Secretary is the agent of the corporation upon whom the process, notice, or demand may be served. The return of a licensed law enforcement official, or the affidavit of a person not a party, that no registered agent or officer can be found at the registered office on the Reservation is conclusive evidence that the corporation has no registered agent or officer at its registered office. Service on the Tribal Secretary of any process, notice, or demand is deemed personal service upon the corporation and shall be made by filing with the Tribal Secretary duplicate copies of the process, notice or demand. The Tribal Secretary shall immediately forward, by certified mail addressed to the

corporation at its registered office, a copy of the process, notice, or demand. Service on the Tribal Secretary is returnable in not less than 30 days notwithstanding a shorter period specified in the process, notice, or demand.

**Subdivision 3. Record of service.** There shall be maintained in the office of the Tribal Secretary a record of all processes, notices, and demands served upon the Tribal Secretary under this section, including the date and time of service and the action taken with reference to it.

**Subdivision 4. Other methods of service.** Nothing in this section limits the right of a person to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

#### **Sec. 11127. Court Action; Remedies and Penalties.**

**Subdivision 1. Court action.** The court shall have the authority to determine, apply and enforce appropriate remedies and penalties, including, but not limited to, civil fines, for violations of this Code, or of the articles of incorporation or bylaws of any corporation formed pursuant to this Code. The remedies available to corporations and their shareholders, shall include declaratory and injunctive relief, and special writs of mandamus, to compel actions necessary to secure the rights, obligations or privileges of such parties, whether or not those rights, obligations or privileges arise under this Code. A prevailing plaintiff in any action shall be awarded costs and reasonable attorneys fees.

**Subdivision 2. Tribal intervention.** If it appears at any stage of a proceeding in the court that the Tribe is, or is likely to be, interested therein, or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the Tribal Executive Board in the same manner prescribed for serving a summons in a civil action. The Tribal Executive Board shall intervene in a proceeding when the Tribal Executive Board determines that the public interest requires it, whether or not the Tribal Executive Board has been served.

### **Subchapter N. Corporations Wholly Owned By The Tribe**

#### **Sec. 11128. Scope.**

Sections 11128 through 11138 apply to all tribal corporations wholly owned by the Tribe, whether directly or as a subsidiary of another tribal corporation wholly owned by the Tribe, as provided in section 11129.

#### **Sec. 11129. Application.**

**Subdivision 1. Corporations directly owned by the Tribe.** The consent of the Tribal Executive Board shall be required prior to the incorporation under this Code of any corporation to be wholly owned by the Tribe. For this purpose, the incorporator shall file with the Tribal Secretary, when the incorporator files the articles of incorporation of a corporation to be wholly owned by the Tribe, a certified copy of a resolution of the Tribal Executive Board authorizing the formation of the corporation.

**Subdivision 2. Corporations indirectly owned by the Tribe.** The consent of the board of directors of the corporation wholly owned by the Tribe shall be required prior to the incorporation under this Code of a subsidiary corporation to be wholly owned by a parent corporation that is wholly owned by the Tribe. For this purpose, the incorporator shall file with the Tribal Secretary, when the incorporator files the articles of incorporation of a subsidiary corporation to be wholly owned by a parent corporation that is wholly owned by the Tribe, a certified copy of a resolution of the board of the parent corporation authorizing the formation of the subsidiary corporation.

**Subdivision 3. Designation in articles.** The articles of a corporation wholly owned, directly or indirectly, by the Tribe and subject to the provisions of sections 11128 to 11136 shall expressly so state and when accepting the articles for filing, the Tribal Secretary shall note that the corporation is governed by the provisions of this Code applicable to wholly owned tribal corporations.

**Sec. 11130. Special Powers, Privileges and Immunities of Corporations Wholly Owned by the Tribe.**

**Subdivision 1. Scope.** The special powers, privileges and immunities described in this section shall be available only to a corporation wholly owned, directly or indirectly, by the Tribe.

**Subdivision 2. Jurisdictional and tax immunities.** All of the rights, privileges and immunities of the Tribe concerning federal, state, or local taxes, regulations and jurisdiction are hereby conferred on all tribal corporations wholly owned, directly or indirectly, by the Tribe to the same extent that the Tribe would have such rights, privileges and immunities if it engaged in the activities undertaken by the corporation. Absent consent by the corporation, a corporation wholly owned, directly or indirectly, by the Tribe shall not be subject to taxation by the Tribe, except to the extent that such taxation is necessary and reasonably appropriate to compensate the Tribe for services provided to the corporation by the Tribe.

**Subdivision 3. Sovereign immunity.** The sovereign immunity of the Tribe is hereby conferred on all tribal corporations wholly owned, directly or indirectly, by the Tribe. A corporation wholly owned, directly or indirectly, by the Tribe shall have the power to sue and is authorized to consent to be sued in the court, and in all other courts of competent jurisdiction, provided, however, that:

(a) No such consent to suit shall be effective against the corporation unless such consent is:

- (1) Explicit,
- (2) Contained in a written contract or commercial document to which the corporation is a party, and
- (3) Specifically approved by the board of directors of the corporation, and

(b) Any recovery against such corporation shall be limited to the assets of the corporation. Any consent to suit may be limited to the court or courts in which suit may be brought, to the matters that may be made the subject of the suit and to the assets or revenues of the corporation against which any judgment may be executed.

**Sec. 11131. Board.**

**Subdivision 1. Removal of Directors.** A director of a corporation wholly owned, directly or indirectly, by the Tribe may be removed with or without cause by the Tribal Executive Board.

**Subdivision 2. Loans to Directors.** A corporation wholly owned, directly or indirectly, by the Tribe may not lend money to or guarantee the personal obligation of a director, officer or employee of the corporation under any circumstances.

**Sec. 11132. Shares in Corporations Wholly Owned by the Tribe; Shareholders; Voting.**

**Subdivision 1. Shares in wholly owned corporations.** Share certificates (or transaction statements for uncertificated shares) of corporations wholly owned, directly, by the Tribe shall be issued in the name of the Tribe, and all such shares shall be held by and for the Tribe. No member of the Tribe shall have any personal ownership interest in any corporation wholly owned, directly or indirectly, by the Tribe, whether by virtue of such person's status as a member of the Tribe or otherwise.

**Subdivision 2. Shares.** A corporation wholly owned, directly, by the Tribe may not issue preferred or special shares.

**Subdivision 3. Voting.** A member of the Tribal Executive Board shall be authorized to vote shares of the corporation owned by the Tribe, as contemplated by section 1174, Subdivision 4 of this Code, in the following manner: Each member shall have the right to vote that number of shares which is equal to a fraction of the total shares owned by the Tribe. The fraction is calculated by dividing the total number of shares owned by the Tribe by the number of Tribal Executive Board members holding such office at the date on which the vote is taken. Each member of the Tribal Executive Board shall enjoy such voting rights in the corporation as is provided by the Constitution and bylaws of the Tribe to such person as a member of the Tribal Executive Board. Such voting rights shall be enjoyed for as long as such Executive Board member remains a duly elected member of the Tribal Executive Board. In voting the shares of a corporation wholly owned by the Tribe, the

members of the Tribal Executive Board are acting not in a personal capacity but in a representative capacity on behalf of the Tribe itself.

**Subdivision 4. Proxies illegal.** Section 1176 shall not apply to any corporation wholly owned, directly or indirectly, by the Tribe. Any proxy given for the voting of shares in a corporation wholly owned, directly or indirectly, by the Tribe shall be void and unenforceable.

**Subdivision 5. Voting trusts illegal.** Section 1177 shall not apply to any corporation wholly owned, directly or indirectly, by the Tribe. Any voting trust agreement for any interest held in a corporation wholly owned, directly or indirectly, by the Tribe shall be void and unenforceable.

**Subdivision 6. Shareholder control agreements illegal.** Section 1179 shall not apply to any corporation wholly owned, directly or indirectly, by the Tribe. Any shareholder control agreement for any interest held in a corporation wholly owned, directly or indirectly, by the Tribe shall be void and unenforceable.

**Subdivision 7. No cumulative voting.** Section 1135 shall not apply to any corporation wholly owned, directly or indirectly, by the Tribe.

#### **Sec. 11133. Liability of Tribe as Shareholder.**

Neither the Tribe nor any member of the Tribal Executive Board shall be under any obligation to a corporation wholly owned, directly or indirectly, by the Tribe or to the creditors of any such corporation and the Tribe shall not be deemed to have waived any of the Tribe's privileges or immunities if the Tribe incorporates, owns or operates a corporation, directly or indirectly.

#### **Sec. 11134. Shareholder Meetings.**

**Subdivision 1. Annual Meeting.** Annual meetings of the Tribal Executive Board, in its capacity as the shareholders of a corporation wholly owned, directly, by the Tribe, shall be held at such time and at such place on the Reservation as the board of directors shall determine. If the board of directors fails to set the time and date of meeting, it shall be held on the second Tuesday in January of each year. At such annual meeting, the Tribal Executive Board, in its capacity as the

shareholders of the corporation, shall transact such business as may properly be brought before the meeting. Such meetings may be called and held in the same manner as applicable law provides for meetings of the Tribal Executive Board.

**Subdivision 2. Special meetings.** Special meeting of the Tribal Executive Board, in its capacity as the shareholders of the corporation, may be called and held for any purpose in the manner provided for the call and holding of special meetings of the Tribal Executive Board.

**Subdivision 3. Notice of Meetings.** The board of directors shall notify the Tribal Executive Board of the date, time and place of the annual meeting of shareholders at least 20 days before the meeting and of any special meeting of the shareholders at least five days before the meeting. Notices shall be deemed to be effective if placed in the U.S. Mail, with proper first class postage affixed, at least 22 days (but not more than 62 days) prior to an annual meeting, and at least 7 days (but not more than 62 days) prior to a special meeting, or on the date personally delivered to the Secretary of the Tribal Executive Board.

**Subdivision 4. Time and Place of Shareholders' Meetings.** Meetings of the shareholders of the corporation shall be held at the principal place of business or of the corporation or at such other location within the Fort Peck Indian Reservation at such time and place as the board of directors shall fix.

**Subdivision 5. Manner of Meeting.** Except as otherwise provided in these Articles, the shareholders of the corporation may conduct regular or special meetings through the use of any means and procedures which are proper for meetings of the Tribal Executive Board.

**Subdivision 6. Presiding Officer.** The Chairman of the Tribal Executive Board shall preside over any shareholders' meeting.

#### **Sec. 11135. Assets; Distributions of Income.**

**Subdivision 1. Assets.** Subject to the contractual and sovereign rights of others, including the Tribe, the corporation shall have as its corporate assets, and the authority to acquire, manage, own,

use, pledge, encumber, or otherwise dispose of, the following:

(a) All funds which the corporation may acquire by subscription, grant, gift, loan or other means,

(b) All interests in real and personal property, whether of a tangible or intangible nature, which the corporation may acquire by subscription, grant, gift, loan, purchase, lease or other means, and

(c) All earnings, interest, dividends, accumulations, contract rights, claims and other proceeds arising from any of the foregoing.

**Subdivision 2. Distribution of Net Income to Tribe Required.** All or that portion of the net income of a corporation wholly owned, directly, by the Tribe shall be distributed to the Tribe at such time as the Tribal Executive Board may determine. The net income of any wholly owned subsidiary of such a corporation and the corporation's share of the net income of any subsidiary of such a corporation, shall be determined in accordance with generally accepted accounting principles. Upon request of the Tribal Executive Board, the board of directors of a corporation wholly owned, directly, by the Tribe will, if the corporation controls a subsidiary, cause the subsidiary to distribute to the corporation all or such portion of the net income of the subsidiary as may be requested by the Tribal Executive Board.

**Sec. 11136. Voluntary Dissolution by Incorporators.**

A corporation wholly owned, directly, by the Tribe with no shares having been issued may be dissolved by a resolution adopted by the incorporators, or if a board of directors has been appointed or elected, by the board of directors and separately concurred in by a majority of the members of the Tribal Executive Board.

**Subchapter O. Effective Date and Authority**

**Sec. 11137. Severability; Effect of Invalidity of Part of This Code.**

If the court shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph,

section, article or part of this Code, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Code, but the effect thereof shall be confined to the clause, sentence, paragraph, section, article or part of this Code as adjudged to be invalid or unconstitutional.

**Sec. 11138. Effective Date.**

This Code shall be in full force and effect according to its terms from and after January 22, 2001.

**Sec. 11139. Authority.**

This Code is enacted by the Fort Peck Tribes Tribal Executive Board under the authority vested in the Tribal Executive Board by Article 7, Section 5 of the Constitution and Bylaws of the Fort Peck Tribes, as amended. The Tribal Executive Board reserves the right to repeal or amend the provisions of this Code, subject to the limitation of section 11140.

**Sec. 11140. No Impairment of Contracts.**

Otherwise lawful contracts and other obligations of any corporation shall not be impaired by any subsequent action of the Tribe or the Tribal Executive Board. Actions to restrain any attempts to impair contracts of tribal corporations, or to declare such actions null and void, shall be available to any interested party in court. Nothing in this section shall be construed to restrict the general application of law, or of this Code to the acts and contracts of tribal corporations.

**(PURSUANT TO RESOLUTION NO. 1433-01-01, Approved 01/22/01.)**

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**Sec. 1201. Purposes of the LLC Act; Rules of Construction**

(1) This Part and all subsequent Parts and sections of this Chapter are for the purpose for developing and implementing the processes and procedures for the formation and operation of limited liability companies under tribal law.

(2) This Chapter shall be liberally construed and applied to promote its underlying purposes and policies.

**Sec. 1202. Definitions.**

As used in this Chapter, unless the context requires otherwise, the following definitions apply:

(1) "Articles of organization" means articles filed pursuant to Section 1209 of this Chapter and those articles as amended or restated. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed under the laws of the tribe, state or country where it is organized.

(2) "At-will company" means a limited liability company other than a term company.

(3) "Business" includes every trade, occupation, profession, or other lawful purpose, whether or not carried on for profit.

(4) "Corporation" means a corporation formed under the laws of this tribe or a foreign corporation.

(5) "Court" includes every court having jurisdiction in the case, and the Fort Peck Tribal Court with regard to enforcement of the provisions of this Chapter.

(6) "Debtor in bankruptcy" means a person who is the subject of an order for relief under Chapter 11 of the United States Code or a comparable order under federal, state, or tribal law governing insolvency.

(7) "Disqualified person" means any person or entity that for any reason is or becomes ineligible under this part to become a member in a professional limited liability company.

(8) "Distribution" means a transfer of money, property, or other benefit to a member in that

member's capacity as a member of a limited liability company or to a transferee of a member's distributional interest.

(9) "Distributional interest" means all of a member's interest in the distributions of a limited liability company.

(10) "Event of dissociation" means an event that causes a person to cease to be a member.

(11) "Foreign corporation" means a corporation that is organized under laws other than the laws of the Fort Peck Tribes. (12) "Foreign limited liability company" means an entity that is

(a) An unincorporated entity;

(b) Organized under laws other than the laws of the Fort Peck Tribes; (c) organized under a statute pursuant to which an entity may be formed that affords to each of its members limited liability with respect to the liabilities of the entity.

(13) "Foreign limited partnership" means a limited partnership formed under any laws other than the laws of the Fort Peck Tribes.

(14) "Foreign professional limited liability company" means a limited liability company organized for the purpose of rendering professional services under laws other than the laws of the Fort Peck Tribes.

(15) "Licensing authority" means an officer, board, agency, court, or other authority on the Fort Peck Reservation that has the power to issue a license or other legal authorization to render a professional service.

(16) "Limited liability company" or "domestic limited liability company" means an organization that is formed under this part.

(17) "Limited partnership" means a limited partnership formed under the laws of the Fort Peck Tribes or a foreign limited partnership.

(18) "Manager" means a person who, whether or not a member of a manager-managed company, is vested with authority under Section 1225 of this Chapter.

(19) "Manager-managed company" means a limited liability company that is so designated in its articles of organization.

(20) "Member" means a person who has been admitted to membership in a limited liability company, as provided in Section 1226 of this

Chapter and who has not dissociated from the limited liability company.

(21) "Member-managed company" means a limited liability company other than a manager-managed company.

(22) "Operating agreement" means an agreement, including amendments, as to the conduct of the business and affairs of a limited liability company and the relations among the members, managers, and the company that is binding upon all of the members.

(23) "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

(24) "Professional limited liability company" means a limited liability company designating itself as a professional limited liability company in its articles of organization.

(25) "Professional service" means a service that may lawfully be rendered only by persons licensed under a licensing law of the Fort Peck Tribes and that may not be lawfully rendered by a limited liability company that is not a professional limited liability company.

(26) "Qualified person" means a natural person, limited liability company, general partnership, or professional corporation eligible under this part to own shares issued by a professional limited liability company.

(27) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is recoverable in a perceivable form.

(28) "Secretary" means the Secretary/Accountant of the Fort Peck Tribes.

(29) "Sign" means to identify a record by means of a signature, mark, or other symbol with the intent to authenticate it.

(30) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession or other jurisdiction of the United States other than the Tribes.

(31) "Term company" means a limited liability company designated as a term company in its articles of organization.

**Sec. 1203. Name.**

(1) (a) The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or the abbreviations "l.l.c.", or "llc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co."

(b) The name of a limited liability company as set forth in its articles of organization may not contain business name identifiers or other language that states or implies that the limited liability company is a business other than a limited liability company.

(2) A limited liability company name must be distinguishable on the records of the Secretary from:

(a) The name of any business corporation, nonprofit corporation, limited partnership, or limited liability company organized or reserved under the laws of the Fort Peck Tribes;

(b) The name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business on the Fort Peck Reservation;

(c) Any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the Secretary; and

(d) The corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

**Sec. 1204. Reservation of Name.**

(1) The exclusive right to use a name may be reserved by:

(a) A person intending to organize a limited liability company and to adopt that name;

(b) A limited liability company or foreign limited liability company registered with the Fort Peck Tribes that intends to adopt that name;

(c) A foreign limited liability company intending to register with the Fort Peck Tribes and to adopt that name; or

(d) A person intending to organize a foreign limited liability company and to have it registered with the Fort Peck Tribes and to adopt that name.

(2) The reservation must be made by filing with the Secretary application, executed by the applicant, to reserve a specified name. If the Secretary finds that the name is available for use by a domestic or foreign limited liability company, the Secretary shall reserve the name for the exclusive use of the applicant for a nonrenewable period of 120 days from the date the application is filed.

(3) The right to the exclusive use of a reserved name may be transferred to another person by filing with the Secretary a notice of the transfer, executed by the applicant for whom the name was reserved, and by specifying the name to be transferred and the name and address of the transferee. The transfer may not extend the term during which the name is reserved.

**Sec. 1205. Registered Office and Registered Agent.**

(1) A limited liability company shall continuously maintain with the Fort Peck Tribes:

(a) A registered office on the Fort Peck Reservation that may, but need not be, the same as its place of business; and

(b) A registered agent for service of process who resides on the Fort Peck Reservation and who may be served process, at the registered office, or their residence, or business office.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the Secretary accepting the appointment.

(3) A limited liability company may change its registered office or registered agent, or both, by delivering to the Secretary a statement setting forth:

(a) The name of the limited liability company;

(b) The address of its current registered office;

(c) If the address of its registered office is to be changed, the new address of the registered office; and

(d) If its registered agent or the agent's address is to be changed, the name and address of the successor registered agent or the current registered agent's new address.

(4) The change of address of the registered office or registered agent is effective on delivery of the statement to the Secretary. The appointment of a new registered agent is effective on delivery of the statement to the Secretary and on receipt by the Secretary of evidence that the new registered agent has accepted appointment pursuant to subsection (2).

(5) A registered agent of a limited liability company may resign as registered agent by delivering a written notice and two copies to the Secretary. The Secretary shall mail a copy of the notice to the limited liability company at its registered office and its principal place of business. The appointment of the registered agent terminates 30 days after receipt of the notice by the Secretary or on the appointment of a new registered agent, whichever occurs first.

(6) If a registered agent changes its address to another place on the Fort Peck Reservation, it may change the address by delivering a statement to the Secretary as required by subsection (3), except that it need be signed only by the registered agent. The statement must recite that a copy of the statement has been mailed to the limited liability company.

#### **Sec. 1206. Purpose of a Limited Liability Company.**

(1) A limited liability company organized under Part 2 of this Chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of organization.

(2) Limited liability companies may be organized under Part 2 of this Chapter for any lawful purpose except for the purpose of banking or insurance.

#### **Sec. 1207. Powers.**

A limited liability company may:

(1) If it so elects, sue, be sued, complain, and defend in its name;

(2) Transact its business, carry on its operations, and have and exercise the powers granted by this part in any tribe or state; in any territory, district, or possession of the United States; and in any foreign country;

(3) Make contracts and guarantees, incur liabilities, and borrow money;

(4) Sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of any of its assets;

(5) Acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal with any interest in real or personal property, wherever located;

(6) Issue notes, bonds, and other obligations and secure any of them by mortgage, deed of trust, or security interest of any of its assets;

(7) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and otherwise use and deal in and with stock or other interests in and obligations of domestic and foreign corporations, associations, general or limited partnerships, limited liability companies, business trusts, and individuals;

(8) Invest its surplus funds, lend money from time to time in any manner that may be appropriate to enable it to carry on the operations or fulfill the purposes set forth in its articles of organization, and take and hold real property and personal property as security for the payment of funds loaned or invested;

(9) Elect or appoint agents and define their duties and fix their compensation;

(10) Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(11) Be a promoter, stockholder, partner, member, associate, or agent of any corporation, partnership, domestic or foreign limited liability company, joint venture, trust, or other enterprise;

(12) Indemnify and hold harmless any member, agent, or employee from and against any

claims and demands whatsoever, except in the case of action or failure to act by the member, agent, or employee that constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any, set forth in the articles of organization or operating agreement;

(13) Cease its activities and dissolve;

(14) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any of its current or former directors, officers, employees, and agents;

(15) Make donations for the public welfare or for charitable, religious, scientific, or educational purposes and, in time of war, make donations in aid of war activities; and

(16) Do every other act not inconsistent with law that is appropriate to promote and further the business and affairs of the limited liability company.

#### **Sec. 1208. Effect of Operating Agreement-Nonwaivable Provisions.**

(1) Except as provided in subsection (2), all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the company and the conduct of its business and to govern relations among the members, managers, and company. To the extent that the operating agreement does not otherwise provide, this part governs relations among the members, managers, and company.

(2) An operating agreement need not be in writing except as otherwise provided in this part to:

(a) Vary the recordkeeping requirements under Section 1230 of the Chapter;

(b) Vary the rights of members to share in distributions under Section 1237 or Section 1258 of the Chapter; or

(c) Vary the process for admission of members under Section 1226 of the Chapter.

(3) The operating agreement may not:

(a) Unreasonably restrict a right to information or access to records under Section 1230 of the Chapter.

(b) Eliminate the duty of loyalty under Section 1229 of the Chapter, but the agreement may:

(i) Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

(ii) Specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(c) Unreasonably reduce the duty of care under Section 1229 of the Chapter;

(d) Eliminate the obligation of good faith and fair dealing under Section 1229 of the Chapter, but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(e) Vary the right to expel a member upon the occurrence of an event specified in Section 1247 of the Chapter

(f) Vary the requirement to wind up the limited liability company's business in a case specified in Section 1254(l)(c) or Section 1255 of the Chapter; or

(g) Restrict the rights of a person under this part, other than a manager, member, or transferee of a member's distributional interest.

#### **Sec. 1209. Formation.**

(1) One or more persons may form a limited liability company consisting of one or more members by signing and filing articles of organization with the Secretary. The person or persons need not be members of the limited liability company at the time of formation or after formation has occurred. A limited liability company is a legal entity distinct from its members.

(2) Unless a delayed effective date is specified, the existence of a limited liability company begins when the articles of organization are filed with the Secretary.

(3) The filing of the articles of organization by the Secretary pursuant to Section 1213 of the Chapter is conclusive proof that the organizers have satisfied all conditions precedent to the creation of a limited liability company.

**Sec. 1210. Articles of Organization.**

(1) The articles of organization must set forth:

(a) The name of the limited liability company that satisfies the requirements of Section 1203 of this Chapter;

(b) Whether the company is a term company and, if so, the term specified;

(c) The complete street address of its principal place of business on the Fort Peck Reservation and, if different, its registered office and the name and complete street address of its registered agent at the registered office on the Fort Peck Reservation;

(d) (i) If the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and street addresses of managers who are to serve as managers until the first meeting of members or until their successors are elected;

(ii) If the management of a limited liability company is reserved to the members, a statement that the company is to be managed in that fashion and the names and street addresses of the initial members;

(e) Whether one or more members of the company are to be liable for the limited liability company's debts and obligations;

(f) If the limited liability company is a professional limited liability company, a statement to that effect and a statement of the professional service or services it will render; and

(g) Any other provision, not inconsistent with law, that the members elect to set out in the articles, including but not limited to a statement of whether there are limitations on the authority of members or management to bind the limited liability company.

(2) It is not necessary to set out in the articles of organization any of the powers enumerated in Section 1207 of the Chapter.

(3) The articles of organization may not vary any nonwaivable provision set out in this Chapter. As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(a) The operating agreement controls as to managers, members, and a member's transferee; and

(b) The articles of organization control as to a person, other than a manager, member, and member's transferee, that reasonably relies on the articles of organization to that person's detriment.

**Sec. 1211. Amendment of Articles of Organization-Restatement.**

(1) The articles of organization of a limited liability company are amended by filing articles of amendment with the Secretary. The articles of amendment must set forth:

(a) The name of the limited liability company;

(b) The date the articles of organization were filed; and

(c) The amendment to the articles of organization.

(2) The articles of organization may be amended as desired, so long as the amended articles of organization contain only provisions that may be lawfully contained in articles of organization at the time of making the amendment.

(3) Articles of organization may be restated at any time. Restated articles of organization must be filed with the Secretary, must be specifically designated as such in the heading, and must state either in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, all of its former names and the date of the filing of its articles of organization. Restated articles of organization supersede the original articles of organization and any previous amendments to the original articles of organization.

(4) An amendment to the articles of organization of a limited liability company must be in the form and manner designated by the Secretary.

**Sec. 1212. Execution of Documents.**

(1) Unless otherwise specified in this part, a document required by this part to be filed with or delivered to the Secretary must be executed:

(a) By any manager if management of the limited liability company is vested in one or more

managers or by a member if management of the limited liability company is reserved to the members;

(b) If the limited liability company has not been formed, by the person or persons forming the limited liability company; or

(c) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(2) The person executing the document shall sign it and state, beneath or opposite the signature, the person's name and the capacity in which the person signs.

(3) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the execution of the document do not need to be shown to or filed with the Secretary.

#### **Sec. 1213. Filing With Secretary.**

(1) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or confirmed copy, of the articles of organization or any other document required to be filed pursuant to this part must be delivered to the Secretary. If the Secretary determines that the documents conform to the filing provisions of this part, the Secretary shall, when all required filing fees have been paid:

(a) Endorse on each signed original and duplicate copy the word "filed" and the date and time of its acceptance for filing;

(b) Retain the signed original in the Secretary's files; and

(c) Return the duplicate copy to the person who filed it or to the person's representative.

(2) If the Secretary is unable to make the determination required for filing by subsection (1) at the time any documents are delivered for filing, the documents are considered to have been filed at the time of delivery if the Secretary subsequently determines that the documents as delivered conform to the filing provisions of Part 2 of this Chapter.

(3) The filing fee shall be \$25.00, except for the Tribes or a tribally-owned business.

#### **Sec. 1214. Effect of Delivery or Filing of Articles of Organization.**

(1) A limited liability company is formed when the articles of organization are delivered to the Secretary for filing.

(2) Each copy of the articles of organization stamped "filed" and marked with the filing date is conclusive evidence that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been legally organized and formed under this part.

#### **Sec. 1215. Annual Report For Secretary.**

(1) A limited liability company or a foreign limited liability company authorized to transact business by the Fort Peck Tribes on the Fort Peck Reservation shall deliver to the Secretary, for filing, an annual report that sets forth:

(a) The name of the limited liability company and the tribe, state, or country under whose law it is organized;

(b) The mailing address and, if different, street address of its registered office and the name of its registered agent at that office on the Fort Peck Reservation;

(c) The address of its principal office;

(d) (i) If the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and street addresses of the managers;

(ii) If the management of a limited liability company is reserved to the members, a statement to that effect;

(e) If the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the Secretary between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized



or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the Secretary between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the Secretary shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction.

(5) The annual report must be executed by at least one member of the limited liability company and must include the street address of the member.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business on the Fort Peck Reservation shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with this Chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

#### **Sec. 1216. Administrative Dissolution-Rules.**

(1) A domestic limited liability company maybe dissolved involuntarily by order of the Secretary if the limited liability company:

(a) (i) Has failed for 60 days after a change of its registered office or registered agent to file in the office of the Secretary a statement of the change; or

(ii) Has failed for 60 days to appoint and maintain a registered agent on the Fort Peck Reservation;

(b) Has failed for 140 days to file its annual report within the time required by law;

(c) Has failed to remit any fees required by law;

(d) Procured its certificate of existence through fraud; or

(e) has exceeded or abused the authority conferred upon it by law and the excesses or abuses have continued after a written notice of the alleged excesses or abuses has been received from the Secretary by the registered agent of the limited liability company.

(2) If dissolution is sought under subsection (1)(d) or (1)(e), the Secretary may dissolve a limited liability company when an alleged violation of subsection (1)(d) or (1)(e) is established by an order of tribal court or a court of another appropriate jurisdiction. In addition to any other person authorized by law, the Secretary or the tribal prosecutor may maintain an action in tribal court to implement the provisions of this section.

#### **Sec. 1217. Reinstatement of Dissolved Limited Liability Company.**

(1) The Secretary may:

(a) Reinstatement a limited liability company that has been dissolved under the provisions of Section 1216 of this Chapter.

(b) Restore to a reinstated limited liability company its right to carry on business on the Fort Peck Reservation to exercise all of its privileges and immunities.

(2) A limited liability company applying for reinstatement shall submit to the Secretary the application, executed by a person who was a member at the time of dissolution, setting forth:

(a) The name of the limited liability company;

(b) A statement that the assets of the limited liability company have not been liquidated;

(c) A statement that a majority of its members have authorized the application for reinstatement; and

(d) If its name has been legally acquired by another entity prior to its application for reinstatement, the name under which the limited liability company desires to be reinstated.

(3) The limited liability company shall submit with its application for reinstatement:

(a) All annual reports not yet filed with the Secretary.

(4) When all requirements are met and the Secretary reinstates the limited liability company to its former rights, the Secretary shall:

(a) Conform and file in the office of the Secretary reports, statements, and other instruments submitted for reinstatement;

(b) Immediately issue and deliver to the reinstated limited liability company a certificate of reinstatement authorizing it to transact business; and

(c) Upon demand, issue to the limited liability company one or more certified copies of the certificate of reinstatement.

(5) The Secretary shall not order a reinstatement if 5 years have elapsed since the dissolution.

(6) A restoration of limited liability company rights pursuant to this section relates back to the date the limited liability company was involuntarily dissolved, and the limited liability company is considered to have been an existing legal entity from the date of its original organization.

#### **Sec. 1218. Fees For Filing, Copying, and Services.**

(1) The Secretary shall collect fees for the following:

(a) Filing documents as required by this Chapter; and

(b) Copying documents, priority handling documents, transmitting facsimile copies of documents, and providing computer-generated information.

#### **Sec. 1219. License Fee.**

(1) In addition to the filing fee authorized by Section 1218 of this Chapter, the Secretary shall charge and collect from each foreign limited liability company:

(a) A license fee at the time of filing its articles of incorporation; and

(b) A license fee at the time of filing an application for a certificate of authority to transact business.

#### **Sec. 1220. Correcting Filed Record.**

(1) A limited liability company or foreign limited liability company may correct a record filed

by the Secretary if the record contains a false or erroneous statement or was defectively signed.

(2) A record must be corrected by:

(a) Preparing articles of correction that:

(i) Describe the record, including its filing date, or have attached a copy of the record to the articles of correction;

(ii) Specify the incorrect statement and the reason that it is incorrect or the manner in which the signing was defective; and

(iii) Correct the incorrect statement or defective signing; and

(b) Delivering the corrected record to the Secretary for filing.

(3) Articles of correction are effective retroactively on the effective date of the record that they correct except as to persons relying on the uncorrected record and adversely affected by the correction. As to those persons, the articles of correction are effective when filed.

#### **Sec. 1221. Certificate of Existence or Authority.**

(1) A person may request the Secretary to furnish a certificate of existence for a limited liability company or a certificate of authority for a foreign limited liability company.

(2) A certificate of existence for a limited liability company must set forth:

(a) The company's name;

(b) That it is organized under the laws of the Fort Peck Tribes, the date of organization, whether its duration is at-will or for a specified term, and, if for a specified term, the period specified;

(c) If payment is reflected in the records of the Secretary and if nonpayment affects the existence of the company that all fees, taxes, and penalties owed to the Fort Peck Tribes have been paid;

(d) Whether its most recent annual report required by Section 1215 of this Chapter has been filed with the Secretary;

(e) That articles of termination have not been filed; and

(f) Other facts of record in the office of the Secretary if requested by the applicant.

(3) A certificate of authority for a foreign limited liability company must set forth:

(a) The company's name used on the Fort Peck Reservation;

(b) That it is authorized to transact business on the Fort Peck Reservation;

(c) Whether its most recent annual report required by Section 1215 of the Chapter has been filed with the Secretary;

(d) That a certificate of cancellation has not been filed; and

(e) Other facts of record in the office of the Secretary if requested by the applicant.

(4) Subject to any qualification stated in the certificate, a certificate of existence or authority issued by the Secretary may be relied upon as conclusive evidence as of the date of the certificate that the domestic or foreign limited liability company is in existence or is authorized to transact business on the Fort Peck Reservation.

#### **Sec. 1222. Liability For False Statement in Filed Record.**

Subject to Section 1227 of this Chapter, if a record authorized or required to be filed under this Chapter contains a false statement, a person who suffers loss by reliance on the statement may recover damages for the loss from the person who signed the record or caused another to sign it on that person's behalf and who knew the statement to be false at the time that the record was signed.

#### **Sec. 1223. Filing By Judicial Act.**

If a person required by Section 1212 of this Chapter to execute any record or document fails or refuses to do so, a person who is adversely affected by the failure or refusal may petition the Fort Peck Tribal Court to direct the signing of the record or document. If the court finds that it is proper for the record or document to be signed and that a designated person has failed or refused to sign the record, it shall order the Secretary to sign and file an appropriate record or document.

#### **Sec. 1224. Knowledge and Notice.**

(1) A person knows a fact if the person has actual knowledge of the fact.

(2) A person has notice of a fact if the person:

(a) Knows the fact;

(b) Has received a notification of the fact; or

(c) Has reason to know that the fact exists from other facts known to the person at the time in question.

(3) A person notifies or gives a notification of a fact to another by taking steps reasonably required to inform the other person, whether or not the other person knows the fact.

(4) A person receives a notification when the notification:

(a) Comes to the persons attention; or

(b) Is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(5) (a) An entity knows, has notice, or receives a notification of a fact for purposes of a particular transaction:

(i) When an individual conducting the transaction for the entity knows, has notice, or receives a notification of the fact; or

(ii) When the fact would have been brought to the individual's attention had the entity exercised reasonable diligence.

(b) (i) An entity exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the entity and there is reasonable compliance with the routines.

(ii) Reasonable diligence does not require an individual acting for the entity to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and to know that the transaction would be materially affected by the information.

#### **Sec. 1225. Agency Power of Members and Managers.**

(1) Except as provided in subsection (2), a member is an agent of the limited liability company for the purpose of its business or affairs and the act of a member, including but not limited to the execution of any instrument in the name of the limited liability company for apparently carrying on in the usual way the business or affairs of the

limited liability company binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) A member, acting solely in the capacity as a member, may not be an agent of the limited liability company; and

(b) A manager is an agent of the limited liability company for the purpose of its business or affairs and the act of a manager, including but not limited to the execution of any instrument in the name of the limited liability company for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

(3) An act of a manager or a member that is not apparently for carrying on in the usual way the business of the limited liability company does not bind the limited liability company, unless authorized in accordance with the articles of organization or the operating agreement, at the time of the transaction or at any other time.

(4) An act of a manager or member in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

#### **Sec. 1226. Admissions of Members and Managers.**

(1) Except as provided in subsection (2), an admission or representation made by a member concerning the business or affairs of a limited liability company within the scope of the member's authority as provided for by this part is evidence against the limited liability company.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) An admission or representation made by a manager concerning the business or affairs of a limited liability company within the scope of the manager's authority, as provided for by this part, is evidence against the limited liability company; and

(b) The admission or representation of a member, acting solely in the capacity as a member, may not constitute evidence.

#### **Sec. 1227. Limited Liability Company Liability For Member's or Manager's Conduct.**

(1) A limited liability company is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission or other actionable conduct of a member or manager acting in the ordinary course of business of the company or with the authority of the company.

(2) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company power or management of its business is not a ground for imposing personal liability on the member or managers of the limited liability company.

#### **Sec. 1228. Management and Voting.**

(1) Unless the articles of organization or the operating agreement provide otherwise, in a member-managed company:

(a) Each member has equal rights in the management and conduct of the company's business; and

(b) Except as provided in subsection (3), any matter relating to the business of the company may be decided by a majority of the members.

(2) Unless the articles of organization or the operating agreement provide otherwise, in a manager-managed company:

(a) Each manager has equal rights in the management and conduct of the company's business;

(b) Except as provided in subsection (3), any matter relating to the business of the company

may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and

(c) A manager:

(i) Must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and

(ii) Holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

(3) Unless the articles of organization or the operating agreement provide otherwise, the only matters of a member-managed or manager-managed company's business requiring the consent of all of the members are:

(a) The amendment of the operating agreement under Section 1208 of this Chapter;

(b) The authorization or ratification of acts or transactions under Section 1208(3)(b)(ii) of this Chapter that would otherwise violate the duty of loyalty;

(c) An amendment to the articles of organization under Section 1211 of this Chapter;

(d) The compromise of an obligation to make a contribution under Section 1234 of this Chapter;

(e) The compromise, as among members, of an obligation to make a contribution or return money or other property paid or distributed in violation of this part;

(f) The making of interim distributions under Section 1237 of this Chapter, including the redemption or repurchase of an interest;

(g) The admission of a new member;

(h) The use of the company's property to redeem an interest subject to a charging order;

(i) The consent to dissolve the company under Section 1254 of this Chapter;

(j) A waiver of the right to have the company's business wound up and the company terminated under Section 1254 of this Chapter;

(k) The sale, lease, exchange, or other disposal of all, or substantially all, of the company's property with or without goodwill.

(4) Action requiring the consent of members or managers under this Chapter may be taken without a meeting.

(5) A member or manager may appoint a proxy to vote or otherwise act for the member or manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact.

### **Sec.1229. General Standards of Member's and Manager's Conduct.**

(1) The only fiduciary duties that a member owes to a member-managed company and the other members are the duty of loyalty imposed by subsection (2) and the duty of care imposed by subsection (3).

(2) A member's duty of loyalty to a member-managed company and its other members is limited to the following:

(a) To account to the company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business or derived from a use by the member of the company's property, including the appropriation of a company's opportunity;

(b) To refrain from dealing with the company in the conduct or winding up of the company's business on behalf of a party or as a person having an interest adverse to the company; and

(c) To refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

(3) A member's duty of care to a member-managed company and the other members in the conduct of and winding up of the company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A member shall discharge the duties under this part or the operating agreement to a member-managed company and its other members and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A member of a member-managed company does not violate a duty or obligation under this part or under the operating agreement merely because the member's conduct furthers the member's own interest.

(6) A member of a member-managed company may lend money to and transact other business

with the company. As to each loan or transaction, the rights and obligations of the member are the same as those of a person who is not a member, subject to other applicable law.

(7) This section applies to a person winding up the limited liability company's business as the personal or legal representative of the last-surviving member as if the person were a member.

(8) In a manager-managed company:

(a) A member who is not also a manager owes no duties to the company or to the other members solely by reason of being a member;

(b) A manager is held to the same standards of conduct as those prescribed for members in subsections (2) through (6);

(c) A member who pursuant to the operating agreement exercises some or all of the rights of a manager in the management and conduct of the company's business is held to the standards of conduct prescribed for members in subsections (2) through (6) to the extent that the member exercises the managerial authority vested in a manager by this part; and

(d) A manager is relieved of liability imposed by law for violation of the standards prescribed for members by subsections (2) through (6) to the extent of the managerial authority delegated to the members by the operating agreement.

### **Sec. 1230. Records and Information.**

(1) Unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company shall keep at its principal place of business the following:

(a) A current and past list, setting forth the full name and last-known mailing address of each member and manager, if any, set forth in alphabetical order;

(b) A copy of the articles of organization and all amendments to the articles, together with executed copies of any powers of attorney pursuant to which any articles have been executed;

(c) Copies of the limited liability company's (if applicable) federal, state, and local income tax returns and financial statements, if any, for the 3 most recent years or, if the returns and statements were not prepared for any reason, copies of the

information and statements provided to or that should have been provided to the members to enable them to prepare their federal, state, and local tax returns for the period;

(d) Copies of any effective written operating agreements and all amendments and copies of any written operating agreements no longer in effect;

(e) Unless provided in writing in an operating agreement:

(i) A writing, if any, setting forth the amount of cash, the agreed value of other property or services contributed by each member, and the times or events upon which any additional contributions agreed to by each member are to be made;

(ii) A writing, if any, stating events that require the limited liability company to be dissolved and its affairs wound up; and

(iii) Other writings, if any, prepared pursuant to a requirement in an operating agreement.

(2) (a) A member may, at the member's own expense, inspect and copy any limited liability company record, wherever the record is located, upon reasonable request during ordinary business hours.

(b) A former member and agents or attorneys of a former member must be provided access and the same right to copy records pertaining to the period that the former member was a member.

(3) Members, if the management of the limited liability company is vested in the members, or managers, if management of the limited liability company is vested in the managers, shall render, to the extent the circumstances make it just and reasonable, true and full information of all things affecting the members to any member and to the legal representative of any deceased member or of any member under legal disability.

(4) Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section may not be grounds for imposing liability on any person for the debts and obligations of the limited liability company.

**Sec. 1231. Actions By Members.**

(1) A member may maintain an action against a limited liability company or another member for legal or equitable relief, with or without an accounting as to the company's business, to enforce:

(a) The member's rights under the operating agreement;

(b) The member's rights under this part; or

(c) The rights and otherwise protect the interests of the member, including rights and interests arising independently of the member's relationship to the company.

(2) The accrual of a right of action under this section and any time limits for asserting the right of action for a remedy under this section are governed by the laws of the Fort Peck Tribes. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

**Sec. 1232. Continuation of Term Company After Expiration of Specified Term.**

(1) If a term company is continued after the expiration of the specified term, the rights and duties of the members and managers remain the same as they were at the expiration of the term except to the extent inconsistent with rights and duties of members and managers of an at-will company.

(2) If the members in a member-managed term company or the managers in a manager-managed term company continue the business without any winding up of the business of the company, it continues as an at-will company.

**Sec. 1233. Contributions to Capital.**

An interest in a limited liability company may be issued in exchange for tangible or intangible property or other benefit to the company, including money, promissory notes, services performed, or other agreements to contribute cash or property or contracts for services to be performed.

**Sec. 1234. Liability For Contribution.**

(1) A promise by a member to contribute to the limited liability company is not enforceable unless set out in a writing signed by the member.

(2) (a) Except as provided in the articles of organization or the operating agreement, a member is obligated to the limited liability company to perform any enforceable promises to contribute cash or property or to perform services even if the member is unable to perform because of death, disability, or other reason.

(b) If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value or the stated contribution that has not been made.

(3) (a) Unless otherwise provided in the articles of organization or the operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this part may be compromised only with the unanimous consent of the members.

(b) A creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation described in subsection (1), and without notice of any compromise, may enforce the original obligation.

**Sec. 1235. Sharing of Profits and Losses.**

Unless otherwise provided in the articles of organization or a written operating agreement, each member must be repaid that member's contributions to capital and share equally in the profits, losses, and surpluses remaining after all liabilities, including those to members, are satisfied.

**Sec. 1236. Member's and Manager's Rights to Payments and Reimbursement.**

(1) A limited liability company shall reimburse a member or manager for payments made and indemnify a member or manager for liabilities incurred by the member or manager in the ordinary course of the business of the company or for the preservation of the company's business or property.

(2) A limited liability company shall reimburse a member for an advance to the company beyond the amount of contribution that the member agreed to make.

(3) A payment or advance made by a member that gives rise to an obligation of a limited liability company under subsection (1) or (2) constitutes a loan to the company upon which interest accrues from the date of the payment or advance.

(4) A member is not entitled to remuneration for services performed for a limited liability company except for reasonable compensation for services rendered in winding up the business of the company.

#### **Sec. 1237. Sharing of Distributions.**

Except as provided in Section 1258 of this Chapter, distributions of cash or other assets of a limited liability company must be shared among the members and among classes of members in the manner provided in writing in the articles of organization or the operating agreement. If the articles of organization or the operating agreement does not so provide in writing, each member shall share equally in any distribution. A member is entitled to receive distributions described in this section from a limited liability company to the extent and at the times or upon the happening of the events specified in the articles of organization or the operating agreement or at the times determined by the members or managers pursuant to Section 1228(3)(f).

#### **Sec. 1238. Distribution In Kind.**

Except as provided in the articles of organization or the operating agreement:

(1) a member, regardless of the nature of the member's contribution, may not demand or receive any distribution from a limited liability company in any form other than cash; and

(2) a member may not be compelled to accept from a limited liability company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the members exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

#### **Sec. 1239. Distributions.**

(1) A distribution may not be made if, after giving effect to the distribution:

(a) The limited liability company would not be able to pay its debts as they become due in the usual course of business; or

(b) The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the articles of organization or the operating agreement provides otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution that are superior to the rights of the member receiving the distribution.

(2) The limited liability company may base a determination that a distribution is not prohibited under subsection (1) on either:

(a) Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or

(b) A fair valuation or other method that is reasonable under the circumstances.

(3) Except as provided in subsection (5), the effect of a distribution under subsection (1) is measured as of:

(a) The date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(b) The date payment is made if it occurs more than 120 days after the date of authorization.

(4) A limited liability company's indebtedness to a member incurred by reason of a distribution to be made to that member in accordance with this section is at parity with the limited liability company's indebtedness to its general unsecured creditors, except as otherwise provided by agreement.

(5) For purposes of this section:

(a) If terms of indebtedness provide that payment of principal and interest is to be made only if and to the extent that payment of a distribution to members could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subsection (2); and

(b) If the indebtedness is issued as a distribution, each payment of principal or interest on the



indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

**Sec. 1240. Liability Upon Wrongful Distribution.**

(1) A member or manager who votes for or assents to a distribution in violation of the articles of organization, the operating agreement, or Section 1239 of this Chapter is personally liable to the limited liability company, but not to other persons, for the amount of the distribution that exceeds what could have been distributed without violating Section 1239 of this Chapter or the articles of organization or the operating agreement if it is established that the member or manager did not perform the member's or manager's duties in compliance with Section 1229 of this Chapter.

(2) A member of a manager-managed company who knew a distribution was made in violation of Section 1239 of this Chapter, the articles of organization, or the operating agreement is personally liable to the company, but only to the extent that the distribution received by that member exceeded the amount that could have properly been paid to that member under Section 1239 of this Chapter.

(3) A member or manager against whom an action is brought under this section may implead in the action: (a) other members and managers who voted for or assented to the distribution in violation of subsection (1) and may compel contribution from them; and (b) members who received a distribution in violation of subsection (2) and may compel a contribution from the members in the amount received in violation of subsection (2).

(4) A proceeding under this section is barred unless it is commenced within 2 years after the date of the distribution.

**Sec. 1241. Right to Distribution.**

Subject to Section 1258, when a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

**Sec. 1242. Ownership of Limited Liability Company Property.**

(1) Property transferred to or otherwise acquired by a limited liability company becomes property of the limited liability company. A member has no interest in specific limited liability company property.

(2) Property may be acquired, held, and conveyed in the name of the limited liability company. Any estate in real property may be acquired in the name of the limited liability company, and title to any estate acquired must vest in the limited liability company rather than in the members individually.

**Sec. 1243. Transfer of Real Property.**

(1) Except as provided in subsection (5), title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any member in the name of the limited liability company.

(2) Title to property of the limited liability company that is held in the name of one or more members or managers may be transferred by an instrument of transfer executed by the persons in whose name title is held if there is an indication in the instrument transferring title to the property to them of:

(a) Their capacity as members or managers of a limited liability company; or

(b) The existence of a limited liability company, even if the name of the limited liability company is not indicated.

(3) Property transferred under subsection (1) or (2) may be recovered by the limited liability company if it proves that the act of the person executing the instrument of transfer did not bind the limited liability company under Section 1225 of this Chapter unless the property has been transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the limited liability company.

(4) Title to property of the limited liability company may be transferred free of any claims of the limited liability company or its members by the persons in whose name title is held to a transferee who gives value without having notice that it is property of a limited liability company if title is held in the name of one or more persons other than the limited liability company and there is no indication in the instrument transferring title to the property to them of:

(a) Their capacity as members or managers of a limited liability company; or

(b) The existence of a limited liability company.

(5) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) Title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any manager in the name of the limited liability company; and

(b) A member, acting solely in the capacity of a member, may not transfer title as provided in subsection (5)(a).

#### **Sec. 1244. Nature of Distributional Interest.**

(1) A member is not a co-owner of, and does not have a transferable interest in, property of a limited liability company.

(2) A member's distributional interest in a limited liability company is personal property and, subject to the provisions of Section 1246 of this Chapter, may be transferred in whole or in part.

(3) An operating agreement may provide that a member's distributional interest may be evidenced by a certificate of the interest issued by the limited liability company and, subject to the provisions of Section 1246 of this Chapter, may also provide for the transfer of any interest represented by the certificate.

#### **Sec. 1245. Rights of Judgment Creditor.**

(1) On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the distributional interest of the member with payment of the unsatisfied

amount of judgment, with interest. To the extent charged, the judgment creditor has only the rights of an assignee of the distributional interest. This part does not deprive a member of the benefit of any exemption laws applicable to a distributional interest.

(2) The court may appoint a receiver of the share of the distributions due or to become due to a judgment debtor and make all other orders, directions, accounts, and inquiries that the judgment debtor may have made or that the circumstances require to give effect to the charging order.

(3) A charging order constitutes a lien on the judgment debtors distributional interest. The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time. A purchaser of the distributional interest at a foreclosure sale has the rights of a transferee.

(4) At any time before foreclosure, a distributional interest that is charged may be redeemed:

(a) By the judgment debtor;

(b) By one or more of the other members with property other than the company's; or

(c) With the company's property if permitted by the operating agreement.

(5) This section provides the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's distributional interest in a limited liability company.

#### **Sec. 1246. Transfer of Distributional Interest-Rights of Transferee.**

(1) A transfer of a member's distributional interest does not entitle the transferee to become a member or to exercise any rights of a member. A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled.

(2) A transferee of a distributional interest may become a member of a limited liability company if and to the extent that the transferor gives the transferee the right in accordance with authority described in writing in the operating agreement or if all other members consent.

(3) A transferee who has become a member, to the extent transferred, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement of a limited liability company and the provisions of this part. A transferee who becomes a member also is liable for the transferor members obligations to make contributions under Section 1234 of this Chapter and for obligations under to return unlawful distributions, but the transferee is not obligated for the transferor members liabilities unknown to the transferee at the time that the transferee becomes a member.

(4) Whether or not a transferee of a distributional interest becomes a member under subsection (2), the transferor is not released from liability to the limited liability company under the operating agreement or the provisions of this Chapter.

(5) A transferee who does not become a member is not entitled to participate in the management or conduct of the limited liability company's business, may not require access to information concerning the company's transactions, and may not inspect or copy any of the company's records.

(6) A transferee who does not become a member is entitled to:

(a) Receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(b) Receive, upon dissolution and winding up of the limited liability company's business:

(i) In accordance with the transfer, the net amount otherwise distributable to the transferor; and

(ii) A statement of account only from the date of the latest statement of account agreed to by all the members; and

(c) Seek under Section 1255(2) of this Chapter a judicial determination that it is equitable to dissolve and wind up the company's business.

(7) A limited liability company does not have to give effect to a transfer until it has notice of the transfer.

### **Sec. 1247. Events Causing Member's Dissociation.**

A member is dissociated from a limited liability company upon the occurrence of any of the following events:

(1) The company's having notice of the member's express will to withdraw upon the date of notice or on a later date if specified by the member;

(2) An event agreed to in the operating agreement as causing the member's dissociation;

(3) Upon transfer of all of a member's distributional interest, other than a transfer for security purposes or pursuant to a court order charging the member's distributional interest that has not been foreclosed;

(4) The member's expulsion pursuant to the operating agreement;

(5) The member's expulsion by unanimous vote of the other members if:

(a) It is unlawful to carry on the company's business with the member;

(b) There has been a transfer of substantially all of the member's distributional interest, other than a transfer for security purposes or pursuant to a court order charging the member's distributional interest, which has not been foreclosed;

(c) Within 90 days after the company notifies a corporate member that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the member fails to obtain a revocation of the certificate of dissolution or a reinstatement of its charter or its right to conduct business; or

(d) A partnership or a limited liability company that is a member has been dissolved, and its business is being wound up;

(6) On application by the company or another member, the member's expulsion by judicial determination because the member:

(a) Engaged in wrongful conduct that adversely and materially affected the company's business;

(b) Willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under Section 1229 of this Chapter; or

(c) Engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the business with the member;

(7) The member's:

(a) Becoming a debtor in bankruptcy;

(b) Executing an assignment for the benefit of creditors;

(c) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of all or substantially all of the member's property; or

(d) Failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence or failing within 90 days after the expiration of stay to have the appointment vacated;

(8) In the case of a member who is an individual:

(a) The member's death;

(b) The appointment of a guardian or general conservator for the member; or

(c) A judicial determination that the member has otherwise become incapable of performing the member's duties under the operating agreement;

(9) In the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the company, except that this subsection does not apply to the substitution of a successor trustee;

(10) In the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estates entire rights to receive distributions from the company, but not merely the substitution of a successor personal representative; or

(11) Termination of the existence of a member if the member is not an individual, estate, or trust other than a business trust.

#### **Sec. 1248. Member's Power to Dissociate-Wrongful Dissociation.**

(1) Unless otherwise provided in the operating agreement, a member has the power to dissociate from a limited liability company at any time, rightfully or wrongfully, pursuant to Section 1247 of this Chapter.

(2) If the operating agreement has not eliminated a members power to dissociate, the members dissociation from a limited liability company is wrongful only if:

(a) It is in breach of an express provision of the agreement; or

(b) Before the expiration of the specified term of a term company:

(i) The member withdraws by express will;

(ii) The member is expelled by judicial determination under Section 1247(6) of this Chapter;

(iii) The member is dissociated by becoming a debtor in bankruptcy; or

(iv) In the case of a member that is not an individual, trust, other than a business trust, or estate, the member is expelled or otherwise dissociated because it willfully dissolved or terminated its existence.

(3) A member that wrongfully dissociates from a limited liability company is liable to the company and to the other members for damages caused by the dissociation. The liability is in addition to any other obligation of the member to the company or to the other members.

(4) If a limited liability company does not dissolve and wind up its business as a result of a member's wrongful dissociation under subsection (2), damages sustained by the company for the wrongful dissociation must be offset against distributions otherwise due the member after the dissociation.

#### **Sec. 1249. Effect of Member's Dissociation.**

(1) Upon a member's dissociation:

(a) in an at-will company, the company shall cause the dissociated member's distributional interest to be purchased as provided under Section 1250 and Section 1251 of this Chapter; and

(b) In a term company:

(i) If the company dissolves and winds up its business on or before the expiration of its specified term, Part 8 of this part applies to determine the dissociated member's rights to distributions; and

(ii) If the company does not dissolve and wind up its business on or before the expiration of its specified term, the company shall ensure that the dissociated member's distributional interest is purchased under Section 1250 and Section 1251 of this Chapter on the date that was specified for the expiration of the term at the time of the member's dissociation.

(2) Upon a member's dissociation from a limited liability company:

(a) The member's right to participate in the management and conduct of the company's business terminates, except as otherwise provided in Section 1256 of this Chapter, and the member ceases to be a member and must be treated the same as a transferee of a member;

(b) The member's duty of loyalty under Section 1229(2)(c) of this Chapter terminates; and

(c) The member's duty of loyalty under Section 1229(2)(a) and (2)(b) of this Chapter and duty of care under Section 1229(3) of this Chapter continue only with regard to matters arising and events occurring before the member's dissociation, unless the member participates in winding up the company's business pursuant to Section 1256 of this Chapter.

### **Sec. 1250. Company Purchase of Distributional Interest.**

(1) A limited liability company shall purchase a distributional interest of a:

(a) Member of an at-will company for its fair value determined as of the date of the member's dissociation if the member's dissociation does not result in a dissolution and winding up of the company's business under Section 1254 of this Chapter; or

(b) Member of a term company for its fair value determined as of the date of the expiration of the specified term that existed on the date of the member's dissociation if the expiration of the

specified term does not result in a dissolution and winding up of the company's business under Section 1256 of this Chapter.

(2) A limited liability company shall deliver a purchase offer to the dissociated member whose distributional interest is entitled to be purchased not later than 30 days after the date determined under subsection (1). The purchase offer must be accompanied by:

(a) A statement of the company's assets and liabilities as of the date determined under subsection (1);

(b) The latest available balance sheet and income statement, if any; and

(c) An explanation of how the estimated amount of the payment was calculated.

(3) If the price and other terms of a purchase of a distributional interest are fixed or are to be determined by the operating agreement, the price and terms so fixed or determined govern the purchase unless the purchaser defaults. If a default occurs, the dissociated member is entitled to commence a proceeding to have the company dissolved under Section 1255(1)(d) of this Chapter.

(4) If an agreement to purchase the distributional interest is not made within 120 days after the date determined under subsection (1), the dissociated member, within another 120 days, may commence a proceeding against the limited liability company to enforce the purchase. The company, at its expense, shall notify in writing all of the remaining members and any other person that the court directs of the commencement of the proceeding. The jurisdiction of the court in which a proceeding is commenced under this subsection is plenary and exclusive.

(5) The tribal court shall determine the fair value of the distributional interest in accordance with the standards set forth in Section 1251 of this Chapter, together with the terms for the purchase. Upon making these determinations, the court shall order the limited liability company to purchase or cause the purchase of the interest.

(6) Damages for wrongful dissociation under Section 1248(2) of this Chapter and all other amounts owing, whether or not currently due, from the dissociated member to a limited liability

company, must be offset against the purchase price.

**Sec. 1251. Court Action to Determine Fair Value of Distributional Interest.**

(1) In an action brought to determine the fair value of a distributional interest in a limited liability company, the court shall:

(a) Determine the fair value of the interest, considering among other relevant evidence the going concern value of the company, any agreement among some or all of the members fixing the price or specifying a formula for determining value of distributional interests for any other purpose, the recommendations of any appraiser appointed by the court, and any legal constraints on the company's ability to purchase the interest;

(b) Specify the terms of the purchase, including, if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the company's other creditors, security for a deferred purchase price, and a covenant not to compete or other restriction on a dissociated member; and

(c) Require the dissociated member to deliver an assignment of the interest to the purchaser upon receipt of the purchase price or the first installment of the purchase price.

(2) After the dissociated member delivers the assignment, the dissociated member has no further claim against the company, its members, officers, or managers, if any, other than a claim to any unpaid balance of the purchase price or a claim under any agreement with the company or the remaining members that is not terminated by the court.

(3) If the purchase is not completed in accordance with the court's specified terms, the company is to be dissolved upon application under Section 1255(1)(d) of this Chapter. If a limited liability company is so dissolved, the dissociated member has the same rights and priorities in the company's assets as if the sale of the distributional interest had not been ordered.

(4) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or not in good

faith, it may award one or more other parties reasonable expenses, including attorney fees and the expenses of appraisers or other experts, incurred in the proceeding. The finding may be based on the company's failure to make an offer to pay or to comply with Section 1250(2) of this Chapter.

(5) Interest must be paid on the amount awarded from the date determined under Section 1250(1) of this Chapter to the date of payment.

**Sec. 1252. Dissociated Members Power to Bind Limited Liability Company.**

For 2 years after a member dissociates without the dissociation resulting in a dissolution and winding up of a limited liability company's business, the company is bound by an act of the dissociated member that would have bound the company under Section 1225 of this Chapter before dissociation only if at the time of entering into the transaction the other party:

(1) Reasonably believed that the dissociated member was then a member;

(2) Did not have notice of the member's dissociation; and

(3) Is not considered to have had notice under Section 1253 of this Chapter.

**Sec. 1253. Statement of Dissociation.**

(1) A dissociated member or a limited liability company shall file in the office of the Secretary a statement of dissociation, stating the name of the company and that the member is dissociated from the company.

(2) For the purposes of Section 1225 and Section 1252 of this Chapter, a person not a member is considered to have notice of the dissociation 90 days after the statement of dissociation is filed.

**Sec. 1254. Dissolution.**

(1) A limited liability company is dissolved and its affairs must be wound up when one of the following occurs:

(a) At the time or upon the occurrence of events specified in writing in the articles of organization or operating agreement;

(b) Consent of the number or percentage of members specified in the operating agreement;

(c) An event that makes it unlawful for all or substantially all of the business of the company to be continued, but any cure of illegality within 90 days after notice to the company of the event is effective retroactively to the date of the event for purposes of this section;

(d) The expiration of the term specified in the articles of organization; or

(e) Entry of a decree of judicial dissolution under Section 1255 of this Chapter.

(2) Subject to subsection (3), a limited liability company continues after dissolution only for the purpose of winding up its business.

(3) At any time after the dissolution of a limited liability company and before the winding up of its business is completed, the members, including a dissociated member whose dissociation caused the dissolution, may unanimously waive the right to have the company's business wound up and the company terminated. In that case:

(a) the limited liability company resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the company or a member after the dissolution and before the waiver is determined as if the dissolution had never occurred; and

(b) the rights of a third party accruing under the provisions of Section 1257(1) or arising out of conduct by the third party in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected.

#### **Sec. 1255. Judicial Dissolution.**

(1) On application by or for a member or a dissociated member, the Fort Peck Tribal Court may order dissolution of a limited liability company, or other appropriate relief, when:

(a) The economic purpose of the company is likely to be unreasonably frustrated;

(b) Another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member remaining as a member;

(c) It is not otherwise reasonably practicable to carry on the company's business in conformity

with the articles of organization and the operating agreement;

(d) The company failed to purchase the petitioner's distributional interest as required by Section 1249 of this Chapter or

(e) The members or managers in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner.

(2) On application by a transferee of a member's interest, The Fort Peck Tribal Court may determine that it is equitable to wind up the company's business:

(a) After the expiration of the specified term, if the company was for a specified term at the time that the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer; or

(b) At any time, if the company was at will at the time that the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer.

#### **Sec. 1256. Winding Up.**

(1) Except as otherwise provided in the articles of organization or the operating agreement, the business or affairs of the limited liability company may be wound up:

(a) By the members or managers who have authority under Section 1240 of this Chapter to manage the limited liability company prior to dissolution; or

(b) If one or more of the members or managers have engaged in wrongful conduct or upon other cause shown, by the Fort Peck Tribal Court on application of any member or any members legal representative or assignee.

(2) The persons winding up the business or affairs of the limited liability company may, in the name of and for and on behalf of the limited liability company:

(a) Prosecute and defend suits;

(b) Settle and close the business of the limited liability company;

(c) Dispose of and transfer the property of the limited liability company;

(d) Discharge the liabilities of the limited liability company; and (e) distribute to the members any remaining assets of the limited liability company.

**Sec. 1257. Agency Power and Liability of Members or Managers After Dissolution.**

(1) Except as provided in subsections (3) through (5), after an event causing dissolution of the limited liability company, a member may bind the limited liability company:

(a) By an act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(b) By any transaction that would have bound the limited liability company, if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

(2) The filing of the articles of termination is presumed to constitute notice of dissolution for purposes of subsection (1)(b).

(3) An act of a member that would not otherwise be binding on the limited liability company under subsection (1) is binding if it is authorized by the limited liability company.

(4) An act of a member that would be binding under subsection (1) or would be otherwise authorized and that is in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

(5) If the articles of organization vest management of the limited liability company in managers, a manager may exercise the authority of a member under subsection (1) and a member may not exercise the authority if the member is acting solely in the capacity of a member.

(6) A member or manager who, with knowledge of the dissolution, subjects a limited liability company to liability by an act that is not appropriate for the winding up of the company's business is liable to the company for any damage caused by the act.

**Sec. 1258. Distribution of Assets.**

Upon the winding up of a limited liability company, the assets must be distributed as follows:

(1) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company, whether by payment or the making of reasonable provision for payment, other than liabilities to members for distributions under Section 1240 of this Chapter;

(2) Unless otherwise provided in the articles of organization or an operating agreement, to members and former members in satisfaction of liabilities for distributions under Section 1240 of this Chapter;

(3) Unless otherwise provided in writing in the articles of organization or a written operating agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

**Sec. 1259. Articles of Termination.**

(1) At any time after dissolution and winding up, a limited liability company may terminate its existence by filing with the Secretary articles of termination stating:

(a) The name of the limited liability company;

(b) The reason for filing the articles of termination;

(c) The effective date of the articles of termination, which must be a date certain, if they are not to be effective upon the filing;

(d) The name of the agent or agents authorized to receive service of process after dissolution or termination of the limited liability company;

(e) The name of the person or persons authorized to wind up the business and authorized to execute documents on behalf of the limited liability company;

(f) The date of the dissolution; and

(g) That the company's business has been wound up and the legal existence of the company has been terminated.

(2) The existence of a limited liability company is terminated upon the filing of the articles of termination or upon a later effective date, if specified in the articles of termination.



**Sec. 1260. Known Claims Against Dissolved or Terminated Limited Liability Companies.**

(1) A dissolved or terminated limited liability company may dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved or terminated limited liability company shall notify its known claimants in writing of the dissolution or termination at any time after the effective date of the dissolution or termination. The written notice must:

(a) Describe information that must be included in a claim;

(b) Provide a mailing address where a claim may be sent;

(c) State the deadline, which may not be less than 120 days from the later of the effective date of the written notice or the filing of the articles of termination pursuant to Section 1259 of this Chapter, by which the dissolved or terminated limited liability company must receive the claim; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved or terminated limited liability company is barred:

(a) If a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved or terminated limited liability company by the deadline; or

(b) If a claimant whose claim was rejected by the dissolved or terminated limited liability company does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of the dissolution or termination.

**Sec. 1261. Unknown Claims Against Dissolved or Terminated Limited Liability Companies.**

(1) Subject to Section 1260 of this Chapter and subsections (2) through (5) of this section, the dissolution or termination of a limited liability company, including dissolution by the expiration of

its term, does not take away or impair any remedy available to or against the limited liability company or its members or managers for any claim or right, whether or not the claim or right existed or accrued prior to dissolution or termination. A proceeding by or against the limited liability company may be prosecuted or defended by the limited liability company in its name. The members and managers have power to take action as appropriate to protect the remedy, right, or claim.

(2) A dissolved or terminated limited liability company may publish notice of its dissolution or termination and request that persons having claims against it present the claims in accordance with the notice.

(3) The notice must:

(a) Be published at least once in a newspaper of general circulation on the Fort Peck Reservation where the dissolved or terminated limited liability company's principal office is located;

(b) Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(c) State that a claim against the limited liability company is barred unless a proceeding to enforce the claim is commenced within 5 years after publication of the notice.

(4) If a dissolved or terminated limited liability company publishes a notice in accordance with subsection (3) The claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved or terminated company within 5 years after the publication date of the notice:

(a) A claimant who did not receive written notice under Section 1260 of this Chapter;

(b) A claimant whose claim was timely sent to the dissolved or terminated company but not acted on; and

(c) A claimant whose claim is contingent on or based on an event occurring after the effective date of dissolution or termination.

(5) A claim not barred under this section may be enforced:

(a) Against the dissolved or terminated limited liability company, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a member of the dissolved or terminated company to the extent of the member's proportionate share of the claim or the company's assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

**Sec. 1262. Involuntary Dissolution-Procedure.**

(1) A limited liability company that is guilty of any of the actions or omissions described in Section 1216(1) of this Chapter is in default. By reason of the default, the limited liability company may be involuntarily dissolved by order of the Secretary, thereby forfeiting its right to transact any business on the Fort Peck Reservation.

(2) On or before September 1 of each year, the Secretary shall compile a list of defaulting limited liability companies, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(3) The Secretary shall give notice to the defaulting limited liability companies by:

(a) Mailing a letter addressed to the limited liability company in care of its registered agent or any director or officer; or

(b) Publication of a general notice once a month for 3 consecutive months in the newspaper of the Fort Peck Reservation.

(4) The notice referred to in subsection (3) must specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in Section 1216 of this Chapter have been rectified within 90 days following the mailing or publication of notice:

(a) The Secretary will dissolve the defaulting limited liability companies;

(b) Defaulting limited liability companies will forfeit the amount of any tax, penalty, or costs to the Fort Peck Tribes; and

(c) Defaulting limited liability companies will forfeit their rights to carry on business within the Fort Peck Reservation.

(5) After 90 days following mailing or publication of each notice, the Secretary may, by order, dissolve all limited liability companies that have

not satisfied the requirements of applicable law and compile a full and complete list containing the names of all limited liability companies that have been so dissolved. The Secretary shall immediately give notice to the dissolved limited liability companies as specified in subsection (3).

(6) In the case of involuntary dissolution, all the property and assets of the dissolved limited liability companies must be held in trust by the members or managers of the limited liability companies and the limited liability companies may carry on business only as necessary to wind up and liquidate their business and affairs under Section 1254 of this Chapter and to notify claimants under Sections 1260 and 1261 of this Chapter.

(7) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent for service of process.

**Sec. 1263. Reinstatement Following Administrative Dissolution.**

(1) A limited liability company administratively dissolved may apply to the Secretary for reinstatement within 5 years after the effective date of dissolution. The applicant shall file an official application. The application must:

(a) Recite the name of the company and the effective date of its administrative dissolution;

(b) State that the ground for dissolution either did not exist or has been eliminated;

(c) State that the company's name satisfies the requirements of Section 1203 of this Chapter;

(d) Contain a certificate from the department of revenue reciting that all taxes owed by the company have been paid; and (e) include all annual reports not yet filed with the Secretary.

(2) If the Secretary determines that the application contains the information required by subsection (1) and that the information is correct, the Secretary shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of

the administrative dissolution, and the company may resume its business as if the administrative dissolution had not occurred.

**Sec. 1264. Appeal From Denial of Reinstatement.**

(1) If the Secretary denies a limited liability company's application for reinstatement following administrative dissolution, the Secretary shall serve the company with a record that explains the reason or reasons for the denial.

(2) The company may appeal the denial of reinstatement to the Fort Peck Tribal Court within 30 days after service of the notice of denial. The company shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary's certificate of dissolution, the company's application for reinstatement, and the Secretary's notice of denial.

(3) The court may summarily order the Secretary to reinstate the dissolved company or may take other action that the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

**Sec. 1265. Authority to Transact Business Required.**

(1) A foreign limited liability company may not transact business on the Fort Peck Reservation until it obtains a certificate of authority from the Secretary.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) Maintaining, defending, or settling any proceeding;

(b) Holding meetings of the members or managers or carrying on other activities concerning internal affairs of the limited liability company;

(c) Maintaining bank accounts;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the limited liability company's own securities or maintaining trustees or depositaries with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the Fort Peck Reservation before they become contracts;

(g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning real or personal property that is acquired incident to activities described in subsection (2)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not used in the performance of a function of the limited liability company;

(j) Conducting an isolated transaction that is completed within 30 days and that is not a transaction in the course of repeated transactions of a similar nature; or

(k) Transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

(4) Except as provided in subsection (2), a foreign limited liability company is transacting business within the meaning of subsection (1) if it enters into a contract with Fort Peck Tribes, an agency or department of the Fort Peck Tribes, or a wholly owned business or subsidiary business of the Fort Peck Tribes and must apply for and receive a certificate of authority to transact business before entering into the contract. The Secretary shall provide written notice to the contracting parties regarding the requirement that a foreign limited liability company obtain a certificate of authority. The foreign limited liability company must be allowed 30 days from the date of the notice to obtain the certificate of authority, and an existing contract may not be voided prior to the expiration of the 30 days.

**Sec. 1266. Consequences of Transacting Business Without Authority.**

(1) A foreign limited liability company transacting business on the Fort Peck Reservation without a certificate of authority may not maintain a proceeding in Fort Peck Tribal Court until it obtains a certificate of authority.

(2) The successor to a foreign limited liability company that transacted business on the Fort Peck Reservation without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in Fort Peck Tribal Court until the foreign limited liability company or its successor obtains a certificate of authority.

(3) Fort Peck Tribal Court may stay a proceeding commenced by a foreign limited liability company or its successor or assignee until it determines whether the foreign corporation or its successor or assignee requires a certificate of authority. If it determines that a certificate is required, the court may further stay the proceeding until the foreign limited liability company or its successor obtains the certificate.

(4) A foreign limited liability company is liable for a civil penalty of \$50 for each day, but not to exceed a total of \$10,000 for each year, that it transacts business on the Fort Peck Reservation without a certificate of authority. The Fort Peck Tribal prosecutor may collect all penalties due under this subsection and deposit them to the general fund.

(5) Notwithstanding the provisions of subsections (1) and (2) and except as provided in subsection (6), the failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of its acts or prevent it from defending any proceeding on the Fort Peck Reservation.

(6) A contract between the Fort Peck Tribes, an agency or department of the Fort Peck Tribes, or a wholly owned business of the Fort Peck Tribes and a foreign limited liability company that has failed to obtain a certificate of authority from Fort

Peck Tribes, the contracting agency or department of the Fort Peck Tribes, or the contracting wholly owned business of the Fort Peck Tribes.

**Sec. 1267. Application For Certificate of Authority.**

(1) A foreign limited liability company may apply for a certificate of authority to transact business on the Fort Peck Reservation by delivering an application to the Secretary for filing. The application must set forth:

(a) The name of the foreign limited liability company or, if its name is unavailable for use on the Fort Peck Reservation, a name that satisfies the requirements of Section 1273 of this Chapter;

(b) The name of the state, tribe, or country under whose law it is organized;

(c) Its date of organization and period of duration;

(d) The street address of its principal office;

(e) The address of its registered office on the Fort Peck Reservation and the name of its registered agent at that office; and

(f) The names and usual business addresses of its current managers, if different from its members.

(2) A foreign limited liability company shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state, tribe, or country under whose law the foreign limited liability company is organized.

**Sec. 1268. Registered Office and Registered Agent of Foreign Limited Liability Company.**

Each foreign limited liability company authorized to transact business by the Fort Peck Tribes shall continuously maintain on the Fort Peck Reservation:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent who shall be: (a) an individual who resides on the Fort Peck Reservation and whose business office may be identical with the registered office; or (b) a domestic corporation, a limited liability company, or a foreign

corporation or foreign limited liability company authorized to transact business by the Fort Peck Tribes.

**Sec. 1269. Resignation of Registered Agent of Foreign Limited Liability Company.**

(1) The registered agent of a foreign limited liability company may resign the agency appointment by signing and delivering to the Secretary for filing the original and two copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement, the Secretary shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if the office has not been discontinued. The Secretary shall mail the other copy to the foreign limited liability company at its principal office address shown in its most recent annual report.

(3) The agency appointment is terminated and the registered office discontinued, if provided in the statement, 30 days after the date on which the statement was filed.

**Sec. 1270. Change of Registered Office or Registered Agent of Foreign Limited Liability Company.**

(1) A foreign limited liability company authorized to transact business on the Fort Peck Reservation may change its registered office or registered agent, or both, by delivering to the Secretary, for filing, a statement of change setting forth:

(a) The foreign limited liability company's name;

(b) The street address of its current registered office;

(c) If the address of its registered office is to be changed, the new address of the registered office on the Fort Peck Reservation;

(d) The name and address of its current registered agent;

(e) If its registered agent or the agent's address is to be changed, the name and address of the successor registered agent or the current registered agent's new address; and

(f) The fact that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent are identical.

(2) If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any foreign limited liability company for which the registered agent is the registered agent by notifying the foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary, for filing, a statement of change that complies with the requirements of subsection (1) and that states that the foreign limited liability company has been notified of the change.

**Sec. 1271. Amended Certificate of Authority.**

(1) A foreign limited liability company authorized to transact business on the Fort Peck Reservation shall obtain an amended certificate of authority from the Secretary if it changes:

(a) Its name;

(b) The period of its duration; or

(c) The state, tribe or country of its organization.

(2) The requirements of Section 1267 of this Chapter for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

**Sec. 1272. Effect of Certificate of Authority.**

(1) A certificate of authority issued by the Secretary authorizes a foreign limited liability company to transact business on the Fort Peck Reservation subject to the right of the Fort Peck Tribes to revoke the certificate as provided in this part.

(2) A foreign limited liability company with a valid certificate of authority has the same rights and privileges as a domestic company of similar character and, except as otherwise provided by this part, is subject to the same duties, restrictions, penalties, and liabilities imposed on a domestic limited liability company of similar character.

(3) This part does not authorize the Fort Peck Tribes to regulate the organization or internal affairs of a foreign limited liability company authorized to transact business on the Fort Peck Reservation.

**Sec. 1273. Name.**

A certificate of authority may not be issued to a foreign limited liability company unless the name of the company satisfies the requirements of Section 1203 of this Chapter. If the name of a foreign limited liability company does not satisfy the requirements of Section 1203 of this Chapter, to obtain or maintain a certificate of authority:

(1) The foreign limited liability company may add the words "limited liability company", the abbreviation "l.l.c.", or the abbreviation "l.c." to its name for use on the Fort Peck Reservation; or

(2) If its real name is unavailable, the foreign limited liability company may use an assumed business name that is available and that satisfies the requirements of Section 1215 of this Chapter, if it files the assumed business name with the Secretary.

**Sec. 1274. Withdrawal of Foreign Limited Liability Company.**

(1) A foreign limited liability company authorized to transact business on the Fort Peck Reservation may not withdraw from the Fort Peck Reservation until it obtains a certificate of withdrawal from the Secretary.

(2) A foreign limited liability company authorized to transact business on the Fort Peck Reservation may apply for a certificate of withdrawal by delivering an application to the Secretary for filing. The application must set forth:

(a) The name of the foreign limited liability company and the name of the state, tribe, or country under whose law it is organized;

(b) That it is not transacting business on the Fort Peck Reservation and that it surrenders its authority to transact business on the Fort Peck Reservation;

(c) That it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business on the Fort Peck Reservation;

(d) A mailing address to which the Secretary may mail a copy of any process served on the Secretary under subsection (3);

(e) A commitment to notify the Secretary in the future of any change in its mailing address;

(f) Additional information as may be necessary or appropriate to enable the Secretary to determine and assess any unpaid fees or taxes payable by the foreign limited liability company.

(3) After the withdrawal of the foreign limited liability company is effective, service of process on the Secretary under this section is service on the foreign limited liability company. Upon receipt of process, the Secretary shall mail a copy of the process to the foreign limited liability company at the mailing address set forth under subsection (2).

**Sec. 1275. Grounds For Revocation.**

The Secretary may commence a proceeding under Section 1276 of this Chapter to revoke the certificate of authority of a foreign limited liability company authorized to transact business on the Fort Peck Reservation if:

(1) The foreign limited liability company does not deliver its annual report to the Secretary within 140 days after it is due;

(2) The foreign limited liability company is without a registered agent or registered office on the Fort Peck Reservation for 60 days or more;

(3) The foreign limited liability company does not inform the Secretary under Section 1205 of this Chapter that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance; or

(4) The Secretary receives a duly authenticated certificate from the Secretary or other official having custody of company records in the

state, tribe, or country under whose law the foreign limited liability company is organized, stating that it has been dissolved or disappeared as the result of a merger.

**Sec. 1276. Procedure For and Effect of Revocation.**

(1) If the Secretary determines that one or more grounds exist under Section 1275 of this Chapter for revocation of a certificate of authority, the Secretary shall serve the foreign limited liability company with written notice of the Secretary's determination.

(2) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary that each ground determined by the Secretary does not exist within 60 days after service of the notice is mailed, the Secretary may revoke the foreign limited liability company's certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The Secretary shall file the original of the certificate and mail a copy to the foreign limited liability company.

(3) The authority of a foreign limited liability company to transact business on the Fort Peck Reservation ceases on the date shown on the certificate revoking its certificate of authority.

(4) The Secretary's revocation of a foreign limited liability company's certificate of authority appoints the Secretary as the foreign limited liability company's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign limited liability company was authorized to transact business on the Fort Peck Reservation. Service of process on the Secretary under this subsection is service on the foreign limited liability company. Upon receipt of process, the Secretary shall mail a copy of the process to the secretary of the foreign limited liability company at its principal office shown in its most recent annual report or in any subsequent communication received from the foreign limited liability company, stating the current mailing address of its principal office or, if

no report or communication is on file, in its application for a certificate of authority.

(5) Revocation of a foreign limited liability company's certificate of authority does not terminate the authority of the registered agent of the foreign limited liability company.

**Sec. 1277. Appeal From Revocation.**

(1) A foreign limited liability company may appeal the Secretary's revocation of its certificate of authority to the Fort Peck Tribal Court within 30 days after service of the certificate of revocation is mailed. The foreign limited liability company may appeal by petitioning the court to set aside the revocation and by attaching to the petition copies of its certificate of authority and the Secretary's certificate of revocation.

(2) The court may summarily order the Secretary to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

**Sec. 1278. Admission of Foreign Professional Limited Liability Companies -- Application -- Revocation.**

(1) A foreign professional limited liability company is entitled to a certificate of authority to transact business on the Fort Peck Reservation only if:

(a) The name of the foreign professional limited liability company meets the requirements of Section 1283 of this Chapter;

(b) The foreign professional limited liability company is organized only for purposes for which a professional limited liability company may be organized under Part 11 of this Chapter; and

(c) All the members and not less than one-half of the managers of the foreign professional limited liability company are qualified persons with respect to the foreign professional limited liability company.

(2) Notwithstanding Section 1265 a foreign professional limited liability company may not be required to obtain a certificate of authority to

transact business on the Fort Peck Reservation unless it maintains an office on the Fort Peck Reservation for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the members and not less than one-half of the managers are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the foreign professional limited liability company.

(4) The certificate of authority may be revoked by the Secretary if the foreign professional limited liability company fails to comply with any provision of Part 11 of this Chapter. The licensing authority shall certify to the Secretary, from time to time, the names of all foreign professional limited liability companies that have given cause for revocation, together with the pertinent facts, and shall concurrently mail to each foreign professional limited liability company at its registered office on the Fort Peck Reservation a notice that the certification has been made. A certificate of authority of a foreign professional limited liability company may not be revoked unless there have been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during the 60 days.

(5) A foreign professional limited liability company is subject to all other provisions of Part 11 of this Chapter not inconsistent with this section.

#### **Sec. 1279. Suits By and Against Limited Liability Company.**

Suit may be brought by or against a limited liability company in its own name.

#### **Sec. 1280. Service of Process.**

(1) An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served upon the company.

(2) If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process on the Fort Peck

Reservation or the agent for service of process cannot with reasonable diligence be found at the agents address, the Secretary is an agent of the company upon whom process, notice, or demand may be served.

(3) Service of any process, notice, or demand on the Secretary may be made by delivering to and leaving with the Secretary duplicate copies of the process, notice, or demand and, when applicable, pursuant to the service provisions of the Fort Peck Tribal Rules of Civil Procedure. If the process, notice, or demand is not served pursuant to the provisions of the Fort Peck Tribal Rules of Civil Procedure, the Secretary shall forward one of the copies by registered mail, return receipt requested, to the company at its designated office, and the Secretary may require the person requesting the service to reimburse the Secretary for mailing costs. Service is effected under this subsection at the earliest of:

(a) The date on which the company receives the process, notice, or demand;

(b) The date shown on the return receipt, if signed on behalf of the company; or

(c) 5 days after its deposit in the mail, if mailed postpaid and correctly addressed.

(4) The Secretary shall keep a record of all processes, notices, and demands served pursuant to this section and record the time of and the action taken regarding the service.

(5) This section does not affect the right to serve process, notice, or demand in any manner otherwise provided by law.

#### **Sec. 1281. Derivative Actions-Proper Plaintiff-Pleading-Expenses.**

(1) A member of a limited liability company may maintain an action in the Fort Peck Tribal Court in the right of the company if the members or managers having authority to bring the action have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to succeed.

(2) In a derivative action for a limited liability company, the plaintiff must be a member of the company when the action is commenced and:



(a) Must have been a member at the time of the transaction of which the plaintiff complains; or

(b) The plaintiff's status as a member must have devolved upon the plaintiff by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

(3) In a derivative action for a limited liability company, the complaint must set forth with particularity the effort of the plaintiff to secure initiation of the action by a member or manager or the reasons for not making the effort.

(4) If a derivative action for a limited liability company is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney fees, and shall direct the plaintiff to remit to the limited liability company the remainder of the proceeds received.

#### **Sec. 1282. Purposes of Professional Limited Liability Companies.**

Professional limited liability companies may be organized under this part only for the purpose of rendering professional services and services ancillary to professional services within a single profession, except that a professional limited liability company may be organized for the purpose of rendering professional services within two or more professions and for any purpose or purposes for which companies may be organized under this part to the extent that the combination of professional purposes or professional and business purposes is permitted by the licensing laws and rules of the Fort Peck Tribes applicable to the professions.

#### **Sec. 1283. Professional Limited Liability Company Name.**

The name of a domestic or foreign professional limited liability company:

(1) Must contain the words "professional limited liability company", "professional limited

company", "professional l.l.c.", "professional llc", "p.l.l.c.", or "pllc"; and

(2) Must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of organization.

#### **Sec. 1284. Professional Limited Liability Company Managers.**

At least one-half of the managers of a professional limited liability company must be qualified persons with respect to the limited liability company.

#### **Sec. 1285. Membership In Professional Limited Liability Company.**

(1) Only the following persons may be members of a professional limited liability company:

(a) Natural persons authorized by law of the Fort Peck Tribes or any other tribe, state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of organization of the professional limited liability company;

(b) General partnerships in which all the partners are authorized by law of the Fort Peck Tribes or any other tribe, state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation and in which at least one partner is authorized by law of the Fort Peck Tribes to render a professional service permitted by the articles of organization of the professional limited liability company; and

(c) Domestic or foreign professional corporations and domestic or foreign professional limited liability companies authorized by law of the Fort Peck Tribes or tribe, state to render a professional service permitted by the articles of organization of the professional limited liability company.

(2) The licensing authority may by rule further restrict or condition the issuance of membership interests in order to preserve ethical standards, but a rule may not cause a member at the time the rule becomes effective to become a disqualified person.

**Sec. 1286. Rendering Services.**

A domestic or foreign professional limited liability company may render professional services on the Fort Peck Reservation only through natural persons permitted to render the services on the Fort Peck Reservation; however, nothing in this part requires any person employed by a professional limited liability company to be licensed to perform services for which a license is not otherwise required or prohibits the rendering of professional services by a licensed natural person acting in that person's individual capacity, even if the person is a member or manager of a professional limited liability company.

**Sec. 1287. Responsibility For Services.**

(1) An individual who renders professional services as a member or an employee of a domestic or foreign professional limited liability company is liable for any negligent or wrongful act or omission in which the individual personally participates to the same extent as if the individual had rendered the services as a sole practitioner. A member or an employee of a professional limited liability company is not liable for the conduct of other members or employees unless the member or employee is at fault in appointing, supervising, or cooperating with them.

(2) A domestic or foreign professional limited liability company whose member or employee performs professional services within the scope of the member's or employee's employment or apparent authority to act for the company is liable to the same extent as the member or employee.

(3) Except as otherwise provided by statute, the personal liability of a member of a domestic or foreign professional limited liability company is no greater in any respect than that of a member of a limited liability company otherwise organized under this part.

**Sec. 1288. Relationship to Clients And Patients.**

(1) The relationship between an individual performing professional services as an employee of a domestic or foreign professional limited liability company and a client or patient is the same as

if the individual performed the services as a sole practitioner.

(2) The relationship between a domestic or foreign professional limited liability company performing professional services and the client or patient is the same as between the client or patient and the individual performing the services.

(3) Any privilege applicable to communications between a person rendering professional services and the person receiving the services recognized under the statutory or common law of the Fort Peck Tribes extends to a domestic or foreign professional limited liability company and its employees.

**(AS PER RESOLUTION NO. 2048-2005-08, DATED AUGUST 22, 2005)**

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 25 – Foreclosure of Mortgages and Liens on Real Estate**

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## Chapter 1.

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#### Sec. 101. Jurisdiction.

The Tribal Court is hereby vested with jurisdiction over all proceedings to foreclosure mortgages and liens on any real property on the Reservation owned by an Indian, provided, that jurisdiction shall not extend to the foreclosure of mortgages or liens on trust land unless authorized by federal law.

#### Sec. 102. Definitions.

(1) Foreclosure means the enforcement of collection of a mortgage loan or lien by the sale of real property through judicial proceedings.

(2) HUD mortgage including any assignment(s), means a guaranteed loan under section 184 of the Housing and Community Development Act of October 28, 1992, 106 Stat. 3672, 3739 (12 U.S.C. 1715z), or any other Housing and Urban Development mortgage insurance program that does not allow for a period of redemption.

(3) Lien means a charge against or an interest in property to secure payment of a debt or performance of an obligation.

(4) Mortgage means a contract by which real property is pledged by the owner as security for a

loan from a lending institution and includes any assignment of the mortgage.

(5) Mortgage loan means an interest bearing obligation secured by a mortgage or HUD mortgage on land and improvements on the Reservation.

(6) Mortgagee means the owner of a mortgage or HUD mortgage, usually the lender.

(7) Mortgagor means the borrower under a mortgage or HUD mortgage.

(8) Redemptionor is a person entitled to redeem after a sale in foreclosure under Section 108 of this Title.

#### Sec. 103 Scope.

This title shall apply:

(a) To all actions to foreclosure any mortgage or lien on real property held in fee that is located on the Reservation and is owned by an Indian or Indians; and

(b) Shall apply to all actions to foreclosure any mortgage or lien on real property held by the United States in trust that is located on the Reservation, provided, that such foreclosure is authorized by federal law.

#### Sec. 104. Recording.

All HUD mortgages including leasehold mortgages and other mortgages of trust real property that secure loans guaranteed by the United States or an agency of the United States shall be recorded with the Bureau of Indian Affairs at the Fort Peck Indian Agency.

#### Sec. 105. Proceedings in Tribal Court.

(a) Foreclosure proceedings. Foreclosure proceedings are instituted upon filing a complaint. The complaint shall be filed and, the proceedings shall be conducted in accordance with the applicable provisions of Title 8 of this Code, unless otherwise specified in this Title. The complaint shall be verified by a Clerk of the Tribal Court and Shall-:

(1) Name as a defendant the mortgagor and each person or entity claiming through the mortgagor subsequent to the recording of the mort-

gage or HUD mortgage, including each subordinate lienholder. With respect to a claim for a tribal lease hold, the Tribes need not to be made a party to an action to foreclosure on HUD leasehold mortgage. Any person holding a conveyance or lien on the property unrecorded at the time of the commencement of the action need not be named as a defendant;

(2) Contain a legal description of the property subject to the foreclosure;

(3) Contain a concise statement of the facts establishing a cause of action, including:

(i) A description of the mortgage or HUD mortgage;

(ii) A description of the lease if the leasehold is subject to foreclosure;

(iii) The date, time and place the mortgage or HUD mortgage is recorded;

(iv) The alleged default; and

(v) The relevant requirements and conditions prescribed in applicable federal statutes and tribal ordinances, regulations, the mortgage or HUD mortgage, and any lease subject to the foreclosure;

(4) Include, as part of an appendix to the complaint,

(a) True and correct copy of the mortgage or HUD mortgage, all assignments of such mortgages, each promissory note and any lease subject to the foreclosure.

(b) Order scheduling hearing. At the time the complaint is filed, the Court shall issue an order setting the place and time for a hearing on the foreclosure complaint, not less than fifteen (15) days or more than thirty (30) days after the date the complaint is filed.

(c) Service of the complaint and order. A copy of the summons, complaint and the order of the Court shall be served on each of the named defendants and, where the mortgage is secured by tribal trust property, on the Chairman of the Tribes and the Superintendent of the Fort Peck Indian Agency. Except as otherwise provided in this Title, service of process and other papers shall be in accordance with the provisions of Title 4, Section 102 of this Code.

### **Sec. 106 The hearing and judgement on the foreclosure complaint.**

(a) Time for hearing and decision. The Tribal Court shall hear and decide a foreclosure suit within a reasonable time period, not to exceed sixty days from the date of service of the summons and complaint.

### **Sec. 107 Judgement of the Court.**

(a) If the defendant fails to appear, or if the Court determines that the evidence and law establish that the plaintiff is entitled to foreclosure under this Title, the Court shall proceed with the foreclosure.

(b) If the Court determines that the evidence and law establish that the plaintiff is not entitled to foreclosure under this Title, the Court shall dismiss the case.

(c) The contents of the judgement in foreclosure. If the Court holds in favor of the mortgagee, the Court in its judgement shall order:

(1) A sale in foreclosure of the interest of the mortgagor and the interest of each other defendant in the mortgage, including subordinate lienholders;

(2) A sale of the encumbered property (or as much of the property as may be necessary);

(3) The application of the proceeds of the sale:

(4) The payment of the costs, expenses of litigation, reasonable attorneys' fees approved by the Court, and the amount due the plaintiff, and

(5) In the case of a leasehold mortgage, that the mortgage and the lease be assigned to the mortgagee, on condition that:

(i) The mortgagee give the Tribes the right of first refusal of any acceptable offer to purchase the lease or leasehold mortgage that the mortgagee subsequently obtains or receives;

(ii) The mortgagee or its assignee shall not transfer, sell or assign, either or both the lease or the mortgage, except to a Tribal member, the Tribes or the Tribal Housing Authority.

**Sec. 108. Foreclosure sales.**

(a) All sales of mortgaged property under a judgement of foreclosure shall be made under authority of the Court.

(b) The sale shall be conducted by public auction by an official appointed by the Court for that purpose, at a place on the Reservation convenient to potential buyers, after such notice reasonably as is calculated to assure that potential buyers are aware of the sale. The notice of sale shall, at a minimum, be published in the Wotanin Wopapi for three consecutive issues and in at least on other newspaper of general circulation on the Reservation once a week for three consecutive weeks. A copy of the notice of sale shall

(1) Be posted on the premises subject to the foreclosure sale;

(2) Be posted in conspicuous public places on the Reservation such as will give notice to all persons who may be interested in the sale (e.g. the Tribal Administrative Building, the Agency, the Housing Authority);

(3) Be served at least thirty (30) days before the sale upon the occupant of the property under foreclosure;

(4) Be mailed, certified mail, return receipt requested, to each party defendant at the address provided for the service of papers; and

(5) Be mailed or delivered to the respective offices of the Tribal Chairman and the Superintendent of the Fort Peck Indian Agency.

(c) On order of the Court, the officer conducting a sale on foreclosure of a HUD mortgage, shall issue to the purchaser a deed in foreclosure or other appropriate document entitling the purchaser to possession of the property. On foreclosure of a non-HUD mortgage the purchaser shall receive a deed in foreclosure subject to the right of redemption provided in Section 110.

(d) Eligible purchasers at all foreclosure sales of interests in tribal property are the Tribes, the Fort Peck Housing Authority, or a member of the Tribes.

**(AMENDED AS PER RESOLUTION NO. 607-98-7, DATED 07/13/98.)**

**Sec. 109. Deficiency judgement.**

Upon foreclosure, no deficiency judgement on account of the foreclosed mortgaged or note(s) secured by the mortgage, shall be rendered for the unpaid balance of the purchase price of the mortgaged property.

**Sec. 110. Right of redemption.**

(a) HUD mortgages. There shall be no period of redemption from any sale in foreclosure of HUD mortgage.

(b) Non-HUD mortgages or liens. The mortgagor -debtor who occupies the property as a home for himself and his family may redeem the property from the purchaser at foreclosure sale within six months after the sale by paying the purchaser:

(1) The amount of the foreclosure purchase price with interest at the rate fixed in the judgement of foreclosure to the date of payment;

(2) The amount of any taxes and insurance premiums paid by the purchaser;

(3) The reasonable cost of repairs and maintenance paid by the purchaser after the sale, with interest from the date of the expenditures to the date of payment;

(4) If the purchaser is a subordinate lienholder the amount of the lien with interest to the date of payment;

(5) The costs and expenses of the foreclosure litigation; and

(6) The reasonable attorneys' fees as fixed by the Court, any agreement between the parties for a larger sum notwithstanding.

**Sec. 111. Non-HUD mortgagor's possession of lands during the period of Redemption.**

The purchaser at a non HUD mortgage foreclosure is not entitled to the possession during the six-month period of redemption allowed by law so long as the mortgagee occupies the land as a home for himself and his family. This right may not be waived. The intent is to ensure to such mortgagor, possession of the property during the period of redemption.

**Sec. 112. Cure of default.**

(a) HUD mortgages. Prior to the entry of a judgement of foreclosure, any mortgagor, or subordinate lienholder, may cure the mortgage default by making full payment of the delinquency together with interest at the rate fixed in the mortgage, plus all reasonable costs and expenses of the litigation and reasonably attorneys' fees approved by the Court.

(b) Mortgages and liens other than HUD mortgages. At any time prior to the expiration of the six-month period of redemption, any mortgagor or subordinate lienholder may cure the mortgage default by paying to the mortgagee in cash, cashier's or certified check the full amount due and owing on the mortgage with interest at the rate fixed in the mortgage, all reasonable costs and expenses of the litigation, plus reasonable attorneys' fees approved by the Court.

**Sec. 113 Foreclosure evictions.**

Foreclosure evictions shall be governed by the provisions of Title 15 of this Code.

**Sec. 114. No merger of estates.**

There shall be no merger of estates by reason of the execution of a lease or a leasehold mortgage or the assignment or assumption of the same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the leasehold mortgage.

**Sec. 115. Intervention.**

The Tribes, or any lessor, shall have the right to intervene in any foreclosure proceeding affecting their interests. Intervention by the Tribes shall not constitute a waiver of sovereign immunity, or a departure from the Tribes' policy not to waive sovereign immunity.

**(AMENDED AS PER RESOLUTION NO. 3185-97-8, DATED 08/11/97.)**

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 26 – Tribal-State Agreements Oversight Commission**

**Chapter 1. Ordinance Establishing Sections:**

Sec. 101. Creation of Commission.....1  
Sec. 102. Composition of the Commission, appointment and term.....1  
Sec. 103. Qualifications of Commission members.....1  
Sec. 104. Oath of Office.....1  
Sec. 105. Duties of the Commission. ....2  
Sec. 106. Compensation and bond of Commission members.....2  
Sec. 107. Suspension and removal of Commission members.....2  
Sec. 108. Disqualification of Commission member in particular cases.....2

**Sec. 101. Creation of Commission.**

There is hereby established the Tribal State Agreements Oversight Commission.

**Sec. 102. Composition of the Commission, appointment and term.**

The Commission shall consist of three (3) members, appointed for a term of three (3) years each by a majority vote of those voting at a meeting of the Tribal Executive Board at which a quorum is present; provided however that the initial Commission shall have one member serving a term of three(3) years, one member serving a term of two (2) years, and one member serving a term of one (1) year, such initial terms as desig-

nated by the Tribal Executive Board. The Commission shall by majority vote designate which member shall serve as Chairperson.

**Sec. 103. Qualifications of Commission members.**

To be eligible to hold office of Commission member, a person

- (1) Must be at least twenty-five (25) years of age;
- (2) Must have at least a high school education or its equivalent;
- (3) Must be of high moral character and integrity;
- (4) Must never have been convicted of a Felony offense in any court for which he/she has not received a pardon;
- (5) Must be physically able to carry out the duties of the office, and

(6) Shall be bondable by a surety company satisfactory to the Tribal Executive Board. Members of the Tribal Executive Board may serve as members of the Commission.

**(Amended as per Resolution No. 1063-92-6, dated 06/08/92.)**

**Sec. 104. Oath of Office.**

On taking office, each member of the Commission shall take an oath as follows:

“I, \_\_\_\_\_, do solemnly swear that I will administer justice and do equal right without respect to persons and will truly, faithfully and



impartially discharge and perform all the duties incumbent upon me a (member) if the Tribal-State Agreements Oversight Commission according to the best of my abilities and understanding. So help me God.”

**Sec. 105. Duties of the Commission.**

The Commission shall, subject to the supervision of the Tribal Executive Board, administer and implement all agreements and compacts between the Tribes and the State of Montana relating to taxation and gaming, and make recommendation and reports to the Tribal Executive Board on any amendments which should be made to these agreements and compacts and any steps which should be taken to improve relations between the Tribes and the State.

**Sec. 106. Compensation and bond of Commission members.**

The compensation of Commission members shall be fixed by the Tribal Executive Board. The rates of compensation so established may not be decreased during a member’s term of office. Commission members shall be bonded by a surety bond satisfactory to the Tribal Executive Board. Commission members shall receive compensation only for those days they actually work as members of the Commission, including meetings they are required to attend as members of the Commission.

**Sec. 107. Suspension and removal of Commission members.**

(a) Upon written charges of specific misconduct in office or permanent physical or medical disability to carry out the duties of office, adopted by a majority vote of those voting at a meeting of the Tribal Executive Board at which a quorum is present, the Tribal Executive Board may initiate proceedings to remove the Chairman or any other members of the Commission from office. “Misconduct” as used in this Section, shall mean:

- (1) Conviction of a Felony offense;
- (2) Abusive or incompetent performance of duties in office, or repeated failure to perform duties of office;

(3) Self-dealing or biased decision making in performing the duties of office.

(b) All charges shall be in writing and served on the Commission member personally, or by certified or registered mail, return receipt requested, not less than ten (10) days prior to the date of hearing before the Tribal Executive Board on the charges. A member proposed to be removed shall be given an opportunity to answer by written or oral presentation before the Tribal Executive Board, to have the charges proven only by sworn testimony of witnesses and documentary evidence, to have the right to cross-examine witnesses and to present his/her own witnesses and to have the right to be represented by counsel at his/her own expense at the hearing. After the hearing, or default, a member may be removed for specific misconduct in office by a majority of those voting at a meeting of the Tribal Executive Board at which a quorum is present. The decision of the Tribal Executive Board shall be final.

**Sec. 108. Disqualification of Commission member in particular cases.**

A member of the Commission shall disqualify himself/herself in any matter before the Commission in which his/her impartiality might reasonably be questioned, in which he/she has any personal bias or prejudice concerning any party, in which he/she or member of his/her immediate family has any financial or other interest in the matter to be considered, has acted or is acting as an attorney respecting the matter, or in which he/she might otherwise appear to be biased or prejudiced.

**(Amended as per Resolution No. 1063-92-6, dated 06/08/92.)**

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 27 – Licensing and Regulation of Bingo and other Games of Chance**

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## Chapter 1. Findings

### Sections:

Sec. 101. The Tribal Executive Board finds: .1

#### Sec. 101. The Tribal Executive Board finds:

(a) That operation of bingo and other games of chance by the Tribes and tribal subdivisions is valid means of promoting tribal economic development and the health and welfare of tribal members;

(b) That, under the principles established by the United States Supreme Court in *California v. Cabazon Band of Mission Indians*, 94 L. Ed. 2d (1987), Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the activity is not specifically prohibited by Federal law and is conducted within a state, such as Montana, which does not criminally prohibit the activity;

(c) That the United States Congress has recently enacted Public Law 100-497, the Indian Gaming Regulatory Act, providing for certain federal regulation of Indian gaming;

(d) That tribal regulation of gaming activity on the Reservation is vital to the protection of trust lands on the Reservation and to the protection of the interests of the Tribes and their members.

## Chapter 2. Definitions

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#### Sec. 201. Class 1 gaming.

"Class 1 gaming" means:

(a) Social games played solely for prizes of minimal value;

(b) Traditional forms of Indian gaming and bingo (as defined in Section 202) engaged in as a part of, or for the promotion of tribal ceremonies, celebrations, or powwows, provided that total gross receipts from such gaming, including bingo, do not exceed fifty thousand dollars (\$50,000.00) in any year for any single ceremony, celebration or powwow.

#### Sec. 202. Class 2 gaming.

The term "Class 2 gaming" means:

(a) Bingo. The game of chance which is played for prizes, including monetary prizes, with cards bearing numbers or other designations, in which the holder of the card covers such numbers or designations when objects, similarly numbered or designed, are drawn or electronically determined, and in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards. Electronic computer or technological aids--such as computer-generated number sequences--can be used in connection with Class 2 bingo, so long as all players are playing against each other to achieve the same sequences. Computerized or "video" bingo, in which players play against the machine rather than against each other, are Class 3 games, subject to Chapter 5 of this Title. Class 2 gaming shall not include bingo included as Class 1 gaming in Section 201.

(b) Other games of chance. Games similar to bingo, including, if played at the same location as bingo, pull-tabs, lotto, punch boards, tip jars, and "instant bingo", in which prizes are awarded on the basis of a designated winning number or numbers, color or colors, symbol or symbols determined by chance.

#### Sec. 203. Class 3 gaming.

All forms of gaming that are not Class 1 or Class 2 gaming, including:

(a) Electronic or electromechanical facsimiles of any game of chance or slot machines of any kind, including "video bingo".

(b) All banking card games; that is, card games played against the house, including baccarat, chemin de fer, and blackjack.

(c) All simulcast racing.

(d) Lottery games.

(e) Live Keno and Live Poker.

**(AMENDED AS PER RESOLUTION NO. 790-92-4, DATED 04/27/92). (AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93).**

**Sec. 204. Traditional forms of Indian gaming.**

(a) Gaming activities such as "stick" or "bone" games played as part of tribal ceremonies, celebrations, or powwows.

(b) Games such as rodeos or horse races, including those for which purses or prizes are awarded, that are played as part of tribal ceremonies, celebrations, or powwows. This does not include games operated prior to a ceremony, celebration, or powwow for the purpose of raising funds for the ceremony, celebration, or powwow; these are considered Class 2 games unless they meet the definition set forth in Section 205, below.

**Sec. 205. Social games for prizes of minimal value.**

Games in which the total value of prizes awarded during the calendar year does not exceed two thousand, five hundred dollars (\$2,500.00).

**Sec. 206. Tribal Subdivision.**

(a) The community organization of each Reservation community.

(b) Nonprofit entities organized to raise funds and operate programs to promote the health and welfare of the tribal members and/or to organize and operate ceremonies, celebrations, and powwows.

(c) Tribal school boards.

**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93).**

**Sec. 207. Net revenues.**

Gross revenues of gaming activity less amounts paid out as, or paid for, prizes and total operating expense, excluding management fees.

**Sec. 208. Primary management official.**

(a) The person having management responsibility for a management contract;

(b) Any person who has authority;

(1) To hire and fire employees; or

(2) To set up working policy for the gaming operation; or

(c) The chief financial officer or other person who has financial management responsibility.

**(AMENDED AS PER RESOLUTION NO. 176-93-12, DATED 12/13/93).**

**Sec. 209 Bingo machine.**

An electronic video gambling machine that, upon insertion of cash, is available to play bingo. The machine utilizes a video display and microprocessor(s) in which, by chance, the player may receive credits that may be redeemed for cash. The term does not include a slot machine.

**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93).**

**Sec. 210. Draw poker machine.**

An electronic video gambling machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker. The machine utilizes a video display and microprocessor(s) in which, by the skill of the player, by chance, or both, the player may receive credits that may be redeemed for cash. The term does not include a slot machine.

**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93).**

**Sec. 211. Keno machine.**

An electronic video gambling machine that, upon insertion of cash, is available to play keno. The machine utilizes a video display and microprocessor(s) in which, by chance, the player may receive credits that may be redeemed for cash. The term does not include a slot machine.

**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93).**

**Sec. 212. Simulcast racing.**

A live broadcast of an actual horse-race at the time it is run, including races of local or national prominence.

**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93)**

**Sec. 213. Lottery games.**

The term “lottery games” means any procedure, including any on-line or other procedure using a machine or electronic device, by which one or more prizes are randomly distributed among persons who have paid for a chance to win a prize but does not include any game in which a player competes against or plays with any other person.

**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93).**

**Sec. 214. Key employee.**

(a) A person who performs one or more of the following functions:

- (1) Bingo caller;
- (2) Counting room supervisor;
- (3) Chief of security;
- (4) Custodian of gaming supplies of cash;
- (5) Floor manager;
- (6) Pit boss;
- (7) Dealer;
- (8) Croupier;
- (9) Approver of credit; or
- (10) Custodian of gambling devices including persons with access to cash and accounting records within such devices;

(b) If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year; or

(c) If not otherwise included, the four most highly compensated persons in the gaming operation.

**(AMENDED AS PER RESOLUTION NO. 176-93-12, DATED 12/13/93).**

**Chapter 3. Class 1 Gaming**

**Sections:**

Sec. 301. Regulation of Class 1 gaming. .... 3

**Sec. 301. Regulation of Class 1 gaming.**

This Title does not apply to class 1 gaming as defined in Chapter 2, except as provided in this Section. The Tribes reserve the right to inspect the premises where the Class 1 game is held and to obtain and review financial information concerning the game in order to determine whether it meets the definition of a Class 1 game. In addition, Class I games may be subject to other tribal ordinance and regulations designed to protect the health and welfare of tribal members.

**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93).**

**Chapter 4. Licensing Class 2 and Class 3 Gaming**

**Sections:**

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Sec. 402. Ownership of Class 2 games. .... 4

Sec. 403. Status as a tribal subdivision. .... 4

Sec. 404. Licenses for Class 2 gaming activities. .... 4

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Sec. 407. Conditions of the tribal license. .... 5

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Sec. 416. Protection of the Environment and Public Health and Safety. .... 10

**Sec. 401. Regulation of Class 2 and Class 3 Gaming.**

(a) All Class 2 and Class 3 gaming operated by the Tribes, Indian organizations, or individual Indians within the Fort Peck Reservation shall be conducted according to the provisions of this Title.

(b) All individually owned video gambling machines shall meet the requirements of the Tribal-State Gambling Compact and Appendix A to that Compact.

(c) The Tribes shall not license any individually owned Class 3 gaming operations except for those electronic video games permitted under the Tribal-State Compact.

**(AMENDED AS PER RESOLUTION NO. 690-98-8, DATED 08/06/98).**

**Sec. 402. Ownership of Class 2 games.  
(REPEALED AS PER RESOLUTION NO. 690-98-8, DATED 08/06/98).**

**Sec. 403. Status as a tribal subdivision.**

Each entity seeking designation as a tribal subdivision for the purpose of this Title shall file an application with the Tribal Executive Board. The Board shall prepare forms for this purpose. The application shall provide information on the nature and purpose of the entity and the programs it operates, and shall demonstrate that the uses to which it puts its funds conform to Section 409. This requirement is waived for the community organization of each reservation community; these organizations shall be designated as tribal subdivisions effective on enactment of this Title by the Board. The decision of the Board on any application shall be final.

**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93).**

**Sec. 404. Licenses for Class 2 gaming activities.**

The Tribes shall issue a license for each place, facility, or location where Class 2 and Class 3 gaming is conducted. For each location licensed, an application must be filed that provides the following information:

(a) A description of the premises in which the game is to be held, and proof that the applicant is the owner of such premises, or lessee of such premises, for at least the term of the license;

(b) Agreement by the applicant to accept and abide by all applicable provisions of this Title and all conditions of the tribal license;

(c) Satisfactory proof that notice of the application has been posted in a prominent, noticeable place in the Tribal Office and on the premises where the game is to be held for at least thirty (30) days prior to consideration by the Board, and published at least twice in a local newspaper serving the Reservation. The notice shall state the date, time and place when the application shall be considered by the Tribal Executive Board pursuant to Section 406.

(d) Each licensee under this section agrees to pay on a quarterly basis sixty percent (60%) of the net revenues from the operation to the Tribes.

(e) Each licensee under this section agrees to pay any assessment levied by the National Indian Gaming Commission.

(f) Each licensee under this section operating Class 3 operations shall suspend operations between the hours of 2:00 a.m. to 8:00 a.m.

(g) The prize limit for individually owned video gambling devices shall be \$800.00.

**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93). (AMENDED AS PER RESOLUTION NO. 690-98-8, DATED 08/06/98).**

**Sec. 405. License fees and duration of license.**

Each application shall be accompanied by a fee of fifty dollars (\$50.00). The license shall expire on December 31st of the calendar year in which it is issued.

**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93).**

**Sec. 406. Hearing on application for a license.**

All applications for a license shall be considered by the Tribal State Agreements Oversight Commission in open session at which the applicant, his/her attorney and any person protesting the application shall have the right to be present,

and to offer sworn oral or documentary evidence relevant to the application. The proceedings of the Commission shall be transcribed. After the hearing, the Commission shall make a written recommendation to the Tribal Executive Board whether to grant or deny the application. The recommendation, the transcript of the proceedings and all documentary evidence shall be submitted to the Tribal Executive Board. The Tribal Executive Board shall consider the record made in the proceedings before the Commission, all evidence and the recommendation of the Commission, and shall then make a final determination of whether to grant or deny the application. In the event that the applicant is a member of the Commission or the Board, or a member of the immediate family of the Commission or of the Board, such member shall not vote on the application or otherwise participate in the consideration of it. The decision of the Tribal Executive Board shall be final.

**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93). (AMENDED AS PER RESOLUTION No. 2660-93-5, DATED 05/24/93).**

**Sec. 407. Conditions of the tribal license.**

Any tribal license issued under this Title shall be subject to such reasonable conditions as the Board shall fix, including, but not limited to the following:

(a) The licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises. The premises shall be in full compliance with Title 14, Health and Sanitation, of the Comprehensive Code of Justice;

(b) The licensed premises shall be subject to patrol by the tribal and BIA police force, for the purpose of enforcing tribal law, and the licensee shall cooperate at all times with such police and law officers;

(c) The licensed premises shall be open to inspection by duly authorized tribal officials and officials of the National Indian Gaming Commission at all times during the regular business hours;

(d) The premises covered by the tribal license shall be closed during polling hours on tribal election days, and on special days of observance, as designated by the Board;

(e) There shall be no discrimination in the operations under the tribal license by reason of race, color or creed, provided, however, that a licensee may give a preference in employment to Indians;

(f) No person who is under the age of eighteen (18) shall participate nor shall be allowed to participate in any manner in the operation of any game. No person who is under the age of eighteen (18) shall play any Class 2 or Class 3 game. It shall be the responsibility of the licensee and those persons physically operating the games to determine that no unauthorized person is allowed to play in or participate in any manner in the operation of any bingo game;

(g) All licensees shall impose a uniform charge on all players for the bingo cards to be used in each bingo game. The rate to be charged players for cards shall be fixed by each licensee and posted conspicuously on the premises. No person shall be allowed to play in a game without first paying this uniform charge, with the exception that free games may be awarded as prizes. Each person paying for the opportunity to participate in a bingo game shall be given a bingo card which shall be numbered. Each card issued shall represent a specific amount of money which has been paid to the licensee. The amount of prize money represented by each card issued shall be clearly made known to all players prior to anyone paying to participate in the activity;

(h) Bingo cards shall be sold and paid for, only in advance for use in a specified game or games. All sales of bingo cards shall take place upon the premises and upon the occasion that the bingo games for which the card is being sold are conducted. No cards may be sold on credit or as a gift or loan of any kind whatever;

(i) No licensee shall allow a person who manages or receives any compensation, directly or indirectly, for the operation of any game conducted by the operator to play in a bingo game or game of chance while on duty;

(j) Each numbered ball, or other device, used in a bingo game for the selection of numbers to be called in play shall be the same weight as each of the other balls or devices used for the purpose in that game. Immediately following the calling of each number in a bingo game, the caller shall turn the portion of the ball or other device used to determine which number and letter to the participants in the game so that participants may know that the proper number has been called out. Nothing in this Section shall prohibit the use of electronic, computer or other technological aids in games of bingo or other games of chance provided that such aids are used properly and fairly;

(k) No beverage containing alcohol, including but not limited to, beer or liquor, shall be offered or awarded as a prize or in lieu of a prize for winning at any of the activities authorized by this Title;

(l) No firearms, air guns which are capable of discharging dangerous projectiles, including but not limited to B.B.'s or CO2 guns, rifles, shotguns, pistols, or revolvers; shall be offered or awarded as a prize or in lieu of a prize for winning at any of the activities authorized by this ordinance;

(m) No person involved in the operation of any activity authorized by this ordinance shall, directly or indirectly, in the course of such operation employ any device, scheme, or artifice to defraud; make any untrue statement of a fact, or omit to state a fact necessary in order to make a statement not misleading in consideration of the circumstances under which such statement was made; engage in any act, practice, or course of operation as would operate as a fraud or deceit upon any person;

(n) Each licensee shall display its license in a conspicuous location in the gaming establishment.

**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93). (AMENDED AS PER RESOLUTION NO. 690-98-8, DATED 08/06/98).**

**Sec. 408. Assignment or transfer.**

No license issued under the ordinance shall be assigned or transferred.

**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93).**

**Sec. 409. Denial, cancellation and suspension.**

(a) The licensee must have, and exercise complete control over the premises being used for bingo or other games of chance at all times said games are being played. The licensee and his/her employees shall be legally responsible for any violation of the Title. Any license issued hereunder may be canceled by the Tribal Executive Board for the breach of any of the provisions of this ordinance or of the tribal license. A hearing on a proposed cancellation shall be held before the Tribal-State Agreements Oversight Commission after ten (10) days notice of the claimed breach to the licensee. Such notice shall be issued by the Tribal Executive Board. If the Tribes are the licensee, notice shall be served on the manager of the tribal operation. A licensee may be suspended by the Tribal Executive Board during the ten (10) day period by a three quarters (3/4) vote of the Board at a meeting at which a quorum is present. The time and place of the hearing shall be posted in the tribal office, and if time permits, in a local newspaper serving the Reservation. The hearing shall be held by the Commission in open session at which the licensee, his/her attorney and any person with an interest in the proceeding shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the breach charged. The proceedings of the Commission shall be transcribed. After the hearing, the Commission shall make a written recommendation to the Tribal Executive Board on whether to cancel the license. The recommendation, the transcript of the proceedings, and all documentary evidence shall be submitted to the Tribal Executive Board, which shall make the decision on the cancellation. The decision of the Board shall be final. **(AMENDED AS PER RESOLUTION NO. 2660-93-5, DATED 05/24/93).**

(b) The Tribe shall not grant a license to any individual person or non-tribal entity that would



not be eligible to receive a license under the Indian Gaming Regulatory Act.

**(AMENDED AS PER RESOLUTION NO. 690-98-8, DATED 08/06/98).**

**Sec. 410. Uses of net revenues of gaming activities.**

Net revenues of the gaming activity must be used for the following purposes:

(a) To fund tribal government operations or programs;

(b) To provide for the general welfare of the Indian tribe and its members, including to fund programs operated by a tribal subdivision that contribute to the general welfare;

(c) To promote tribal economic development;

(d) To donate to charitable organizations; or

(e) To help fund operations of local government agencies, including tribal subdivisions.

**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93).**

**Sec. 411. Annual outside audit.**

Each licensee, including the Tribes, shall arrange for an annual outside audit of the operation for presentation to the National Indian Gaming Commission. The audit shall examine the uses of the net revenues and all contracts for amounts in excess of twenty-five thousand dollars (\$25,000.00) annually (except contracts for legal or accounting services). The tribal subdivisions shall provide their audit reports to the Tribes for review at least thirty (30) days before they are due at the Commission, and the Tribes shall forward all audit reports to the Commission.

**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93).**

**Sec. 412. Reports to the Tribes.**

Each licensee shall submit to the Tribal Executive Board, on a quarterly basis, a financial report for the previous quarter's operations. Such reports shall be signed, under oath, by an official or representative of the licensee, who in the case of a tribal operation shall be the operation's manager. The reports shall document:

(a) Monthly attendance at scheduled gaming events;

(b) Gross receipts for each month;

(c) Names of each employee and the salary or other compensation paid to each;

(d) All expenses in the operation of the games, specifying all payments to vendors and contractors;

(e) The amount paid in prizes each month;

(f) All bank deposits made from proceeds of the bingo games, including any interest received on such deposits;

(g) All bank withdrawals, and the purpose of each;

(h) All expenditures of net proceeds including the amount, person or organization paid, date, and purpose of such expenditures.

**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93).**

**Sec. 413. Licenses for Key Employees and Primary Management Officials.**

(a) Application forms.

(1) The following notice shall be placed on the application form for a key employee or a primary management official before that form is filled out by an applicant: In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities

while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position. The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN May result in errors in processing your application.

(2) The Tribal-State Agreements Oversight Commission shall notify existing key employees and primary management officials in writing that they shall either:

(i) Complete a new application form that contains a Privacy Act notice; or

(ii) Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

(3) The following notice shall be placed on the application form for a key employee or a primary official before that form is filled out by an applicant. A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment. (U.S. Code, title 18, section 1001.)

(4) The Tribal-State Agreements Oversight Commission shall notify existing key employees and primary management official in writing that they shall either:

(i) Complete a new application form that contains a notice regarding false statements; or

(ii) Sign a statement that contains the notice regarding false statements.

(b) Background investigations.

(1) The Tribal-State Agreement Oversight Commission shall request from each primary management official and from each key employee all of the following information:

(i) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

(ii) Currently and for the previous 5 years: business and employment positions held, ownership interests in those businesses, business and residence addresses and drivers license numbers;

(iii) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period or residence listed under paragraph (b)(1)(ii) of this section;

(iv) Current business and residence telephone numbers;

(v) A description of any existing and previous business relationships with Indian Tribes, including ownership interest in those businesses;

(vi) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(vii) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(viii) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;

(ix) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within 10 years of the date of the application, the name and address of the court involved and the date and disposition;

(x) For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (b)(1)(vii) or (b)(1)(ix) of this section, the criminal charge, the name and address of the court involved and the date and disposition;

(xi) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

(xii) A current photograph;

(xiii) Any other information the Tribes deem relevant; and

(xiv) Fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. § 522.2(h).

(2) The Tribal-State Agreement Oversight Commission shall conduct an investigation sufficient to make a determination under subsection (c) below. In conducting a background investigation, the Oversight Commission or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

(c) The Tribal Executive Board shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. If the Executive Board determines that employment in a gaming operation. If the Executive Board determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of suitable, unfair or illegal practices and methods and activities in the conduct of gaming, a tribal gaming operation shall not employ that person in a key employee or primary management official position. No one who has been convicted of a felony in any tribal, state or federal court shall be eligible for employment as a primary management official or key employee.

(d) Procedures for forwarding applications and reports for key employees and primary management officials to the National Indian Gaming Commission.

(1) When a key employee or primary management official begins work at a gaming operation authorized by this ordinance, the Tribal-State Agreements Oversight Commission shall forward to the National Indian Gaming Commission a completed application for employment and conduct the background investigation and make the determination referred to in subsection (c) of this section.

(2) The Tribal-State Agreements Oversight Commission shall forward the report referred to in subsection (e) of this section to the National Indian Gaming Commission within 60 days after an employee begins work or within 60 days of the approval of this ordinance by the Chairman of the National Indian Gaming Commission.

(3) The gaming operation shall not employ as a key employee or primary management official a person who does not have a license after 90 days.

(e) Report to the National Indian Gaming Commission.

(1) Pursuant to the procedures set out in subsection (d) of this section, the Tribal-State Agreements Oversight Commission shall prepare and forward to the National Indian Gaming Commission an investigative report on each background investigation. An investigative report shall include all of the following:

(i) Steps taken in conducting a background investigation;

(ii) Results obtained;

(iii) Conclusions reached; and

(iv) The bases for those conclusions.

(2) The Tribal-State Agreement Oversight Committee shall submit, with the report, a copy of the eligibility determination made under subsection (c) of this section.

(3) If a license is not issued to an applicant, the Tribal-State Agreements Oversight commission:

(i) Shall notify the National Indian Gaming Commission; and

(ii) May forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records System.

(4) With respect to key employees and primary management officials, the Tribal-State Agreements Oversight Commission shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman of the National Indian Gaming Commission or his or her designee for no less than three (3) years from the date of termination of employment.

(f) Granting a gaming license.

(1) If, within a thirty (30) day period after the National Indian Gaming Commission receives a report, the National Indian Gaming Commission notifies the Tribes that it has no objection the is-

suance of a license pursuant to a license application filed by a key employee or a primary management official for whom the tribe has provided an application and investigative report to the National Indian Gaming Commission, the Executive Board may issue a license to such applicant.

(2) The Tribal-State Agreements Oversight Commission shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning key employee or a primary management official who is the subject of a report. Such a request shall suspend the 30-day period under paragraph (f)(1) of this section until the Chairman of the National Indian Gaming Commission receives the additional information.

(3) If, within the thirty (30) day period described above, the National Indian Gaming Commission provides the Tribes with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Tribes have provided an application and investigative report the National Indian Gaming Commission, the Executive Board shall reconsider the application, taking into account the objections itemized by the National Indian Gaming commission. The Executive Board shall make the final decision whether to issue a license to such applicant.

(g) License suspension.

(1) If, after the issuance of a gaming license, the Tribes receive from the National Indian Gaming Commission reliable information indicating that a key employee or primary management official is not eligible for employment under subsection (c) above, the Executive Board shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

(2) The Tribal-State Agreements Oversight Commission shall notify the licensee of a time and place for a hearing on the proposed revocation of a license.

(3) After a revocation hearing, the Tribal-State Agreements Oversight Commission shall recommend to the Executive Board to revoke or to reinstate a gaming license. The Executive

Board shall decide whether to revoke or reinstate a gaming license and notify the National Indian Gaming Commission of its decision.

(h) Each license shall be effective for a period of one (1) year. Prior to expiration of the license, the licensee shall update the information produced during the original investigation, and if the individual still meets the applicable standards, the Executive Board shall renew the license for another year. Notice of any such renewals shall be forwarded to the National Indian Gaming commission by the Tribal-State Agreements Oversight Commission.

**(AMENDED AS PER RESOLUTION NO. 690-98-8, DATED 08/06/98).**

**Sec. 414. Raffles.**

Nothing in this Title shall be construed to prohibit any raffle or like activity conducted by a religious, charitable or other non-profit organization as permitted by Section 415 (b) (3) of Title 7 of the Code of Justice, or to require such organization to obtain a license to operate such a raffle.  
**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93).**

**Sec. 415. Criminal penalties.**

Operations of a Class 2 gaming activity without a license shall constitute a Class A misdemeanor. Violation of any other provision of Chapter 4 of this Title shall constitute a Class B misdemeanor.  
**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93).**

**Sec. 416. Protection of the Environment and Public Health and Safety.**

Class 2 gaming facilities shall be constructed, maintained, and operated in a manner that adequately protects the environment and the public health and safety.

**(AMENDED AS PER RESOLUTION NO. 176-93-12, DATED 12/13/93).**

**Chapter 5. Class 3 Gaming**

**Sections:**

Sec. 501. Permitted Class 3 games. .... 11

Sec. 502. Conditions of Class 3 games. .... 11  
 Sec. 503. Special conditions on simulcast racing..... 11  
 Sec. 503-A. Special conditions on lottery games. .... 11  
 Sec. 504. Special conditions for bingo, draw Poker and Keno machines..... 11  
 Sec. 505. Management contracts..... 15  
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**Sec. 501. Permitted Class 3 games.**

The Tribes may conduct the following Class 3 games:

- (a) Bingo machines;
- (b) Draw poker machines;
- (c) Keno machines;
- (d) Simulcast racing;
- (e) Lottery games;
- (f) Live keno; and
- (g) Live Poker.

**(AMENDED AS PER RESOLUTION NO. 2163-93-2, DATED 02/08/93).**

**Sec. 502. Conditions of Class 3 games.**

All Class 3 games shall comply with all the requirements established for Class 2 games in Chapter 4 of this ordinance except for Sections 407 (d), (f), (g), (h) and (j) and in addition with the following conditions:

(A) Prizes shall be in tangible personal property, free games, credits or cash.

(B) A person who is not physically present on the premises where the game is actually conducted shall not be allowed to participate in the game.

(C) The consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play the game at the time the game is played. No check, credit card, note, IOU, or other evidence of indebtedness shall be offered or accepted as part of the price of participation in such game or as payment of a debt incurred therein.

(D) No person who is under the age of eighteen (18) years shall participate nor shall be allowed to participate in any manner in the operation of any Class 3 game. No person who is under

the age of eighteen (18) years shall play in any Class 3 game. It shall be the responsibility of the licensee of any Class 3 game and those persons physically operating the games to determine that no unauthorized person is allowed to play in or participate in any manner in the operation of any bingo game.

**(AMENDED AS PER RESOLUTION NO. 2660-93-5, DATED 05/24/93).**

**Sec. 503. Special conditions on simulcast racing.**

All simulcast racing operated by the Tribes shall be with a network approved to operate within Montana.

**Sec. 503-A. Special conditions on lottery games.**

Lottery games may be conducted on the Fort Peck Reservation under the following conditions:

(1) Such games are authorized by the Montana Lottery and subject to the provisions of Section 23-7-101 through 23-7-412, MCA, or;

(2) Such games are conducted and operated by the Tribes in a manner which provides security at least as stringent as the Montana Lottery.

**Sec. 504. Special conditions for bingo, draw Poker and Keno machines.**

All bingo, draw poker, and Keno machines shall also comply with the following conditions:

(a) No prize may exceed the value of one thousand dollars (\$1,000.00) 20-17 for each individual award.

(b) No license shall make available for play more than twenty (20) machines in any single premises, except that tribal organization facilities shall not make available for play more than one hundred (100) machines in any single premise.

(c) The expected payback value of one credit played shall be at least eighty percent (80%) of the value of a credit.

(d) Each video gambling machine model or modification must:

(1) Be inspected for approval and licensure. Any machine sold or operated may be inspected. Any approval granted to a person is not

transferable. Immediate access must be allowed to each machine. Keys to allow access to a machine for purposes of inspection may be provided or must be immediately available on the premises. Machines for which a substantial modification of a series of minor modifications whose total result is substantial must meet all of the specific law or rule requirements in effect at the time of submission. Only those machines which are owned or operated and to which applied are required to meet those specifications in effect at time of submission. A determination that a modification is substantial may be contested;

(2) Be operated by the players in the manner specified by this ordinance;

(3) Not have any switches, jumpers, wire posts, or other means of manipulation that could affect the operation or outcome of a game. The machine may not have any functions or parameters adjustable by and through any separate video display or input codes except for the adjustment of features that are wholly cosmetic or other operational parameters as approved. This is to include devices known as "knockoff switches";

(4) Offer only bingo, draw poker and Keno as defined in this ordinance and operate in the following manner:

(i) In the case of draw poker, after the initial cards have been dealt, the player may be allowed to raise his/her wager but the player may not exceed the overall statutory bet limit;

(ii) The game must display the combinations for which credits will be awarded and the number of credits awarded for each combination;

(iii) One credit may not exceed twenty five cents (\$.25) in value;

(iv) The machine must have three (3) locks: one in the area containing the logic board and software for the game; one to the logic board itself; and the other to the area housing the cash, except that a separate cash compartment shall not be required for coins necessary to pay prizes in a machine which pays prizes through a drop hopper. EPROMS contained on the logic board must be readily accessible from the front of the machine.

(v)(A) The machines may have two (2) mechanisms that accept coins, hereinafter referred to as "mechanism 1" and "mechanism 2". These mechanisms must have devices referred to as "lockouts" which prohibit the machine from accepting coins during periods when the machine is inoperable;

(v)(B) The machine may have a machine manufacturer mechanism that accepts cash in the form of bills that do not exceed five dollars (\$5.00);

(vi) In the case of poker, each machine must use a color display with image of cards that closely resemble the standard poker playing cards;

(vii) the machine must be capable of printing a ticket voucher for all credits owed the player at the completion of each game, or machines utilizing coin drop hoppers are permitted provided they are monitored by a game transaction management/ reporting system of the type described in a paragraph A d (xi) which has been approved by the State of Montana. A valid ticket must contain the following:

(A) The name of the licensed establishment;

(B) The name of the city, town, or county in which the licensed establishment is located;

(C) The machine serial number or other unique identification number for the machine;

(D) The time of day in hours and minutes in a twenty four (24) hour format;

(E) The current date;

(F) The program name and revision;

(G) The value of the prize in numbers;

(H) The value of the prize in words;

(I) The sequential ticket number of the ticket voucher;

(viii) The printing mechanism must be located in a locked area of the machine to insure the safekeeping of the audit copy. The logic board shall be mounted within the logic area so it is not visible upon opening the logic area door. The printing mechanism must have a paper sensing device that upon sensing a "low paper" condition

will allow the machine to finish printing the ticket and prevent further play. The machine must recognize a printer power loss occurrence and cease play until power has been restored to the printer and the machine is capable of producing a valid ticket;

(ix) The machine must have non-resettable mechanical meters housed in a readily accessible locked machine area. The mechanical meters must be manufactured in such a way as to prevent access to the internal parts without destroying the meter. Meters must be hardwired (no quick connects will be allowed in the meter wiring system). A validating identification sticker attached to the mechanical meters to verify the meters are assigned to a specific licensed machine may be required. The meters must keep a permanent record of:

(A) Total credits accepted by the coin acceptor mechanism(s), and bill acceptor (if applicable);

(B) Total credits played;

(C) Total credits won;

(D) Total credits paid;

(x) The machine must contain electronic metering, using meters that record and display the following on the video screen;

(A) Total credits in mechanism(s) 1 and 2 (if applicable);

(B) Total credits through the bill acceptor (if applicable);

(C) Total credits, total credits played, total credits won and total credits paid;

(D) Total games played and total games won; and

(E) Any other metering required by this ordinance.

(xi) The machine must issue by activation of an external key switch, an accounting ticket containing a performance synopsis of the machine and progressive accounting data is applicable. The printing of all totals from the electronic meters shall occur automatically each time access occurs to either the logic compartment or any compartment where cash is collected. Whenever electronic meters are reset, each machine

must produce a full accounting ticket both before and after each resetting. The tickets must contain:

(A) If a machine is attached to and communicates electronically with a game transaction management/ reporting system, it is not required to have a ticket printer. However, the game transaction management/ reporting system must each day collect from the machine the following information:

(1) The name of the licensed establishment;

(2) The name of the city, town, or county in which the licensed establishment is located;

(3) The serial number of other unique identification number for the machine;

(4) The time of day, in hours and minutes in a twenty four (24) hour format;

(5) The current date;

(6) The program name and revision number; and

(7) The electronic meter readings or dollar amounts of electronic meters.

(B) If a machine is not attached to a game transaction management/reporting system, the machine must issue by activation of an external key switch, an accounting ticket containing a performance synopsis of the machine and progressive accounting data if applicable. The printing of all totals from the electronic meters shall occur automatically each time access occurs to either the logic compartment or any compartment where cash is collected. Whenever electronic meters are reset, each machine must produce a full accounting ticket both before and after each resetting. The tickets must contain the information required in subsections (1) (d) (xi) (A) (1) through (7) of this Section.

(xii) The machine and any peripheral electronic device must have an identification tag permanently affixed to the machine by the manufacturer. The tag must be on the right hand side, upper left corner of the machine or peripheral electronic device or in another approved location and must include the following information:

(A) Manufacturer;

(B) Serial number;

(C) Model;

(D) Date of manufacture; and

(xiii) The face of the machine must be clearly labeled so as to inform the public that no person under the age of eighteen (18) years is allowed to play;

(xiv) No machine may offer for play more than one play table per program;

(xv) Each machine and peripheral electronic device must pass a static test; and electrical current to the machine and a backup power supply capable of maintaining for a thirty (30) day period the accuracy of all electronic meters, date, and time during power fluctuations and loss. The battery must be in a state of charge during normal operation of the machine. Manufacturers incorporating either the use of E2 proms or a lithium battery for memory retention will be considered to meet this requirement.

(E) Any and all modifications made to an approved gambling machine must be submitted for approval prior to installation.

(F) Authorization to operate a machine may be suspended or revoked or approval of a machine may be revoked at any time if it is determined that a machine or machine component does not comply with a tribal ordinance or terms of a tribal-state compact governing video gambling machines in effect at the time of approval.

(G) A video gambling machine must include the following hardware specifications:

(1) All electrical and mechanical parts and design principles shall follow acceptable industrial codes and standards in both design and manufacture.

(2) A video gambling machine shall be designed to ensure that the player will not be subjected to any physical, electrical or mechanical hazards.

(H) Each video gambling machine must meet the following software specifications:

(1) The random number selection process shall conform to an acceptable random order of occurrence and uniformity of distribution;

(2) The field of numbers must be mixed after each game by using a random number generator;

(3) After the field of numbers has been mixed and before the start of the game the field of numbers is to be frozen with all numbers used for play taken in order from the top of the frozen field;

(4) Any variable data, e.g., location name, shall not reside on EPROMS that contain game programs;

(5) Must payback or award credits at a minimum rate of eighty percent (80%);

(6) The game program must not interfere in any way with expected random play;

(7) All electronic meters must be eight (8) digits in length; and

(8) For any game played, the pay table for that game must be prominently displayed and understandable to the player.

(I) a machine may have a personality program that includes but is not limited to the following:

(1) Pay table (limited to one per program);

(2) Graphics;

(3) Deal;

(4) Optional features to include but not be limited to:

(i) Raise;

(ii) Auto-bet;

(iii) Hold and discard;

(5) Personality program number.

(J) Each video draw poker machine must meet the following specifications for approval. In order to be approved the machine must:

(1) Use a deck of cards consisting of fifty two (52) standard playing cards; up to two (2) jokers may also be used;

(2) Deal the initial cards from the top of the frozen field;

(3) Replace discarded cards with remaining cards in the frozen field starting with the sixth (6th) card and drawing any additional cards in the order of that frozen field;

(4) Meter for each breakdown in the pay table; and



(5) Display the winning hands and the number of credits awarded for that hand.

(K) Each video Keno machine must meet the following specifications for approval. In order to be approved the machine must:

(1) Display a fixed playing field of numbers from 1-80;

(2) Only accept a bet on a minimum of two (2) spots and a maximum of ten (10) spots per game;

(3) Display the balls picked;

(4) Conform to standard rules of Keno; and

(5) Display the total number of player spots picked at the end of each game, display the number of balls drawn that matched the players' picks (this may be shown as 3 out of 8, 8 out of 10, etc.) and display any credits awarded for these combinations.

(L) Each video machine must meet the following specifications for approval. In order to be approved the machine must:

(1) Utilize a field of numbers from 1 to 75;

(2) Provide a card or cards that contain twenty four (24) numbered spaces per card and one free spot. No cards may be identical;

(3) Generate cards by utilizing a random number generator;

(4) Meter each breakdown in the pay table;

(5) Conform to standard rules of bingo;

(6) Produce a bingo during each game;

(7) Display the number of balls picked and the credits awarded for the number of balls drawn in order to obtain a bingo;

(8) Allow the player the choice of cards on which to play. All winning cards must be available for display on the screen, including any that may be played by the machine in any game; and

(9) Designate the winning arrangement of numbers prior to commencing play.

### **Sec. 505. Management contracts.**

An individual Indian may operate Class 3 gaming on the Reservation only pursuant to a management contract with the Tribes in conformance with the IGRA.

### **Sec. 506. Criminal. Penalties.**

Operations of a Class 3 gaming activity without a license shall constitute a felony. Violation of any other provision of Chapter 5 of this Title shall constitute a Class A misdemeanor.

## **Chapter 6. Self-Regulation of Gaming Activities**

### **Sections:**

Sec. 601. Petition for certification of self-regulation. .... 15

Sec. 602. Waiver of tribal requirements based on certificate of self-regulation ..... 15

### **Sec. 601. Petition for certification of self-regulation.**

Under Public Law 100-497, the Tribes and any tribal subdivision that operates a licensed gaming activity pursuant to this Title, and has operated the gaming activity for at least three (3) years, including at least one (1) year after October 17, 1988, is eligible to petition the National Indian Gaming Commission for a certificate of self-regulation. Such a certificate exempts the Tribes or tribal subdivision from certain regulatory requirements under Public Law 100-497. When the Tribes or any tribal subdivision meets the requirements for duration of the gaming activity set forth above, it shall review the standards set forth in Section 11 of Public Law 100-497 and determine whether it wishes to file a petition for self-regulation would be appropriate.

### **Sec. 602. Waiver of tribal requirements based on certificate of self-regulation .**

If any licensee under this Title is granted a certificate of self-regulation by the Commission, the requirements of Section 411 of this Title shall be waived as to that licensee. All other requirements

shall continue in full force and effect. If the certificate of self-regulation is revoked, the requirements of Section 411 shall be reinstated.

**(THIS TITLE ADOPTED AS PER RESOLUTION NO.'S 1729-88-12, DATED 12/12/88, and 2084B- 89-3, DATED 03/13/89.)**

**Chapter 7. National Indian Gaming Commission**

**Sections:**

- Sec. 701. Authority of the Commission.....16
- Sec. 702. Failure to cooperate with the Commission. ....16
- Sec. 703. Commission regulations and guidelines superseding this Title.....16

**Sec. 701. Authority of the Commission.**

Public Law 100-497 creates the National Indian Gaming Commission and grants the Commission and its chairman certain regulatory authority over Indian gaming activities, including the authority to:

- (a) Monitor Class 2 gaming activities;
- (b) Inspect and examine all premises located on Indian lands on which Class 2 gaming is conducted;
- (c) Conduct or cause to be conducted such background investigations as may be necessary;
- (d) Demand access to and inspect, examine, photocopy, and audit all papers, books, and records pertaining to the gaming activity;
- (e) Promulgate such regulations and guidelines as it deems appropriate to implement the provisions of Public Law 100-497, including regulations for the assessment and collection of civil fines against Indian gaming activities as authorized by Section 14 of Public Law 100-497;
- (f) Establish the fees to be paid by Indian gaming activities in order to fund the Commission's operations.

**Sec. 702. Failure to cooperate with the Commission.**

All licensees under this Title shall cooperate fully with all lawful regulations, guidelines, and orders of the Commission. Failure to do so shall

constitute a Class A misdemeanor and shall also constitute grounds for revocation of the tribal license.

**Sec. 703. Commission regulations and guidelines superseding this Title.**

Any regulations and guidelines adopted by the Commission that are inconsistent with any provisions of this Title shall supersede that provision, unless the Commission grants a waiver. In such a case, the Board shall promptly amend this Title so that it conforms to the Commission's regulations and guidelines.

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 28 – Cigarette Retailer and Licensing**

**Chapter 1. License Applications**

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**Sec. 101. Licenses required.**

No person shall sell cigarettes to Indians within the Reservation unless duly authorized by a license issued in accordance with this ordinance.

**Sec. 102. Application for license.**

Each person intending to sell cigarettes to Indians within the Reservation shall file an application for an annual license to do so. The application of 1992 must be filed within thirty (30) days after the enactment of this ordinance. Beginning

with the 1993 calendar year, all applications must be filed by November 30th of the preceding year.

**Sec. 103. Contents of applications.**

Information in all applications for licenses shall be certified by the applicant under oath on forms provided by the Tax Commission and shall include the following information, in addition to any other information deemed necessary by the Commission.

(a) The name and mailing address of the applicant;

(b) The location of all cigarette retail businesses operated or proposed to be operated by the applicant on the Reservation;

(c) The number of cartons of cigarettes sold by the applicant to Indians during each of the last twelve full calendar months immediately preceding the application;

(d) The number of cartons of cigarettes which the applicant expects to sell to Indians during the next calendar year;

(e) Such other information as the Commission shall require.

**Sec. 104. Fees.**

Each application shall be accompanied by a filing fee of \$25.00.

**Sec. 105. Initial licensing determination by Commission.**

The Commission shall by December 15th of each year make its initial determination on

whether to grant or deny each application for license, and, where it determines to grant a license, its initial determination of the amount of cigarettes which that licensed retailer may sell to Indians for the next calendar year. The initial determination shall be delivered to the applicant and to the Tribes. The Commission's initial determination of the amount of cigarettes all licensed retailers, taken together, may sell shall not exceed the total Reservation quota established for that year pursuant to the Tribes' cigarette tax agreement with the State of Montana.

**Sec. 106. Conditions of licenses.**

Any license granted by the Commission shall include:

(a) The name, mailing address and all business locations on the Reservation where the licensee is authorized to sell cigarettes to Indians;

(b) The quantity of cigarettes which may be sold by the licensee annually to Indians on the Reservation;

(c) Provisions requiring that the licensee shall:

(i) Not collect the Montana cigarette sales tax on any sale to Indians on the Reservation;

(ii) Collect and pay to a wholesaler the Montana cigarette sales tax on all other sales;

(iii) Not sell cigarettes at less than the cost to the retailer, except

(A) As an isolated transaction not in the usual course of business, or (B) as part of a bona fide clearance sale for the purpose of final liquidation of a business or discontinuing trade in such cigarettes;

(iv) Keep all records required by Section 112 of this ordinance;

(v) Notify the Montana State Department of Revenue of each proposed purchase from each wholesaler of a specified quantity cigarettes for resale to Indians.

(d) A provision that "this license constitutes authorization by the Tribes to sell a portion of the Reservation quota of cigarettes exempt from state taxation established by the Tribes' cigarette tax agreement with the State of Montana. This license shall not be deemed the property right or

any other interest other than the limited permission as described by this license."

**Sec. 107. Challenges to initial determination.**

(a) Any applicant or the Tribes may file a challenge to an initial determination either

(i) Granting or denying an application, or (ii) setting the amount of cigarettes a licensee may sell to Indians.

(b) A challenge shall state in writing why the challenger disputes the initial determination, what the challenger believes the appropriate determination should be, and the reasons why. The challenge shall have attached to it as an exhibit any information upon which the challenger intends to rely. The challenge shall be filed with the Tax Commission and a copy shall be served on the Tribes and the applicant.

(c) During the pendency of a challenge proceeding the initial determination shall be followed.

**Sec. 108. Hearing.**

(a) As soon as practicable after receiving a challenge filed under Section 107, the Tax Commission shall review the challenge for adequacy and completeness. If additional information is required, the Commission shall so inform the challenger in writing and provide a reasonable time for the challenger to provide further information. When the Commission believes the challenge is adequate and complete, the Commission shall promptly schedule a hearing on it. The hearing shall not be held more than sixty (60) days after the date the completed challenge was filed. The applicant and the Tribes shall be given not less than ten (10) days notice of the hearing date.

(b) At the hearing, the applicant and the Tribes shall have the right to present oral and written testimony of witnesses under oath, and to be represented by counsel, each at its own expense. The Commission shall have the power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel the attendance of witnesses or for the production of books, records, documents and other evidence. The Fort

Peck Tribal Court shall enforce any subpoena issued by the Commission in the same manner as the Court enforces its own subpoenas. The ordinary rules of evidence shall not apply in any hearing, but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfair if admitted, shall be excluded or may be admitted by the Commission only under special conditions or stipulations.

(c) The Chairman of the Tribal Executive Board may appoint a person to represent the interest of the Tribes and present the case for the Tribes at the hearing. The representative shall have all the same rights at the hearing as the applicant.

(d) The hearing shall be on the record, with all testimony taken under oath, and a permanent record shall be made by tape recorder or stenographic means.

(e) The Commission's decision on the challenge shall either be issued in writing, or orally on the record at the hearing.

#### **Sec. 109. Revocation, suspension or alteration of licenses.**

(a) The Commission may alter the quantity of cigarettes any licensed retailer is authorized to sell to Indians in any year, after giving at least fifteen (15) days prior notice to the retailer and the Tribes of a hearing set for that purpose. The hearing shall be conducted pursuant to the procedures provided in Section 108.

(b) The Commission may revoke or suspend for a set period of time a license for failure of licensed retailer to comply with the terms and conditions of a license, any provision of this ordinance, or with any order or decision of the Commission, after giving at least thirty (30) days prior notice to the retailer and the Tribes of a hearing set for that purpose. The hearing shall be conducted pursuant to the procedures provided in Section 108.

#### **Sec. 110. Appeals.**

(a) The Fort Peck Tribal Court of Appeals shall have exclusive jurisdiction to hear appeals from

final decisions of the Commission issued pursuant to Sections 108(e) or 109. (b) Any party may appeal any final decision under Sections 108(e) or 109 within thirty (30) days after the decision by filing a notice of appeals with the Tax Commission, and serving a copy on each other party. Thereafter, the Tax Commission shall promptly file the full record of the proceeding, including the notice of appeal, with the Court of Appeals.

(c) The Court of Appeals shall hear the appeal in the same manner as it hears civil cases from the Fort Peck Tribal Court in which petition for review is granted. In all appeals, the Court shall give proper deference to the administrative expertise of the Commission. The Court of Appeals shall not set aside, modify or remand any determination by the Commission unless it finds that the determination is arbitrary and capricious, unsupported by substantial evidence or contrary to law. The Court of Appeals shall issue a written decision on all appeals, which decision shall be final.

(d) The Court of Appeals may, in its discretion, award costs and attorneys' fees to the Tribes against any applicant whose appeal was frivolous, malicious, or in bad faith.

#### **Sec. 111. Finality of decisions.**

Any final finding or determination of the Tax Commission pursuant to Sections 108 or 109 which is not timely appealed, and any final determination of the Court of Appeals in a proceeding pursuant to Section 110 shall be final and binding in any other proceeding against or by the same person, and shall not be open to question in any other suit.

#### **Sec. 112. Enforcement and recordkeeping.**

(a) Each licensed retailer shall keep a record of the name of each Indian who purchases cigarettes, and the amount and date of each such purchase. Such records shall be retained for at least six (6) years beyond the date of purchase.

(b) The Tribes may, for the purposes of preparing for a proceeding under this ordinance or otherwise implementing or enforcing the provisions of this ordinance, inspect property, examine and

require the production of pertinent records, books, information, or evidence, and require the presence and testimony under oath of any person within the jurisdiction of the Tribes.

(c) If any person fails upon request to testify, or to provide information or documents, the Tax Commission may seek and obtain a subpoena or other order from the Fort Peck Tribal Court compelling the testimony or production of the information or documents.

**Sec. 113. Prohibited acts.**

(a) No person shall sell cigarettes to any Indian on the Reservation free of the Montana cigarette sales tax unless licensed to do so pursuant to this ordinance.

(b) No person shall sell cigarettes to any non-Indian on the Reservation without collecting the Montana cigarette sales tax.

(c) No person shall make any false oath or statement in any application for license issued under this ordinance.

**Sec. 114. Civil remedies.**

(a) The Tribes may file suit in any court of competent jurisdiction to enjoin or restrain any act in violation of any provision of this ordinance or a condition of any license issued pursuant to this ordinance. If such a suit is filed in Tribal Court, that court shall proceed expeditiously both to determine it and to consider any petition for temporary injunctive relief sought by the Tribes.

(b) Any non-Indian who violates the provision of this ordinance may be excluded from the Fort Peck Reservation or may have his/her right to do business on the Reservation suspended for a period of time or revoked by order of the Tribal Executive Board or by the Tax Commission.

**Sec. 115. Criminal offenses.**

Any Indian who violates subsections 113(a), (b) or (c) of this ordinance shall be guilty of a Class A misdemeanor.

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 29 – Adult Protection**

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## Chapter 1. Purpose and Definitions

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### Sec. 101. Purpose:

An ordinance to prohibit the abuse of adults, to require reporting of abuse of adults, to provide for services through the Adult Protection Team, and to provide a penalty for such abuse.

### Sec. 102. Definitions.

Terms used in this Title, unless a different meaning is clearly indicated by context, mean:

(a) Abuse. Any negligent act which results in physical injury, sexual abuse, unreasonable confinement, malnutrition, or the reckless or negligent deprivation by a caretaker of goods and services necessary to maintain physical health or mental health.

(b) Adult. Any person over the age of 18, including an incapacitated person.

(c) Adult Protection Team (APT). A team appointed by the Tribal Executive Board (TEB) which shall have the responsibility to investigate reports of abuse of adults, provide for protective services to such persons, and where necessary, initiate actions in Tribal Court on behalf of the adult who lacks capacity to consent to protective services. The membership of the APT shall include, but need not be limited to, a member of the Fort Peck Tribes' HEW Committee, a representative from the Indian Health Service, a representative from BIA Social Services, and two adults appointed by the TEB.

(d) Caretaker. An individual or public institution who has assumed the responsibility for the care of a person either voluntarily, by contract, by receipt of payment for care, or by order of a court. If the adult and a family member live in the same household, there shall be the presumption that the family member is the caretaker. In the proceedings with the APT or Tribal Court, the family member may rebut this presumption through presentation of the facts. In all other situations, the APT and Tribal Court shall ascertain, through

consideration of relevant facts, whether a particular person is a caretaker.

(e) Emotional distress. Mental anguish, fear, agitation, confusion, severe depression, or other forms of serious emotional distress.

(f) Exploitation. Illegal or improper utilization of an adult or of the resources of an adult for monetary or personal benefit, profit or gain.

(g) Goods and services necessary to avoid physical harm or emotional distress. Includes but is not limited to provision of medical care for physical or mental health needs, assistance in personal hygiene, providing adequate shelter with heat and ventilation, protection from health and safety hazards, protection from malnutrition, proper supervision when appropriate, and transportation necessary to secure these needs.

(h) Incapacitated person. Any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or which cause has so impaired the person's judgment that he is incapable of realizing and making a rational decision with respect for his need for protection, care or treatment.

(i) Least restrictive alternative. Adult protective services provided in a manner no more restrictive of a vulnerable adult's liberty, and no more intrusive than necessary to achieve and ensure goods and services necessary to avoid physical harm and mental anguish of a vulnerable adult.

(j) Neglect. The caretaker's failure to provide adequate shelter, food, clothing, or medical services to a disabled adult.

(k) Self-endangerment. An adult, whose behavior indicates that he is causing himself to be in imminent physical danger as evidenced by an inability to provide for some of (but not limited to) his basic needs, such as food, clothing, shelter, and health and safety.



## **Chapter 2. Report of Abuse**

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### **Sec. 201. Obligation to Report.**

Any person knowing or having reasonable cause to suspect that an adult is or has been abused shall report such abuse to the Adult Protection Team or to the appropriate law enforcement agency, the agency shall immediately notify the APT.

### **Sec. 202. Contents of Report**

The report must be in writing and shall contain the name, age and address of the adult, the name and address of the alleged perpetrator, the nature and extent of the abuse, and any other pertinent information known to the person making the report.

### **Sec. 203. Immunities**

Any person, other than a perpetrator, who in good faith makes any report pursuant to this Chapter or who testifies in any judicial proceedings arising from such report shall be immune from civil or criminal liability because of such report or testimony. Any person who intentionally fails to make a report required by this Chapter shall be subject to a civil fine not to exceed \$500.00.

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### **Sec. 301. APT Investigation**

(a) Upon receiving a report of abuse of an adult, the APT shall make a prompt and thorough investigation to determine if such abuse exists and whether the adult is in need of protective services.

(b) In the absence of special circumstances, the investigation shall include an interview of the adult, his caretaker(s), and the alleged abuser if different from the caretaker, a visit to the residence, and consultation with persons who might have knowledge of the situation.

(c) If the report indicates that the adult may be in imminent danger of serious physical or mental harm, an initial investigation shall be completed within 24 hours. If not, it shall be completed within a reasonable time.

### **Sec. 302. Cooperation by Other Agencies**

The BIA, IHS, and any other public and private agencies shall assist the APT, at its request, in making the investigation. If confidential information is needed from any such agency, the APT shall obtain the adult's authorization for release of the information.

### **Sec. 303. Provision of Protection Services**

Upon completion of the investigation, if the APT determines, based on the investigation, that the adult has been abused and is in need of protective services, the APT shall develop a plan for provision of such services. Where the abuse was by a member of the adult's family, a primary purpose of the plan shall be to restore and promote family harmony, and the plan shall contain services designed to achieve this result.

Services provided to abused adults may include, but are not limited to:

(1) Assistance in obtaining needed counseling for the abused adult and/or the abuser.

(2) Mediation between the abused adult and the abuser.

(3) Assistance in locating and moving to alternative living quarters, on a temporary or permanent basis.

(4) Assistance in obtaining needed medical care, food, clothing and household goods.

(5) Appointment of a guardian by order of the court.

To assist the APT in the provision of such services, the APT shall develop a bank of information concerning agencies and individuals willing to provide medical care, food and clothing, temporary housing and other services. These services shall be provided using the least restrictive alternative available, while still meeting the needs of the adult.

**Sec. 304. Central Registry**

The APT shall establish a central registry for reports of and convictions of abuse of an adult. The information in the central registry shall be confidential and may be released only to the APT.

**Sec. 305. Consent to Protective Services**

The APT shall not provide protective services to an abused adult unless that person consents, except as provided in Chapter 5 of this Title.

**Sec. 306. Reports to the Tribal Prosecutor**

Whenever the APT makes a positive determination under Section 301, the APT shall inform the Tribal prosecutor, and pursuant to Section 602 of this Chapter, shall furnish information as requested by the prosecutor.

**Chapter 4. Self-endangerment**

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**Sec. 401. Self-endangerment**

If any individual is found, upon investigation by the APT, to have self-inflicted his own abuse, and is in imminent danger of causing serious physical harm to himself and such person refuses assistance, the APT may submit a petition to the Tribal Court to determine the capacity of the adult pursuant to Chapter 5 of this Title.

**Chapter 5. Lack of Capacity to Consent to Protective Services**

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**Sec. 501. Petition to Court for Determination of Capacity.**

(a) If the APT determines that an adult is being abused and/or is in imminent danger of substantial physical or mental injury, and lacks capacity to consent to protective services, it may petition the Tribal Court for an order authorizing APT services. The petition must allege specific facts to show that the adult is in need of protective services and lacks the capacity to consent to such services.

(b) Upon receiving a petition, the Tribal Court shall immediately schedule a hearing to determine the capacity of the adult.

**Sec. 502. Definition of Lack of Capacity.**

For purposes of this chapter, lack of capacity to consent to services shall mean that the person does not understand the nature of the services being offered or the reasons for which the APT is offering the services.

**Sec. 503. Rights to the Adult.**

The adult shall be immediately notified in writing that a petition has been filed in Tribal Court, the reasons for the petition, and the date and time of the hearing. The adult shall have the right to be present at the hearing, to be represented by counsel at his expense, and to present testimony on his behalf.

**Sec. 504. Hearing-Determination by the Court.**

At the hearing, the APT shall present evidence that the adult is in need of protective services and lacks capacity to consent. If the Court determines by clear and convincing evidence that the adult is

in imminent danger of substantial physical or mental injury and lacks the capacity to consent to protective services, it may enter an order authorizing the provision of protective services.

**Sec. 505. Adult Protection Order.**

An order for adult protective services may include, but is not limited to, the following:

- (1) Removing the person from the place where the abuse or neglect has taken or is taking place;
- (2) Removing the person who has abused or neglected the adult from the adult's home;
- (3) Restraining the person who has abused or neglected the adult from continuing such acts;
- (4) Requiring the adult's family or caretaker or any other person with a fiduciary duty to the adult to account for the adult's funds and property;
- (5) Requiring any person who has abused or neglected the adult to pay restitution to the adult for damages resulting from the person's wrongdoing;
- (6) Appointing a guardian ad litem for the adult;
- (7) Recommending that a representative payee be named; or
- (8) Ordering the appropriate human services agency to prepare a plan for the delivery of adult protective services which provide the least restrictive alternative for services, care, treatment, or placement consistent with the adult's needs.

**Sec. 506. Duration of the Adult Protection Order.**

An adult protection order shall be issued for a period not to exceed sixty (60) days. The Tribal Court shall review the order every sixty (60) days to determine whether the need for services still exists, and shall have the discretion to close the case at any time if it finds the situation has been resolved.

**Chapter 6. Record keeping and Access to Records**

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**Sec. 601. APT Records.**

The APT shall keep a separate case file for each report or abuse it receives. The file shall include a complete record of the complaint itself, the result of the investigation, any services provided, a summary of any court proceedings, and any other pertinent information.

**Sec. 602. Confidentiality.**

The APT records shall be confidential, except that the adult who is the subject of the report shall have access to his or her file at any time, and shall be informed of such access during the initial investigation, and the Tribal Court shall have access to the case file as needed for criminal proceedings against the abuser or for proceedings under Title 7 of this Code or Chapter 7 of this Title.

**Chapter 7. Penalties for Abuse**

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**Sec. 701. Prosecution Under Title 7.**

Any person who is reported to the APT as a probable abuser as defined in Chapter 1, Section 102(a) of this Title, or any other person as to whom the Tribal prosecutor finds probable cause of such abuse, may be prosecuted and punished under any applicable section of Title 7 of this Code.

**(AMENDED AS PER RESOLUTION NO. 1709-2005-4, DATED APRIL 25, 2005)**

**Sec. 702. Prosecution under Title 29.**

In the discretion of the Tribal Prosecutor, the alleged abuser shall be prosecuted for the crime of elderly abuse. The crime of elderly abuse is a Class A misdemeanor for the first offense, and a felony for each subsequent offense.

**(AMENDED AS PER RESOLUTION NO. 1455-2010-12, DATED 12/13/2010.)**

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 32 – Cultural Resource Protection Ordinance**

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## Chapter 1. General Provisions

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### Sec. 101. Declaration of Policy and Intent.

The purpose of this Ordinance is to protect, preserve and promote the Fort Peck Assiniboine and Sioux Tribes (Tribes) cultural resources by establishing a governmental agency to identify, evaluate and protect cultural, historic, and archaeological resources. The Tribes are determined to protect, preserve and promote its cultural resources by regulating undertakings upon lands within its jurisdiction that may potentially affect cultural resources. No person may initiate any undertaking on protected lands without a permit from the Cultural Preservation office.

### Sec. 102. Findings.

The Fort Peck Tribal Executive Board (TEB) finds that:

(a) The spirit and direction of the Fort Peck Assiniboine and Sioux Tribes is founded upon and reflected in its cultural heritage;

(b) The cultural foundation of the Tribes should be preserved and protected as a living part of our community life and development in order to give a sense of orientation to the Dakota and Nakoda people;

(c) Cultural resources, archeological resources and burial items of the Tribes are being lost, substantially altered or destroyed, with increasing frequency;

(d) In the face of ever increasing economic, residential, highway, sanitation, agricultural, energy and public health developments, and the influx of non-Indian people with interest in obtaining cultural resources, archeological resources and burial items located within the jurisdiction of the Tribes, the Tribes must ensure that such resources

are preserved and protected for future generations;

(e) Tribal laws are necessary to foster conditions under which our modern society and our cultural resources, archeological resources and burial items can exist in productive harmony and fulfill the social, economic and other requirements of present and future generations;

(f) The Tribes self-governing capability, political integrity, health, welfare and economic security will be enhanced and protected by the Tribes control, regulation and preservation of irreplaceable cultural resources, which are essential to the continued well-being of the Tribes and will be maintained and enriched for the Tribes future generations.

### Sec. 103. Legal Authority

The Tribes possesses the inherent sovereign authority to enact this Ordinance. The Ordinance is intended to be consistent with the minimum federal requirements provided by federal law to include, but not be limited to, the Historic Sites, Buildings and Antiquities Act, the National Historic Preservation Act, the Archeological Resources Protection Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Reservoir Salvage Act, and the National Environmental Policy Act. The Preservation Officer and the Cultural Preservation Board are the tribal officials that ensure the Tribes rights are protected under such federal laws, including representing the Tribes whenever possible under such federal laws.

### Sec. 104. Name and Short Title.

This Ordinance shall be referred to as the Cultural Resource Protection Ordinance. The short title of this Ordinance may be referred to as the CRPO.

### Sec. 105. Severability.

Should any provision set forth in this Ordinance or application thereof to any person or circumstance be held invalid by the Tribal Court of the Fort Peck Assiniboine and Sioux Tribes, this

will not affect the full remainder of the provisions or the application of the provisions to another person or circumstance. This Ordinance will supersede any conflicting laws found in the Fort Peck Tribes Comprehensive Code of Justice (CCOJ).

**Sec. 106. Applicability.**

This Ordinance shall be applicable to areas within the jurisdiction of the Fort Peck Indian Reservation.

**Sec. 107. Effective Date.**

This Ordinance shall be in full force and effect on the date of formal approval and adoption by the Fort Peck Assiniboine and Sioux Tribal Council.

**Chapter 2. Definitions**

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**Sec. 201. Archaeological Resource.**

Means any material remains of past human life or activities that are of archaeological interest. Archeological resources shall include, but are not

limited to: cultural resources, burial items, pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, stone circles, rock paintings, rock carvings, winter counts, intaglios, or any such item, piece, or portion that may potentially record or provide evidence of any aspect of the Tribes culture or a previous culture.

**Sec. 202. Archaeological Site.**

Means a geographical locality containing archaeological resources or features where the remnants of the past survive in a physical context that allow for the interpretation of these remnants.

**Sec. 203. Burial Item.**

Means any funerary item, human remain, or burial site.

**Sec. 204. Burial Site.**

Means a natural or prepared physical location, whether originally below, on, or above the surface of the earth, onto which human remains or cultural items were intentionally deposited as a part of the death rites or ceremonies of a culture. This definition shall be construed to be more broad than those marked cemeteries and graveyards protected under existing State law.

**Sec. 205. Community Register.**

Means the Tribal Register of cultural resources, archeological resources, sacred items, spiritual sites or burial items within the jurisdiction of the Fort Peck Indian Reservation.

**Sec. 206. Tribes.**

Means the Fort Peck Assiniboine and Sioux Tribes.

**Sec. 207. Tribal Executive Board (TEB).**

Means the governing body of the Fort Peck Assiniboine and Sioux Tribes.

**Sec. 208. Cultural Resource.**

Means materials or objects designated by the Cultural Preservation Office as having cultural significance that are obtained from

(1) Protected lands or

(2) If outside the jurisdiction, associated with the Tribes culture or history. Cultural materials may include such items as eagle feathers, sweat lodge rocks, pipestone, game, roots, berries, native medicines, water having special significance, sacred items, spiritual sites, archeological resources and burial items.

**Sec. 209. Duly authorized Law Enforcement Official.**

Means any law enforcement personnel of the Tribes or any law enforcement officer delegated authority to enforce the laws of the Fort Peck Indian Reservation pursuant to a cooperative agreement with the Tribes.

**Sec. 210. Funerary Item.**

Means items or objects that are found at the burial site, or with the human remains, as part of a death rite or ceremony of our culture that are reasonably believed to have been placed with human remains either at the time of death or later. Such an object may still be deemed a funerary object whether or not the human remains and the funerary object are currently together. Items made exclusively for burial purposes or to contain human remains shall be considered associated funerary objects.

**Sec. 211. Human Remains.**

Means a deceased person or any part of the human body in any state of decomposition.

**Sec. 212. Indian.**

Means any member of an Indian tribe, Band, or other organized group or community, including any Alaska native village or unit defined or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.), and any other Indian persons who are recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**Sec. 213. Ordinance or CRPO.**

Means the Cultural Resource Protection Ordinance.

**Sec. 214. Person.**

Means and includes both natural and artificial persons. Artificial persons include, but are not limited to any individual, partnership, association, corporation, and any other entity composed of individuals. Person shall also include Federal, Tribal, and State governments and their entities or agencies.

**Sec. 215. Preservation Officer.**

Means the Tribes Cultural Preservation Officer.

**Sec. 216. Protected Lands.**

Means land that may contain cultural resources, spiritual sites, sacred objects, human remains, burial items, archaeological resources, burial sites, or those lands, places or items listed on the Tribes register and is located either:

(a) Within the jurisdiction of the Fort Peck Indian Reservation, whether in fee or trust status if owned by the Tribes or tribal members;

(b) Outside the jurisdiction of the Fort Peck Indian Reservation, which are owned by the Tribes or held by the United States in trust for the Tribes or its members.

**Sec. 217. Reoccurring Violation.**

Means a violation that the Preservation Board may penalize on a cumulative daily basis if the responsible person receives written notice of a potential or alleged violation and does not take the steps required by the Preservation office to minimize or cure the potential or alleged violation. If a responsible person does not receive written notice of a potential or alleged violation, the violation may still be deemed a reoccurring violation subject to a cumulative daily penalty if a reasonable person would have known that its conduct violated this Ordinance or the rules or regulations of the Preservation Board.

**Sec. 218. Sacred Items.**

Means specific ceremonial objects which are needed by traditional Native American religions by their present day adherents, or were used by traditional adherents.

**Sec. 219. Spiritual Site.**

Means any place or area, including, but not limited to, any geophysical or geographical area or feature:

(a) Where Tribal practitioners are required by their religion to gather, harvest or maintain natural substances or natural products for use in spiritual ceremonies or for spiritual purposes, including all places or areas where such natural substances or products are located; or

(b) That is utilized by spiritual practitioners for ceremonies or spiritual practices.

**Sec. 220. Responsible Person.**

Means any person who has decision-making authority over a particular undertaking on protected lands.

**Sec. 221. Tribal Member.**

Means any person who is an enrolled member of the Fort Peck Indian Reservation as provided by the Revised Constitution and Bylaws.

**Sec. 222. Undertaking.**

Means any project, activity or program located on protected lands that may potentially cause effects to cultural resources, archeological resources, burial items, sacred items or spiritual sites, and it is presumed that such resources, items and sites exist.

**Chapter 3. Cultural Preservation Officer**

**Sections:**

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 Sec. 302. Preservation Officer. ....4  
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**Sec. 301. Tribal Cultural Preservation Office.**

There is hereby established a Tribal Cultural Preservation Office that will be directed by a Preservation Officer appointed by the Tribal Council to administer the Cultural Preservation Program.

**Sec. 302. Preservation Officer.**

The Preservation Officer shall have substantial experience in the administration of a preservation program and experience in at least one (1) of the following disciplines: traditional cultural properties, archaeology, history, cultural resources, geography or anthropology.

**Sec. 303. Responsibilities of the Preservation Officer.**

In order to execute this Ordinance, the Preservation Officer shall have the following authority, duties and responsibilities:

(a) Maintain the Tribal Register;

(b) As funds and staff are available, and in cooperation with Tribal traditionalists, direct and conduct a comprehensive a survey of cultural resources, archeological resources, burial items, sacred items and spiritual sites. Maintain an inventory of such resources that is documented in such a manner that the data collected can be utilized in the Tribes priorities and planning decisions;

(c) Identify and nominate eligible properties or resources to the Tribal Register and administer applications for the Tribal Register;

(d) Prepare and implement a comprehensive cultural preservation planning process which includes the identification, evaluation, registration, and treatment of cultural properties so that effective decisions concerning preservation can be made;

(e) Advise and assist, as appropriate, Tribal, Federal, and State agencies in carrying out their obligations and responsibilities as provide in this Ordinance;

(f) Consult with appropriate Tribal, Federal, and State agencies in accordance to this Ordinance and regulations on:



(1) Undertakings that may affect cultural resources; and

(2) The content and sufficiency of any plans developed to protect, manage, avoid or mitigate harm to such cultural resources;

(g) Maintain a cultural, historical, and archaeological database in a manner that protects the Tribal customs regarding the disclosures of personal, private or Spiritual information;

(h) Cooperate with the Advisory Council on History Preservation, the State Historic Preservation Office and other Tribal, Federal, and State agencies to ensure that cultural resources are taken into consideration at all levels of planning and development;

(i) Provide public information, education and training, and technical assistance relating to the Tribes Cultural Resource Protection Ordinance;

(j) Inspect any undertaking for the purpose of determining compliance with this Ordinance, its implementing regulations, or permit terms and conditions;

(k) Review and process permit applications.

## **Chapter 4. The Cultural Preservation Board**

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### **Sec. 401. Establishment and Selection of a Cultural Preservation Board.**

There is hereby established a Cultural Preservation Board, to be composed of 6 Elder members. The Preservation Officer shall serve as an ex-officio member of the Preservation Board. The Board shall select 1 of its members to serve as meeting chair of each session of the Preservation Board.

### **Sec. 402. Board Member Qualifications.**

All Board members shall demonstrate special knowledge of Assiniboine (Nakoda) and Sioux (Dakota) custom, belief and practice, which includes experience or knowledge in traditional cultural properties, historic, prehistoric and cultural resources or related disciplines.

### **Sec. 403. Term.**

Members of the Board shall each hold office for a term of 3 years, with a reappointment consideration at the discretion of the TEB.

### **Sec. 404. Vacancy and Interim Appointment.**

If a Board member dies, resigns, becomes incapacitated or is removed from office, the vacancy may be temporarily filled by a list of alternate Board members designated by the TEB. The alternate Board member shall serve until the vacancy is permanently filled by the TEB.

### **Sec. 405. Compensation.**

Board members may receive a stipend, as the budget permits, and may be reimbursed for any reasonable and documented expenses actually incurred in connection with his or her performance of duties and responsibilities. The Board may establish a proposed budget for TEB approval that delineates the Boards compensation and training.

### **Sec. 406. Duties of the Preservation Board.**

The Cultural Preservation Board shall develop and maintain a Tribal Ordinance including, but not limited to, the following authority, duties and responsibilities:

(a) Permit appeals, the issuance of orders, the levying of penalties, holding hearings and the making of any and all related decisions;

(b) The Board shall recommend rules, regulations and standards that are necessary to carry out the purposes of the Ordinance. If the TEB approves the Boards rules, regulations or standards, then such rules shall have the force and effect of tribal law;

(c) Assist the Preservation office in reviewing any proposed undertaking that might affect any cultural item or cultural resource, including

but not limited to: Spiritual sites, archaeological resources, burial sites, human remains, traditional cultural properties, historic resources, cultural items, food, medicinal plants and water located upon protected lands;

(d) Review requests for ethnographic work, studies or surveys;

(e) Identify and nominate traditional cultural properties to the Tribal Register, apprise the TEB of its recommendations and otherwise administer applications for listing traditional cultural properties on the Register;

(f) Provide general advice and guidance to the Tribal Historic Preservation Officer;

(g) To accept on behalf of the Fort Peck Tribes, gifts, grants and fees to administer this Ordinance. Such money may be expended to hire staff or consultants for the purpose of carrying out the powers and duties of the Board or for performing other appropriate functions;

(h) To call upon Tribal staff or other elders having technical expertise for advice;

(i) The Preservation Board, with the consent of the TEB, may issue rules regarding the proper treatment and handling of burial items and procedures for the re-burial of burial items; and

(j) Perform other duties as may be appropriate and necessary to implement the Ordinance.

**Sec. 407. Duties of the Preservation Board Off the Reservation.**

To the maximum extent possible, the Board and the Preservation Officer are authorized and required to participate in the identification, evaluation, review or permitting process of any undertaking or project that may affect any cultural resource outside the jurisdiction of the Fort Peck Indian Reservation. The Board and Preservation Officer shall provide an annual report and summary of such consultation to the TEB on a date to be established by the TEB.

**Chapter 5. Confidentiality and Disclosure Sections:**

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**Sec. 501. Confidentiality.**

A determination regarding the nature and cultural significance of cultural resources may involve the use of sensitive and confidential information regarding Community customs, beliefs, practices and traditions. Such information may be of a highly specialized and personal nature and may sometimes be held by only a few individuals within the Fort Peck Indian Reservation. According to traditional beliefs and customs, such information is not readily shared and is considered proprietary and confidential. Public disclosure of this type of information could cause severe harm and loss to Tribal culture and cultural resources. In developing the Register, the required database and record system required under this Ordinance, and in identifying and documenting cultural resources, the Preservation Officer and the Preservation office will use methods that require only minimal disclosure of sensitive cultural and spiritual information necessary to meet the purposes and needs of this Ordinance. Release of sensitive data will be restricted and access to this data will be made on a case-by-case basis. The Preservation Board and the Preservation office shall withhold from disclosure to the public, information about the location, character or ownership of a cultural resource if the Preservation Officer or the Preservation Board determine that disclosure may:

(a) Cause a significant invasion of privacy;

(b) Risk harm to cultural resources; or

(c) Impede the use of a spiritual site by practitioners.

**Chapter 6. Presumption of Cultural Resources**

Sec. 601. Presumption. .... 6

**Sec. 601. Presumption.**

No person shall begin an undertaking on protected lands without first obtaining the requisite permit from the Cultural Preservation office. To adequately preserve and protect the Tribes cultural resources, the presence of cultural resources are presumed to be affected by an undertaking on

protected lands. Only the Cultural Preservation office may determine that no cultural resources will be affected by an undertaking on protected lands upon completion of the identification and evaluation process. Until the Cultural Preservation office determines that no cultural resources will be affected by an undertaking on protected lands, every person must presume that cultural resources do exist and that any undertaking will affect such cultural resources.

## **Chapter 7. Application for a Permit**

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### **Sec. 701. Permits required.**

Due to the presumption regarding cultural resources provided in Chapter 6 of this Ordinance, no undertaking on protected lands is allowed without a permit. No historical or ethnographic work or studies relating to the Community or its cultural resources may be conducted on protected lands without a permit. This application process should be completed prior to the approval of the expenditure of any funds on the undertaking or prior to the issuance of any license or permit. This does not bar any expenditure of funds on or any non-destructive planning activities preparatory to an undertaking before complying with the application process. The responsible person should ensure that the application process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives is open for consideration. Proceeding with an undertaking without a permit is prohibited and shall result in the penalties provided by this Ordinance.

### **Sec. 702. Permit Application and Permit Fee.**

An application for a permit shall be accompanied by payment of a non-refundable fee to cover the costs associated with evaluation, identification, permit issuance and administration. The amount of the fee shall be fixed from time to time by the Board.

### **Sec. 703. Application for Permit.**

Any person who intends to conduct an undertaking on protected lands shall submit a written application to the Cultural Preservation Office. The application shall be on a form provided by the Preservation Office. The application shall include, but is not limited to:

- (a) Location map, including a legal description;
- (b) A specific description of the proposed undertaking;
- (c) The purpose and need for the proposed undertaking;
- (d) Practical alternative methods of implementing the undertaking;
- (e) The project dates and length of time necessary to complete the proposed undertaking;
- (f) The name, address, and telephone number of the responsible person;
- (g) The name, address, and telephone number of the creditor(s) of the undertaking, if applicable;
- (h) Any other information the Board may deem necessary.

## **Chapter 8. Identification and Evaluation Sections:**

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### **Sec. 801. Determining whether the Application is an Undertaking.**

The Preservation Officer shall review a permit application for adequacy and shall determine if the proposal constitutes an undertaking. The Preservation Officer may make such on-site investigations as are necessary to perform these duties. If the Preservation Officer determines that the proposal is not an undertaking, the Preservation Officer shall so state in a written notice to the responsible person within 14 days of receipt of the application. If the Cultural Preservation Officer determines that the proposal is an undertaking, the Cultural Preservation Officer shall transmit the proposal to the Preservation office who is responsible for conducting a review.

**Sec. 802. Evaluating the Undertaking.**

The Preservation office shall identify what cultural resources may be affected by the undertaking. This Ordinance seeks to protect cultural resources even if such resources have not been identified prior to the proposed undertaking. As part of the identification process, the Preservation office will conduct a background research, literature review, oral history interviews, sample field investigation and a field survey, when necessary, and will notify the Preservation Officer of its findings. The Preservation office may consult with Federal, State or local officials, if the Preservation office has reason to believe that such authorities possess information pertaining to the presence of cultural resources that may be affected by an undertaking.

**Chapter 9. Permit Determination**

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**Sec. 901. Determination Based upon Permit Application and Identification and Evaluation Information.**

The Preservation Officer shall issue its findings and recommendations based on the investigation and evaluation. The Preservation Officer shall approve, approve with modifications or alternatives, or disapprove a permit application and shall state its decision in writing to the responsible person. The Preservation Officer's decision on the permit application shall be forwarded to the responsible person. The Preservation Officer's decision may include provisions for avoidance or mitigation of adverse impacts associated with the undertaking. All work on an undertaking shall be conducted pursuant to the terms and conditions of the permit.

**Sec. 902. Appealing the Preservation Officer's Decision.**

The Preservation Officer's decision on a permit application may be appealed to the Preservation Board for a hearing under Chapter 10.

**Sec. 903. Post-Permit Discoveries.**

Any person who has obtained a permit but discovers an archeological resource or a burial item must stop all work or activity and immediately contact the Preservation office. Any person who continues an undertaking after discovering an archeological resource or burial item shall be subject to the penalties provided in this Ordinance and, if possible, prosecution under federal law. The undertaking may resume only after receiving approval from the Preservation Officer.

**Sec. 904. Reacting to Emergencies without a Permit.**

In rare circumstances, all or part of a person's responsibilities under this Ordinance may be temporarily exempt from compliance if the responsible person determines that emergency action is necessary to prevent imminent harm to preserve human life or to avoid irreparable damage. To be effective, the Preservation Officer must concur in this determination after receiving notice of the alleged emergency action. An emergency exemption is temporary and shall not exceed the period of time during which the emergency circumstance(s) exist. The responsible person shall notify the Preservation Officer in writing of the emergency undertaking within 4 business days of commencement of such undertaking. The notice shall include:

- (a) The natural disaster or event necessitating emergency action; and
- (b) The date and nature of the emergency action; and
- (c) A description of the measure(s) taken to avoid or minimize harm to cultural resources or reasons why such measures were not taken;
- (d) The responsible person shall provide for the restoration of the destroyed or disturbed cul-

tural resource resulting from the emergency situation to the extent considered reasonable by the Preservation Board. If the Preservation Officer does not concur in the emergency determination, then the Preservation Officer shall notify the Board. The Board shall set the matter for a hearing to determine whether an emergency existed and, if not, whether penalties should be imposed.

## **Chapter 10. Complaint and Hearing Procedure**

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### **Sec. 1001. Filing a Complaint.**

The Preservation office or any person who has reason to believe that an undertaking is proceeding without a permit or that the terms of a permit may have been violated may file a written complaint with the Preservation office. Upon receipt of the written complaint, the Preservation Officer shall provide the complaint to the responsible person and attach any supporting documents with the notice. The Preservation office shall conduct an investigation of the complaint. The responsible person and other associated persons are required to cooperate with the investigation. The responsible person shall provide its official response within 15 business days of receipt of the complaint. The official response must include any and all defenses and arguments that the responsible person intends to assert. The Preservation office shall complete an investigation of a complaint and issue a decision within 30 business days upon receipt of the complaint.

### **Sec. 1002. Informal Settlement Efforts and Hearing.**

If the Preservation Officer determines there is probable cause to believe the allegation(s) in the complaint have merit, then the Officer shall first attempt to achieve a voluntary, informal solution to the complaint through negotiation. The Preservation Officer must make the probable cause determination and finalize all attempts for an informal settlement within 45 business days of receipt of the written complaint. Depending upon the nature of the complaint the Preservation Officer may determine to order any combination of the following:

- (1) Petition the Preservation Board to enjoin the undertaking;
- (2) Issue a permit if one does not exist and/or impose penalties; or
- (3) Modify, suspend, or revoke an existing permit. If the parties do not reach an informal settlement, then the Preservation Officer shall issue its decision and request the Board to set a hearing date.

### **Sec. 1003. Serving Notice of a Hearing.**

The Preservation Board shall serve written notice of the hearing, including the date, time and location to:

- (a) The responsible person against whom the allegation has been made;
- (b) The complainant;
- (c) The Preservation Officer; and
- (d) Any other identified interested person(s).

### **Sec. 1004. Contents of the Notice of a Hearing.**

The notice of a hearing shall advise each party of:

- (a) The nature of the hearing;
- (b) The right to be present and participate in the hearing;
- (c) The right to present witness testimony and documentary evidence and the right to cross-examine witnesses;
- (d) The right to be represented by counsel at his or her own expense;

(e) The right of the complainant to request assistance, not including legal assistance, at the hearing that will be provided by the Preservation office.

**Sec 1005. Conflict of Interest.**

If at any hearing before the Preservation Board, the Board determines that an actual or potential conflict of interest exists between any member of the Board and a hearing participant, the conflict shall disqualify such member or members of the Board from participation in such hearing.

**Sec.1006. Rules of Procedure.**

The Preservation Board on its own initiative or at the request of any person notified of a Board hearing, may call identified witnesses to appear, and subpoena documents and/or records necessary for the hearing. The following Rules of Procedure shall be followed at all hearings conducted by the Preservation Board:

- (a) Each notified party shall have the right to be present and participate in the hearing;
- (b) Each notified party shall have the right to present relevant sworn testimony and documentary evidence;
- (c) Each notified party shall have the right to call witnesses on his or her own behalf and to cross examine witnesses called by any other hearing participant;
- (d) Each notified party shall have the right to be represented by counsel at his or her own expense;
- (e) The Chairperson of the Preservation Board shall preside over the proceedings;
- (f) Formal rules of evidence need not be observed, but the Preservation Board shall act to ascertain the facts in a reasonable and orderly fashion. Any evidence submitted to the Preservation Board for consideration shall exclude hearsay, innuendo and personal attacks;
- (g) The Preservation Board shall record the hearing by utilizing a reliable audiotape recorder;
- (h) The proceedings may be recessed and continued at the discretion of the Preservation Board;

(i) At the conclusion of the proceedings, the Preservation Board may either render an immediate decision or take the matter under advisement and issue its decision and order no later than seven (7) days from the conclusion of the hearing; and

(j) The written decision and order, setting forth specific findings, shall be sent to the complainant and respondent. Should the Preservation Board determine that the person or entity against whom charges were brought violated this Ordinance, the Board may impose one or more penalties set forth in Chapter 11 of this Ordinance, and may order that the responsible person take corrective action to remedy any harm caused by the non-compliance issue.

**Chapter 11. Penalties**

**Sections:**

- Sec. 1101. Possible Penalties for a Person's Violations..... 10
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**Sec. 1101. Possible Penalties for a Person's Violations.**

The Preservation Board, in its discretion, may impose any of the following penalties, or a combination thereof, provided that the severity of the penalty correlates to the severity of the offense.

- (a) Imposition of a civil monetary fine of \$0 to \$5,000.00 per violation. The Preservation Board possesses the discretion to impose cumulative daily penalties if the violation is a reoccurring violation. The amount of a penalty shall take into account the following factors:
  - (1) The damages suffered, both economic and non-economic by Tribal members; and
  - (2) Costs of restoring or replacing a traditional cultural property burial site, archaeological or cultural resource or its equivalent if possible; and
  - (3) Enforcement costs associated with the enforcement of this Ordinance; and
  - (4) Costs associated with the disposition of human remains or cultural items; and

(5) Costs associated with documentation, surveying, and evaluation of the Spiritual site, burial site, traditional cultural property or human remains or archaeological site to assess the characteristics of the site.

(b) Suspension or termination of the responsible person's current privilege of conducting business within the jurisdiction of the Fort Peck Indian Reservation, provided that a reasonable time period be allowed to remove equipment and personal property from the Fort Peck Indian Reservation's jurisdiction.

(c) Prohibition from conducting future business within the jurisdiction of the Fort Peck Indian Reservation for a period of time.

**Sec. 1102. Collection and Deposit of Fines.**

The Preservation Officer shall be responsible for the collection of all fines in a timely manner. The Preservation Officer shall deposit all fines with the Tribes in accordance with the Tribal financial management system, identified as a separate line item of the appropriate Preservation office account. The Preservation office may only utilize the fines in accordance with the budgets approved by the Preservation Board and the TEB.

**Chapter 12. Appeals Procedure**

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**Sec. 1201. Tribal Court Jurisdiction.**

The Tribal Court of the Fort Peck Assiniboine and Sioux Tribes shall have jurisdiction over appeals taken from decisions and orders issued by the Preservation Board. An appeal to the Tribal Court may be taken from any final order of the Preservation Board by any party adversely affected thereby. The appeal must be filed no later

than 15 business days after the party receives a copy of the Preservation Board's decision. The Tribal Court shall require all parties to exhaust the proceedings and remedies available before the Preservation Board. The Tribal Court shall also have jurisdiction to grant such orders as are necessary and appropriate to enforce the orders of the Preservation Board and the penalties imposed by it.

**Sec. 1202. Standard of Review.**

The Tribal Court shall uphold the decision of the Preservation Board unless it finds that the decision of the Board is arbitrary, capricious or in excess of the authority of the Board. The appealing party bears the burden of proving that the Preservation Board's decision is arbitrary, capricious or in excess of the Board's authority.

**Sec. 1203. Notice of Appeal.**

The appeal shall be taken by filing a written notice of appeal with the Tribal Court, serving a copy on the Preservation Officer within 15 business days after the date of the entry of the order. The notice of appeal shall:

- (a) Provide the Preservation Board's decision and order which is the subject of the appeal;
- (b) Specify the grounds justifying reversal or modification of the order; and
- (c) Be signed by appellant.

**Sec. 1204. Petition for Bond.**

The Preservation Officer may petition and, for good cause shown, the Court may order the party requesting a hearing to post a bond sufficient to cover monetary damages that the Preservation Board assessed against the party or to assure the party's compliance with other penalties or remedial actions imposed by the Board's order if that order is upheld by the court.

**Sec. 1205. Petition for Court Order to Enforce a Preservation Board Order.**

The Preservation Board may petition the Tribal Court and the Court may issue such orders as are necessary and appropriate to enforce the orders

and/or penalties of the Board and/or the Court. The Preservation Board may petition and the Tribal Court may order the confiscation and/or sale of a responsible person's property. If the Court determines that a responsible person is not complying with an order and/or penalty of the Preservation Board and/or the Court, then the Court may order Tribal Police to confiscate and hold the specifically-described property. The Tribal Police shall deliver in person or by certified mail, a notice to the responsible person. The notice shall inform the responsible person of the pending confiscation and of the right to prevent such confiscation by coming into compliance with the order and/or penalty being enforced. The responsible person shall have 15 business days to initiate compliance and execute a schedule setting forth how the responsible person will achieve complete compliance. If the responsible person has not come into compliance within 15 business days, the Court shall order the police to confiscate and sell said property and use the proceeds to pay any outstanding fines imposed by the Preservation Board and all costs incurred by the Board, the Court and the police in filing, maintaining and enforcing the confiscation and sale. Any excess proceeds shall be returned to the party.

**Sec. 1206. Final Decision of the Preservation Board or the Tribal Court.**

The Court's order on appeal shall be final, or if no appeal is filed within 15 business days from the date of party's receipt of the Preservation Board's order, the Board's order shall be final. If the Tribal Court reverses or modifies an order of the Preservation Board, the Court shall specifically direct the Board to comply with such reversal or modification.

**Chapter 13. Implementation of the Native American Graves Protection and Repatriation Act and Other Federal Laws**

**Sections:**

Sec. 1301. Policy..... 12  
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**Sec. 1301. Policy.**

It is the policy of the Tribes that ancestors' burial items, as that phrase is defined in this Ordinance, are sacred and we desire that they not be disturbed. In the event that our ancestors are disturbed or excavated, the remains shall be re-buried together with all funerary items as soon as possible. The remains of the Tribe's ancestors and funerary items that have been disturbed and are now in possession of museums, universities, federal agencies or other institutions or persons, should be returned to the Tribes for reburial.

**Sec. 1302. Implementation.**

To effectively prevent any further disturbance of any burial item, archeological resource or cultural resource, the Tribes will assert its inherent sovereign rights and those federal rights provided in various federal laws. The Preservation office shall represent the Tribe's interests when providing consent to federal agencies or consulting with federal agencies on federal undertakings on tribal lands and aboriginal lands in accordance with the National Historic Preservation Act, the Archeological Resources Protect Act, the Native American Graves Protection and Repatriation Act and other federal laws.

**Chapter 14. Sovereign Immunity**

**Sections:**

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**Sec. 1401.**

As a tribal agency providing critical government services, the Cultural Preservation office, including the Preservation Officer and the Preservation Board (collectively referred to as Preservation office in this paragraph), shall share in the Tribe's sovereign immunity from suit. Only the TEB may expressly authorize a limited waiver of the Preservation office's sovereign immunity from suit, provided, however, that such waiver must be express and unequivocal and evidenced by a duly enacted resolution by the TEB for that purpose only. A resolution of the TEB which expressly and unequivocally authorizes a limited



waiver for an explicit purpose shall not be deemed a waiver for any other purpose. Any limited waiver enacted by the TEB pursuant to the authorization granted by this provision shall not extend to the Tribes or any of its departments, agencies or entities. The Tribes shall not be liable for the debts or obligations of the Preservation office, except in so far as it may hereafter expressly obligate itself in writing.

**(AS PER RESOLUTION NO. 26-1304-2012-08; DATED 8/27/2012.)**

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Title 33 – Fort Peck Tribal Executive Board Code of Ethics**

**Sections:**

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**101. Purpose.**

This Ordinance establishes a Code of Ethics that all voting and non-voting members of the Board must observe and carry out, sets forth the procedures for investigating complaints by the Board members that another Board member has violated any ethical obligations, and sets forth procedures for the Board to make a final determination whether any member of the Board has violated any ethical obligations and whether to impose a sanction for such violation.

**102. Removal Ordinance.**

Nothing in this Ordinance shall prohibit or limit the Board from pursuing a separate proceeding under the Removal Ordinance.

**103. Definitions.**

For purposes of this Ordinance, the following definitions shall apply:

(a) *Conflict of Interest* means:

(1) Action or conduct by a member of the Board which is in conflict with the member’s obligation to take actions exclusively in the best interest of the Tribes; or

(2) When the member of the Board has or should have anticipated that the Board member or a relative or closely associated person has a personal or financial interest in a matter before the Board that is separate from and adverse to the Tribes in that matter.

(b) *Relative* means father, mother, grandfather, grandmother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, whether or not by adoption. In addition, the term includes husband, wife, son-in-law, daughter-in-law, father-in-law, mother-in-law, sister-in-law, brother-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

**104. Ethical Obligations of Board Members.**

(a) No members of the Board shall take any official action, whether in a Board meeting, committee meeting, or otherwise, in which the Board member, or a relative or closely associated person, has a personal or financial interest which could be affected by such action.

(b) No members of the Board shall accept, on his or her own behalf, or on behalf of a relative of closely associated person, individual gifts valued at over three hundred dollars (\$300.00). The following are examples of permissible gifts that may

be accepted by members of the Board, individually or on behalf of a relative or closely associated person:

(1) Ceremonial and customary gifts generally granted to dignitaries;

(2) Food and refreshment of a nominal value in the ordinary course of a luncheon or dinner meeting;

(3) Personal achievement awards for meritorious service;

(4) Unsolicited advertising or promotional material of nominal value; and

(5) Loans on customary terms to finance proper and usual activities on the same basis as any enrolled member of the Tribes.

(c) No members of the Board shall accept, on his or her own behalf or on behalf of his or her relative or closely associated person, any gifts, monetary or otherwise, intended for the Tribes.

(d) No member of the Board shall knowingly make public any confidential information received in connection with his or her duties as a member of the Board including but not limited to:

(1) Matters discussed during executive sessions of the Board;

(2) Matters protected as confidential under applicable Tribal or federal law; and

(3) Information given with the reasonable expectation that such information would be kept confidential.

### **105. Investigation of Complaints for Violations of this Code.**

(a) Complaint.

(1) Allegations that a member of the Board has violated his or her ethical obligations as set forth in this Code shall be investigated and resolved exclusively by the Board under the provisions of this Section.

(2) Any member of the Board may submit to the Chairman, or Vice-Chairman if an allegation is made against the Chairman, a written complaint that another member of the Board has engaged in a violation of this Ordinance. The complaint shall specify the member of the Board against whom a complaint is being made, and the

conduct that is alleged to violate an obligation set forth in this Ordinance.

(3) The Chairman, or Vice-Chairman if an allegation is against the Chairman, shall provide a copy of the complaint to all members of the Board, including the member against whom the complaint has been filed.

(b) Initial Review. The Board shall perform an initial review of the allegation and complaint in executive session no later than fifteen (15) days after the complaint has been submitted. The purpose of the initial review shall be to determine whether the allegation made falls within the scope of this Ordinance and whether, assuming the facts alleged are true, the facts would support a determination of unethical conduct. The member of the Board against whom the allegation is made shall not participate in the initial review.

(c) Investigation.

(1) If the Board, upon completion of the initial review, determines by a resolution duly adopted by a majority of the Board that the allegation falls within the scope of this Ordinance and alleges facts which, if true, would support a determination of unethical conduct, the Board, shall schedule a hearing within twenty (20) days to investigate the complaint.

(2) The Board shall hear all relevant evidence and have the authority to take testimony under oath, to issue subpoenas, and to compel the production of relevant documents and other evidence. The member of the Board against whom an allegation is made, all other members of the Board, and members of the public shall be permitted to be present at the hearing, except that all or any portion of the hearing shall be held in executive session if the member against whom the complaint has been filed so requests.

(3) The member against whom the complaint has been filed shall have the right to be represented by counsel at his or her own expense at the hearing, to cross-examine witnesses, and to present his or her own witnesses and documentary evidence.

**106. Decision by the Board.**

(a) The Board shall make a formal decision whether an ethical violation under this Ordinance has occurred. The decision shall be made by a motion of a member of the Board, made and seconded in open session, voted upon by recorded roll call vote, and approved by a two-thirds majority of the voting members of the Board.

(b) The member of the Board against whom an allegation of unethical conduct is made shall not participate in the decision by the Board of whether unethical conduct occurred and shall not participate in the proceedings described in subsection (a) above.

**107. Sanctions.**

(a) If the Board determines, pursuant to Section 106 of this Ordinance, that a member of the Board has engaged in unethical conduct under this Ordinance, the Board may impose a sanction or sanctions against that member. The decision to impose a sanction or sanctions shall be made by a motion of a member of the Board, made and seconded in open session, voted upon by recorded roll call vote, and approved by a majority of the voting members of the Board.

(b) The member of the Board who has been determined to have engaged in unethical conduct under this Ordinance shall not participate in the decision by the Board of whether to impose a sanction, shall not participate in the decision by the Board regarding appropriate sanction, and shall not participate in the proceedings described in subsection (a) above.

(c) Appropriate sanctions under this Section may include, but shall not be limited to, any or all of the following:

(1) Reprimand, which is defined as a public censure or condemnation administered by the Board;

(2) Restitution or fine; or

(3) Suspension with or without pay, provided that such suspension shall not exceed three months for any specific violation.

(d) Appropriate sanctions under this Section shall not include removal. As set forth in Section

102 of this Ordinance, removal proceedings are subject to the Removal Ordinance.

**108. Determination to be Final.**

The decision by the Board concerning any allegation of a violation of this Ordinance and any sanction imposed shall be final and shall not be subject to judicial appeal.

## APPENDIX I

2013

CONSTITUTION AND BYLAWS OF  
THE ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION  
*as ratified by Special Election held on Oct. 1, 1960,  
and approved by the Secretary of the Interior on Nov. 30, 1960.*

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Article I.	Preamble and Name
Article II.	Territory
Article III.	Membership
Article IV.	Governing Body
Article V.	Nominations, Elections and Vacancies
Article VI.	Vacancies and Removal from Office
Article VII.	Governmental Powers
Article VIII.	Future Powers
Article IX.	Reserve Powers
Article X.	Business and Fiscal Authorities
Article XI.	Bylaws
Article XII.	Roberts Rules of Order
Article XIII.	Manner of Review
Article XIV.	Referendum
Article XV.	Amendment
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### ARTICLE I – PREAMBLE AND NAME

We, the adult members of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana, in order to establish a recognized and approved tribal organization to handle our Reservation affairs and business, to protect the sovereignty and the vested interest of our Tribes and members under treaties, agreements, and laws, formerly enacted, to procure for our Tribes and our members and our posterity, social, educational and industrial assistance, also, to procure assistance in all matters of interest to the Tribes, and to preserve peaceful and cooperative relations with the United States Government, its subdivisions, and its offices, do hereby establish this Constitution and Bylaws, with the legal name: “Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana.” (Where used herein, the “Reservation” refers to the Fort Peck Indian Reservation in Montana; the “Tribes” to the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, the “Board” to the Tribal Executive Board, the “Secretary” to the Tribal Executive Board Secretary, the “General Council” refers to an assembly of the qualified Electors of the Tribes.)

**History:** En. Oct. 1, 1960, *codified as enacted.*

### ARTICLE II – TERRITORY

The jurisdiction of the Tribes shall extend to the territory within the original confines of the Fort Peck Reservation as defined in the agreement of December 28 and December 31, 1886, confirmed by the Act of May 1, 1888 (25 Stat. 113, Ch. 212) and to such other lands as may be hereafter added thereto under any laws of the United States, except as otherwise provided by law.

**History:** En. Oct. 1, 1960, *codified as enacted*.

### ARTICLE III – MEMBERSHIP

Membership of the Tribes of the Reservation shall consist of those persons who qualify in accordance with an ordinance approved by the Tribes, in a referendum vote. A membership ordinance shall be submitted to the Tribes simultaneously with the submission of this Constitution for referendum vote by the Tribes.

**History:** En. Oct. 1, 1960, *codified as enacted*.

### ARTICLE IV – GOVERNING BODY

**Section 1.** The governing body of the Tribes shall be known as the Tribal Executive Board, subject to the powers of the General Council.

A General Council may initiate ordinances or reject within ninety (90) days any enactment of the Executive Board. Upon petition of at least 10 percent (10%) of the eligible voters of the Tribes, a General Council shall be called by the Chairman at a place within the Fort Peck Reservation designated in the petition; a quorum shall consist of one hundred (100) eligible voters of the Tribes. A stenographic transcript shall be kept of all proceedings of the General Council.

**Section 2.** The Board shall consist of a Chairman, a Vice-Chairman, a Secretary-Accountant, a Sergeant-at-Arms, and twelve (12) Board members.

**Section 3.** The Chairman, the Vice-Chairman, Sergeant-at-Arms and twelve (12) additional members of the Board shall be elected at large. The Secretary-Accountant shall be appointed from within or without the Board membership.

**Section 4.** The Chairman, the Vice-Chairman, the Sergeant-at-Arms, and Board members shall be elected for a two (2) year term.

**Section 5.** The Secretary-Accountant shall be appointed for a two (2) year term, and if appointed from outside of the elected Board membership, the Secretary-Accountant so appointed shall have no vote in Executive Board proceedings.

**Section 6.** The Board shall adopt a Code of Ethics governing behavioral standards for the Board, which shall apply to all voting and non-voting members of the Board.

**History:** En. Oct. 1, 1960; § 3 *amended* by Amdt. 1 (Oct. 6, 1971); § 1 *amended* by Amdt. 2 (May 5, 1972); § 6 *enacted* by Amdt. 8, (Oct. 26, 2013).

### ARTICLE V – NOMINATIONS, ELECTIONS AND VACANCIES

**Section 1.** Elections shall be by secret ballot. Voting shall be within the respective districts as provided herein, at a place designated within each district by the Board.

**Section 2.** All members of the Assiniboine and Sioux Tribes, as determined by Article III of this Constitution, who are eighteen (18) years of age or over, are eligible to vote as provided:

- (a) Voters residing on the Reservation shall be eligible to vote in the district in which they have last resided for a full sixty (60) days immediately preceding the election. The registration of any member for voting at a State or County election shall be conclusive as establishing his/her place of residence.
- (b) Non-resident voters may vote by absentee ballot in the last district of their former affiliation,

provided they have registered their intent to vote at that district at least thirty (30) days prior to the date of election.

**Section 3.** The first election of the Board under this Constitution and Bylaws shall be held within one hundred twenty (120) days following its ratification and approval by the Secretary of the Interior under such rules, regulations, and ordinances, as promulgated by the Tribal Executive Board. Subsequent elections shall be held on the last Saturday in October every two (2) years. In the event such day is a holiday, the election shall be held on the first subsequent day that is not a holiday.

**Section 4.** Elected Board members shall take office at the first regular meeting following the election. Before entering on duty the newly elected Board members shall file the oath of office certified by a notary public, the following oath: "I do solemnly swear that I shall faithfully execute the duties of my office, defend the Constitution of the United States of America, the State of Montana, and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, so help me God."

**Section 5.** To be eligible for nomination and election to the Board, a person must be:

- (a) An eligible voter on the Reservation.
- (b) A qualified candidate having resided on the Reservation at least sixty (60) days immediately preceding an election, and not having been convicted of a felony for which he/she has not received a pardon.
- (c) All questions of residence as referred to in this Constitution shall be resolved by the Tribal Executive Board.

**Section 6.** The candidates for Chairman, Vice-Chairman, Sergeant-at-Arms and twelve (12) additional members of the Executive Board receiving the highest number of cumulative legal votes from all the districts shall be declared elected.

**Section 7.** The Tribal Executive Board shall have the authority to pass ordinances providing for method of elections, and not limiting said power to, but including election announcements, nominations, and fees, registration of voters lists, election officials and their duties, place of voting, certificates of election, manner of protests and recount, and all election procedures; as a guide, to follow as near practicable Chapter 23 of the Revised Code of Montana, 1947, as amended, and effective at the time; and in case of disputed interpretation, the decisional laws of Montana shall be resorted to, subject to the approval of the Fort Peck Tribal Board.

**History:** En. Oct. 1, 1960; § 6 amended by Amdt. 1 (Oct. 6, 1971); § 2 amended by Amdt. 3 (Jul. 29, 1974), Amdt. 4 (Feb. 13, 1978).

## **ARTICLE VI - VACANCIES AND REMOVAL FROM OFFICE**

**Section 1.** The Tribal Executive Board shall declare a position on the Board vacant whenever a member shall die, resign, be removed or recalled from office. Such vacancies shall be filled as follows:

- (a) If the office of Chairman shall become vacant, the Vice-Chairman shall become Chairman, and the office of Vice-Chairman shall then be filled as provided in Subsection (b) of this Section.
- (b) If the office of Vice-Chairman shall become vacant, it shall be automatically filled by the person who received the next highest number of cumulative legal votes from all districts for the office of Vice-Chairman at the previous election who meets the qualifications for that office on the date he or she takes office, and who is willing to serve as Vice-Chairman.
- (c) If the office of Secretary/Accountant shall become vacant, a successor shall be appointed for the remainder of his or her term as provided in Article IV, Section 3 and 5.

- (d) If the office of Sergeant-at-Arms shall become vacant, it shall be automatically filled by the person who received the next highest number of cumulative legal votes from all districts for the office of Sergeant-at-Arms at the previous election, who meets the qualifications for that office on the date he or she takes office; and who is willing to serve as a member of the Board.
- (e) If any other seat on the Tribal Executive Board shall become vacant, it shall be automatically filled by the person who received the highest number of cumulative votes from all districts in the previous election, who meets the qualifications for office on the date he or she takes office, who is not a member of the Board on the date he or she takes office; and who is willing to serve as a member of the Board.
- (f) If a vacancy shall remain in any office for a reason, the Board may schedule a special election to fill the vacancy.

**Section 2.** A Board member or officer of the Board, may be removed from office by the Board, after having been given twenty (20) days notice in writing by the Secretary, and a chance to be heard. Causes for prejudicial Executive procedures removal are:

- (a) Permanent change of residence from the Reservation.
- (b) Conviction in any court of a felony while in office, and/or any course of conduct prejudicial to the Tribes.
- (c) Failure to attend three (3) regular meeting in succession, except that the Tribal Board may approve reasonable grounds for nonattendance.
- (d) The Tribal Executive Board shall by duly enacted ordinances establish such and regulations necessary to carry out the intent of this article.
- (e) All questions which cannot be resolved by the Tribal Executive Board shall be referred to the Fort Peck General Council.

**History:** En. Oct. 1, 1960, *amended by* Amdt. 7, as per Oct. 26, 1991 Referendum, Tribal Resolution 2373-91-7 (Jul. 10, 1991).

## ARTICLE VII – GOVERNMENTAL POWERS

The Tribal Executive Board shall exercise the following powers subject to any limitations imposed by the Constitution or Statutes of the United States and Fort Peck General Council, and subject further to all expressed restrictions upon such powers contained in this Constitution and Bylaws.

**Section 1.** To negotiate with Federal, State and local governments, and others on behalf of the Tribes, and consult with representatives of the Department of the Interior on all activities which may affect the Tribes.

**Section 2.** To employ legal counsel for the protection of the rights of the Tribes.

**Section 3.** To make and enforce ordinances covering the Tribes’ right to levy taxes and license fees on person or organizations doing business on the Reservation, except that ordinances or regulations affecting the non-members trading or residing within the jurisdiction of the Tribes shall be subject to the approval of the Secretary of the Interior.

**Section 4.** To promote public health, education, security, charity, and such other services as may contribute to the social advancement of the members of the Tribes.

**Section 5.** To provide, subject to the review of the Secretary of the Interior, or his authorized representatives, for the maintenance of law and order and the administration of justice by establishing tribal courts and police force, and defining the powers and duties of same, and to promulgate criminal



and civil codes or ordinances governing the conduct of persons within the jurisdiction of the Tribes.

- (a) To prescribe rules of inheritance, except allotted lands.
- (b) To provide for an escheat of personal property to the Tribes of resident members who die intestate and without heirs.
- (c) To protect and preserve the wildlife and natural resources of the Reservation, and to regulate hunting and fishing on the Reservation.
- (d) To protect and preserve cultural and traditional/spiritual sites and landmarks within the boundaries of the Reservation.
- (e) To protect and preserve the Tribes' culture, including traditional medicinal plants and natural foods.

**Section 6.** To exclude from the restricted land of the Reservation persons not legally entitled to reside thereon under ordinances subject to the review of the Secretary of the Interior.

**Section 7.** To adopt resolutions regulating the procedure of the Tribal Executive Board, its officials and committees in the conduct of tribal affairs.

**Section 8.** No authority contained in this Constitution and Bylaws may be delegated by the Tribal Executive Board to tribal officials, district councils, committees, delegates or associations, to carry out any functions for which this Tribal Executive Board assumes primary responsibility, except by ordinance or resolution duly enacted by the Tribal Executive Board in the legal session, and excepting those specific requirements contained in the Bylaws hereof.

**Section 9.** The Tribal Executive Board is hereby authorized to recognize claim councils, district committees, and other organizations open to the membership of the Tribes, and to approve such organizations, and to provide financial support, services, or such other assistance as may be required to carry on programs beneficial to the membership of the Tribes. The Tribal Executive Board will require all such recognized organizations to submit an annual audited fiscal report to the Board for review and public release.

**History:** En. Oct. 1, 1960, § 5 amended by Amdt. 9 (Oct. 26, 2013); §§ 5(d) and (e) enacted by Amdt. 10 (Oct. 26, 2013); § 9 amended by Amdt. 11 (Oct. 26, 2013).

## ARTICLE VIII – FUTURE POWERS

The Tribal Executive Board may exercise future powers as may be granted to it by the membership of the Tribes by approving amendments to this document,

**History:** En. Oct. 1, 1960, *codified as enacted*.

## ARTICLE IX – RESERVE POWERS

Any rights and powers heretofore vested in the Assiniboine and/or Sioux Tribes, but not expressly referred to in this Constitution, shall not be abridged, but may be exercised through the adoption of appropriate amendments to this Constitution.

**History:** En. Oct. 1, 1960, *codified as enacted*.

## ARTICLE X - BUSINESS AND FISCAL AUTHORITIES

The Tribal Executive Board shall exercise the following powers subject to any limitations imposed by the

Constitution or Statutes of the United States and subject further to all expressed restrictions upon such powers contained in this Constitution and Bylaws.

**Section 1.** Not more than seventy percent (70%) of the income of the Tribes in the United States Treasury shall be paid out in per capita payments each year among the enrolled members of the Tribes.

**Section 2.** To administer any funds within the control of the Tribes; to make expenditures from available funds for tribal purposes, including salaries and expenses to tribal officials or employees. All expenditures of tribal funds under control of the Tribal Executive Board shall be authorized in legal session and the amount so expended shall be matter of public record.

**Section 3.** The Tribal Executive Board shall prepare annual budget requests for advance to the control of the Tribes, such funds as may be deposited to their credit in the United States Treasury, or which may hereafter be appropriated for their use.

**Section 4.** To manage, lease, permit, or otherwise deal with tribal land, interest in lands or assets under tribal jurisdiction; and to purchase or otherwise acquire lands, or interest in lands within the Fort Peck Indian Reservation, in accordance with law.

**Section 5.** To engage in any business that will further the economic well-being of the members of the Tribes, or undertake any programs or projects designed for the economic advancement of the people.

**Section 6.** To borrow money from the Federal Government, or other sources, and to direct the use of such funds for productive purposes, or to loan money thus borrowed to members of the Tribes, with the approval of the Secretary of the Interior, or his authorized representative.

**Section 7.** To pledge or assign chattel or future income due or to become due, provided such agreement, pledge, assignment, or extension thereof shall be subject to the approval of the Secretary of the Interior or his authorized representative.

**Section 8.** To make and perform contract and agreements of every description, not inconsistent with law or the provisions of this Constitution and Bylaws, provided that any contract if required by law shall be subject to the approval of the Secretary of the Interior, or his authorized representative.

**History:** En. Oct. 1, 1960, *codified as enacted*.

## ARTICLE XI – BYLAWS

**Section 1. General Council.** Upon receipt of the Petition calling for General Council, the Chairman or in his absence, or failure to act within three (3) days, the Secretary, shall give fifteen (15) day's notice of the time and place of such General Council by publication in newspapers, having general circulation on the Fort Peck Reservation and by posting in three (3) public places in each election district.

**Section 2. Meetings.** The Tribal Executive Board shall establish regular and special meeting dates in accordance with duly enacted resolutions. The Secretary shall mail notices of all meetings and shall include dates, time, place, and purpose of special meeting at least three (3) days in advance.

**Section 3. Quorum.** A quorum shall consist of a majority of the voting members of the Tribal Executive Board, and no business shall be conducted at any time a quorum is absent.

**Section 4. Manner of Acting.** The act of a majority of the Tribal Executive Board representatives present at a meeting at which a quorum is present shall constitute the act of the Tribal Executive Board. Act of the Tribal Executive Board may be by motion duly carried, except that any delegation of authority to act for and on behalf of the Tribal Executive Board shall be by written resolution and shall specify the nature of the authority granted and the limitations, if any, imposed, excepting those authorities and responsibilities specifically outlined in these Bylaws.

## **Section 5. Account.**

- (a) The Tribal Executive Board shall cause to be installed, maintained, and audited a complete and detailed accounting system and such safeguards as bonding officials and employees responsible for the safety, accuracy, and maintenance of such records and funds.
- (b) All checks, drafts, or other order for the payment of tribal money, notes, or other indebtedness issued in the name of the Tribes, shall be signed by such officers, or agents, and in such manner as shall be prescribed by resolution. No tribal funds shall be disbursed except where so ordered by resolution.

## **Section 6. Duties of Officers.**

### **Duties of Chairman:**

- (a) He shall preside at all regular and special meetings.
- (b) He shall have general and active management of the affairs of the Tribes except that he shall not act on matters binding the Tribal Executive Board until that body had deliberated and decided on the course of action.
- (c) He shall see that all resolutions and ordinances are carried into effect.
- (d) He shall execute all official papers of the Tribes when authorized to do so.
- (e) He shall exercise general supervision of all other tribal officers and employees and see that their respective duties are performed.
- (f) He shall submit a report of operations to the Tribal Executive Board at its regular meeting including all matters within his knowledge which the interest of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation may require be brought to its attention.
- (g) He shall vote in the case of a tie only.

### **Duties of the Vice-Chairman:**

- (a) In the absence of the Chairman, he shall preside. Then so presiding, he shall have all rights, privileges and duties, as set forth above under duties of Chairman, as well as the responsibility of the Chairman.

### **Duties of Secretary:**

- (a) He shall keep a book of minutes at the principle office of the Tribes or at such other place as the Tribal Executive Board may order, of all meetings of the Tribal Executive Board in the manner as and in the form prescribed by the Board.
- (b) He shall attend to the filing and serving of all notices of the Tribal Executive board required by this Constitution.
- (c) He shall keep the tribal roll showing all changes therein as required by this Constitution. In addition, he shall keep a current voting list.
- (d) He shall attend to all correspondence as may be assigned to him, and perform all other duties incidental to his office or prescribed by the Tribal Executive Board.

### **Duties of the Secretary as Accountant:**

- (a) He shall keep and maintain, open to inspection by members of the Tribes or representatives of the Commissioner of Indian Affairs at all reasonable times, adequate and correct accounts of the properties and business transactions of the Tribes.
- (b) He shall have care and custody of the funds and valuables of the Tribes, and deposit same in

the name of and to the credit of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, with such depositories as the Board may direct.

- (c) Disburse the funds of the Tribes as may be ordered by the Tribal Executive Board, taking proper signed invoices, vouchers, or other instruments for said disbursements.
- (d) Render to the Tribal Executive Board monthly report and account of all his transactions as Accountant, and an annual financial statement in forms and detail showing the conditions of tribal expenditures, receipts and disbursements.
- (e) The Tribal Accountant and all officers and employees whose duties involve the handling of tribal money or resources, shall be bonded under the terms and conditions established by the Tribal Executive Board and approved by the Superintendent of the Fort Peck Reservation.

**Duties of Sergeant-at-Arms:**

- (a) He shall act as Sergeant-at-Arms at all regular and special meetings and shall enforce all rules and see that peace and order are kept during the sessions of the Board.
- (b) He shall perform all other duties as assigned by the Tribal Executive Board.
- (c) He shall not be a voting member of the Board.

**History:** En. Oct. 1, 1960, *codified as enacted.*

**ARTICLE XII – ROBERTS RULES OF ORDER**

Roberts Rules of Order as revised shall govern all meetings of the General Council and the Tribal Executive Board except as otherwise provided in this Constitution and Bylaws.

**History:** En. Oct. 1, 1960, *codified as enacted.*

**ARTICLE XIII – MANNER OF REVIEW**

**Section 1.** Any resolution or ordinance which by the terms of this Constitution is subject to review by the Secretary of the Interior shall within ten (10) days of its enactment be presented to the Superintendent of the Fort Peck Agency who shall within ten (10) days after its receipt by him approve or disapprove it.

**Section 2.** If the Superintendent approves any resolution or ordinance it shall thereupon become effective, but the Superintendent shall transmit the enactment bearing his endorsement to the Secretary of the Interior, who may within ninety (90) days of the date of its enactment rescind the resolution or ordinance for any cause by notifying the Fort Peck Tribal Executive Board of his veto.

**Section 3.** If the Superintendent disapproves any resolution or ordinance, he shall within ten (10) days after its receipt by him advise the Tribal Executive Board in writing of his reasons therefore, and if these reasons appear to the Board insufficient, it may, by vote of the majority of all members, refer the resolution or ordinance to the Secretary of the Interior and if approved by him in writing it shall be effective.

**History:** En. Oct. 1, 1960, *codified as enacted.*

**ARTICLE XIV – REFERENDUM**

Upon a petition of at least twenty-five percent (25%) of the eligible votes of the Tribes, or upon request of a majority of the Tribal Executive Board members, any enacted or proposed enactment of the Tribal

Executive Board shall be submitted to a popular referendum and the vote of a majority of the qualified voters at that election shall be conclusive.

**History:** En. Oct. 1, 1960, *codified as enacted*.

#### ARTICLE XV – AMENDMENT

This Constitution and Bylaws may be amended by a majority vote of the qualified voters of the Tribes voting at an election called for that purpose by the Tribal Executive Board or General Council or under the provisions of Article XIV of this Constitution.

**History:** En. Oct. 1, 1960, *amended by Amdt. 6 (Aug. 13, 1988)*.

#### ARTICLE XVI - ADOPTION

This revised Constitution and Bylaws when adopted by a majority vote of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana, voting at a special election called by the Tribal Executive Board, shall be submitted to the Secretary of the Interior, and shall be in full force and effect from the date of such approval by the Secretary of the Interior.

**History:** En. Oct. 1, 1960, *codified as enacted*.

#### CERTIFICATE OF ADOPTION

Pursuant to an election called by the Fort Peck Tribal Executive Board, the attached Constitution and Bylaws of the Fort Peck Tribes, was submitted for ratification to the members of the Assiniboine and Sioux Tribes of the Fort Peck Reservation, Montana, and was on October 1, 1960, ratified by vote of seven hundred fifty six (756) For, and one hundred forty one (141) Against.

/s/ Austin Buckles,

Chairman, Fort Peck Tribal Executive Board

/s/ Joseph W. Culbertson,

Secretary, Fort Peck Tribal Executive Board

/s/ Dale M. Baldwin,

Superintendent, Fort Peck Agency

#### APPROVAL

I, George W. Abbott, Assistant Secretary of the Interior of the United States of America, do hereby approve the attached Constitution and Bylaws of the Fort Peck Tribes of the Fort Peck Indian Reservation, Montana.

Approval recommended:

/s/ Glen L. Emmons,

Commissioner, Bureau of Indian Affairs

November 22, 1960

/s/ George W. Abbott,

Assistant Secretary of the Interior (SEAL)

November 30, 1960 (Washington, D.C.)

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*The foregoing CONSTITUTION AND BYLAWS (2013) incorporates the changes approved by the*

*amendments described below.*

**Amdt. 1.** “That commencing with the elections to be held in 1971, all officers of the Executive Board, consisting of the Chairman, Vice-Chairman, Sergeant-at-Arms and twelve (12) additional members of the Board shall be elected at large.”

**Amdt. 2.** Section I of Article IV, Governing Body, shall be amended to read as follows:

Section 1. The governing body of the Tribes shall be known as the Tribal Executive Board, subject to the powers of the General Council.

A General Council may initiate ordinances or reject within ninety (90) days of any enactment of the Executive Board, upon petition of at least ten percent (10%) of the eligible voters of the Tribes, a General Council shall be called by the Chairman at a place within the Fort Peck Reservation designated in the petition; a quorum shall consist of one hundred (100) eligible voters of the Tribes. A stenographic transcript shall be kept of all proceedings of the General Council.”

**History:** Adopted by a majority affirmative vote at General Election held on Oct. 30, 1971, and approved on May 5, 1972 by Assistant Secretary Loesch.

**Amdt. 3.** “Section III, Article V, Nominations, Elections and Vacancies, shall be amended to read:

Section 2. All members of the Assiniboine and Sioux Tribes, as determined by Article III of this Constitution, who are eighteen (18) years of age or over, are eligible to vote, provided:

- (a) Voters residing on the Reservation shall be eligible to vote in the district in which they have last resided for a full sixty (60) days immediately preceding the election. The registration of any member for voting at a State or County election shall be conclusive as establishing his or her place or residence.
- (b) Non-resident voters may vote by absentee ballot in the last district of their former affiliation provided they have registered their intent to vote in that district at least thirty (30) days prior to the date of election.”

**History:** Adopted by a majority affirmative vote at General Election held on Oct. 27, 1973, and approved on Jul. 29, 1974 by Area Director Canan.

**Amdt. 4.** Article V, Nominations, Elections and Vacancies, Section 2 shall be amended to read:

Section 2. All members of the Assiniboine and Sioux Tribes, as determined by Article III of this Constitution, who are eighteen (18) years of age or over, are eligible to vote, provided:

- (a) Voters residing on the Reservation shall be eligible to vote in the district in which they have last resided for a full sixty (60) days immediately preceding the election. The registration of any member for voting at a State or county election shall be conclusive as establishing his or her place or residence.
- (b) Non-resident voters may vote by absentee ballot in the last district of their former affiliation provided they have registered their intent to vote in that district at least thirty (30) days prior to the election date.”

**History:** Adopted by a majority affirmative vote at General Election held on Oct. 29, 1977, and approved on

Feb. 13, 1978 by Area Director Canan.

**Amdt. 5.** Article XI, Bylaws, Section 5, Account, repeal Article Section 5(a) of the Bylaws and conform the present paragraph numbers “Section 5(b)” and “Section 5(c)” to “Section 5(a)” and “Section 5(b).”

**History:** Adopted by a majority affirmative vote at General Election held on Oct. 29, 1977, and approved on Feb. 13, 1978 by Area Director Canan.

**Amdt. 6.** Article XV, Bylaws, shall be amended to read:

“This Constitution and Bylaws may be amended by a majority vote of the qualified voters of the Tribes at an election called for that purpose by the Tribal Executive Board or General Council or under the provisions of Article XIV of this Constitution.”

**History:** Adopted by a majority affirmative vote at Special Election held on May 7, 1988, and approved on Sept. 13, 1988 by Deputy Assistant to the Secretary, Hazel E. Elbert.

**Amdt. 7.** Article VI, Vacancies and Removal from Office, Section 1, shall be amended to read:

“Section 1. The Tribal Executive Board shall declare a position on the Board vacant whenever a member shall die, be removed or recalled from office. Such vacancies shall be filled as follows:

- (a) If the Office of the Chairman shall become vacant, the Vice-Chairman shall become Chairman, the office of Vice-Chairman shall then be filled as provided in subsection (b) of this section.
- (b) If the office of Vice-Chairman shall become vacant, it shall be automatically filled by the person who received the next highest number of cumulative legal votes from all districts for the office of Vice-Chairman at the previous election who meets the qualifications for that office on the date he or she takes office; and who is willing to serve as Vice-Chairman.
- (c) if the office of Secretary/Accountant shall become vacant, a successor shall be appointed for the remainder of his or her terms as provided in Article IV, Sections 3 and 5.
- (d) If the office of Sergeant-at-Arms shall become vacant, it shall be automatically filled by the person who received the next highest number of cumulative legal votes from all districts for the office of Sergeant-at-Arms at the previous election who meets the qualifications for that office on the date he or she takes office; and who is willing to serve as Sergeant-at-Arms.
- (e) If any other seat on the Tribal Executive Board shall become vacant it shall be automatically filled by the person who received the next highest number of cumulative legal votes from all districts in the previous election, who meets the qualification for office on the date he or she takes office, who is not a member of the Board on the date he or she takes office; and who is willing to serve as a member of the Board.
- (f) If a vacancy shall remain in any office for a reason, the Board may schedule a special election to fill the vacancy.”

**History:** Adopted by a majority affirmative referendum vote at General Election held on Oct. 26, 1991, and by previous Tribal Executive Board Resolution No. 2372-91-7 (Jul. 10, 1991).

**Amdt. 8.** This amendment established Art. IV, § 6, which includes the following language: “The Board shall adopt a Code of Ethics governing behavioral standards for the Board, which apply to all voting and non-voting members of the Board.”

**History:** Adopted by a majority affirmative vote at General Election held on Oct. 26, 2013.

**Amdt. 9.** This amendment removed the language: “the members of the Tribes and non-member Indians residing” from Art. 7, § 5 (Governmental Powers), which had previously limited the criminal jurisdiction of the Tribes to offenses committed by Indian persons only and replaced it with less restrictive language: (“persons”) which allows the Tribes to exercise criminal jurisdiction over non-Indians, as permitted by federal law.

**History:** Adopted by a majority affirmative vote at General Election held on Oct. 26, 2013.

**Amdt. 10.** This amendment established Art. VII, §§ 5(d) and 5(e) (Governmental Powers), clarifying that the Executive Board may exercise its powers to protect and preserve the cultural and spiritual sites, medicinal plants and natural foods within the Reservation:

(d) To protect and preserve cultural and traditional/spiritual sites and landmarks within the boundaries of the Reservation.

(e) To protect and preserve the Tribes’ culture, including traditional medicinal plants and natural foods.

**History:** Adopted by a majority affirmative vote at General Election held on Oct. 26, 2013.

**Amdt. 11.** This amendment added the following language to Section 9 of Article VII (Governmental Powers), requiring claims councils, district councils and other organizations to submit an annual audited fiscal report: “The Tribal Board will require all such recognized organizations to submit an annual audited fiscal report to the Board for review and public release.”

**History:** Adopted by a majority affirmative vote at General Election held on Oct. 26, 2013.

**[End of Document]**



**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Appendix 2 – Rules of Civil Procedure Fort Peck Tribal Court**

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## Chapter 1.

### Rule 1. Effective Date-Divisions-Admission To Bar.

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#### 1-1. Effective Date

These Revised Rules of Civil Procedure of the Fort Peck Tribal Court, Fort Peck Indian Reservation supplement Title 8 of the Comprehensive Code of Justice (CCOJ), the Federal Rules of Civil Procedure, Title 28 USC and will be effective on October 1st 2007. Subsequent amendments to these Rules shall be effective on the date of approval by the Tribal Executive Board as per 2 CCOJ 104.

#### 1-2. Decorum

(a) **Opening Court:** When the Court first convenes in the morning and afternoon recess, the bailiff shall, in an appropriate manner, announce the opening of Court, and all persons in attendance in the courtroom shall rise until the judge has taken the bench.

(b) The judges of the Court shall, when presiding in open court, wear judicial robes.

(c) Any attorney, lay counselor or prosecutor appearing before the Court will be appropriately attired, including neckties for males, and corresponding attire for females.

(d) Counsel for either party shall address a presiding judge in the manner prescribed in Court practice. A first name basis with the judge is prohibited at any time the Court is in session. During arraignments the defendant and counsel shall stand before the bench until dismissed.

(e) Concealed weapons are not allowed at any time in the courtroom.

#### 1-3. Divisions of the Court.

The Court is divided into divisions as follows:

Criminal Division, located in Poplar;

Civil Division, located in Poplar;

Juvenile Division, located in Poplar.

#### 1-4. Assignment of Cases.

(a) All of the judges designated to serve shall have presumptive jurisdiction over all criminal and civil cases filed, and may make and sign any orders, decrees or judgments.

(b) The Chief Judge shall randomly assign all cases. Application for orders shall be to the judge specifically assigned to that case.

#### 1-5. Venue.

Venue lies with all Courts and divisions. All causes of action can be filed in any appropriate division in Poplar.

#### 1-6. Court Calendar.

The Chief Judge shall determine the calendar of each division. Each judge shall set the calendar for each individual case assigned to them.

#### 1-7. Admission to the Bar of this Court.

(a) **Eligibility:** Eligibility to apply for admission to practice before the Fort Peck Tribal Courts shall be determined by 2 CCOJ 501.

(b) **Procedure on Admission:** Persons applying for admission must personally appear in Court at the time the application for admission under Section 501 is made. Before any certificate of admission shall be issued, the applicant must take and subscribe to the following oath or affirmation:

"I solemnly swear or affirm that I will support the Constitution of the Sioux and Assiniboine

Tribes of the Fort Peck Indian Reservation; that I will maintain the respect due to the Courts of Justice and Judicial Officers, and that I will conduct myself properly as an attorney or lay counselor of this Court.

### **1-8. Practice in this Court.**

(a) **Appearance:** No eligible attorney or lay counselor may participate in any proceedings in any case until his name has been entered of record by filing an attorney of record notice with the clerk. An attorney's or lay counselor's signature on pleadings filed with the Court will substitute as a notice filing.

(b) **Permission to Appear in a Particular Case:** Should a party in any cause not appear in person, and should his attorney/lay counselor not be admitted to practice in this court, he must at the time of his first appearance, or within ten (10) days thereafter and before any further proceedings are had in the matter, join with an attorney/lay counselor who is a member of the Bar of this Court. In order to help secure the just, speedy, and inexpensive determination of every action, such local counsel must be furnished with all factual, evidentiary, and legal information necessary for him to intelligently act on behalf of the party he represents in all matters connected with the cause of action. A failure of local counsel to take any action required by Title 8 CCOJ, Federal Rules of Civil Procedure or these Rules by reason of lack of authority shall, for the purpose of imposing sanctions, be treated as a refusal to act.

### **1-9. Standards of Professional Conduct.**

**Professional Conduct and Ethics:** The standards of professional conduct for attorneys/lay counselors practicing in this Court shall include the Code of Ethics for Attorneys and Lay Counselors of the Fort Peck Reservation, at 30 CCOJ. An attorney /lay counselor may be subjected to appropriate disciplinary action by this Court for a violation of these Canons.

### **1-10. Withdrawal from Case.**

(a) **Leave of Court and Notice:** No attorney/lay counselor may withdraw from any case,

civil or criminal, except by leave of Court after notice served on his client and opposing counsel.

(b) **Responsibility of Attorney/Lay Counselor on Withdrawal:** When an attorney/lay counselor of record for any reason ceases to act for a party, such party should immediately appoint another attorney/lay counselor or appear in person, and may be required to do so on motion and notice to such party.

### **1-11. Suspension or Disbarment.**

(a) **Disbarment and Discipline:** For good cause and after an opportunity to be heard, any member of the Bar of this Court may be disbarred, suspended for a definite time, reprimanded, or disciplined as the Court may deem proper, in accordance with 2 CCOJ 504.

(b) **Reinstatement:** Any attorney/lay counselor who has been disbarred by this Court may petition for reinstatement under 2 CCOJ 504 (b)(c).

### **1-12. Attorney as a Witness.**

If an attorney/lay counselor of any party is examined as a witness in a case, and gives testimony on the merits of the case, he shall not argue the merits of the case either to the Court or jury, except by the permission of the Court, and as limited by the Court, in that case.

### **1-13. Agreements of Attorneys/Lay Counselors.**

No executory agreement or stipulation between parties, not made in open court, the existence of which is not conceded, will be enforced, unless the same was in writing and signed by the attorney/lay counselor of record; and no executory agreement by an attorney/lay counselor in open court, the existence of which is not conceded, will be enforced unless the same be either made as above provided, or appear from the minutes of the clerk or be within the clear recollection of the judge. Agreements during a trial or hearing in open court may be made by the counsel conducting the trial, though he is only one of the attorneys/lay counselors of record.

#### **1-14. Attorneys/Lay Counselors under Appointment of the Court.**

(a) **Compensation:** It shall be the duty of the counsel to act as such without compensation whenever he is appointed by the Court to represent an incompetent person in any proceeding except as provided in 11 CCOJ 107 (b)(c).

(b) **Gratuities:** Attorneys/lay counselors appointed by the Court to represent an incompetent person shall not, without specific approval of the Court, accept from or solicit any money from any person on account of the representation of the incompetent. Any attorney/lay counselor violating this Rule will be disciplined by the Court.

#### **1-15. Communications to Court and Ex-Parte Applications.**

Except as provided for under 8 CCOJ 401 and 10 CCOJ 308, the court will not receive letters or other communications from counsel that do not indicate on their face that copies have been sent to opposing counsel. Ex-parte applications for orders, made either by mail or by telephone, will not be granted unless it is indicated that the adverse party has been advised of the request.

#### **1-16. Student Practice Rule.**

(a) **Activities:** An eligible law or pre-law student may appear in court on behalf of any person in any civil or criminal proceedings if:

(1) The person on whose behalf he is appearing has indicated in writing his consent to that appearance and the supervising attorney has also indicated in writing approval of that appearance;

(2) The supervising attorney is personally present throughout the proceedings and is fully responsible for the manner in which they are conducted.

(b) In each case, the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the judge.

(c) Under the general supervision of a member of the Bar of this Court, but outside the personal presence of that attorney, an eligible law or pre-law student may engage in other activities, including:

(1) Preparation of briefs, pleading, and other documents to be filed in Court, but such documents must be approved and signed by the supervising attorney;

(2) Advising, negotiating, and performing other appropriate legal services, but only after prior consultation with, and obtaining the consent of, the supervising attorney. Negotiations are subject to final approval of the supervising attorney.

(d) **Requirements and Limitations:** In order to make an appearance pursuant to this Rule, the law or pre-law student must:

(1) Be duly enrolled in a law school approved by the American Bar Association, or enrolled at Fort Peck Community College or other equivalent college and attending legal courses;

(2) Have completed at least six (6) credits of legal studies including Fort Peck Tribal Codes and Federal Indian Law;

(3) Be certified by the Dean of his school as being of good character and competent legal ability and as being adequately trained to perform as a legal intern;

(4) Be introduced to the Court by a member of the Bar of this Court;

(5) Neither ask for nor receive any compensation or remuneration of any kind for his services from clients; but this shall not prevent an attorney, legal aid bureau, law school or public defender agency from paying compensation to the eligible law or pre-law student, nor shall it prevent any agency from making charges for its services as it may otherwise properly require;

(6) Certify in writing that he has read and is familiar with and will abide by the Code of Ethics for Attorneys and Lay Counselors of the Fort Peck Reservation. Title 30 CCOJ

(e) **Supervision:** The attorney under whose supervision an eligible law student participates in any of the activities permitted by this rule shall:

(1) Be a member in good standing of the Bar of this Court;

(2) Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work;

(3) Assist and counsel the law or pre-law student in the activities mentioned in these Rules and review such activities with such student, all to the extent required for the proper practical training of the student and the protection of the client;

(f) **Pro Se Representation:** Nothing in this Rule shall affect the right of any person who is not admitted to practice law to do anything he might lawfully do prior to the adoption of this Rule.

## **Rule 2. File and Filings.**

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### **2-1. Form of Papers.**

(a) All papers shall be filed flat and firmly bound together and be pre-punched to accommodate a 2 3/4 inch two-prong fastener centered at the top of the page.

(b) All papers shall be typewritten, printed or reproduced, without erasures or interlineations materially defacing them, on white opaque paper of good quality. Use of line numbered paper is optional.

(c) Writing shall appear on one side of the page only, and shall be double spaced, except quoted material. Names shall be typed or printed under all signatures. Pages shall be numbered at the bottom.

(d) The use of legal size paper is eliminated and the 8 1/2 by 11 inch size paper will be the only size accepted in this Court.

### **2-2. Counsel, Identification, Caption and Title.**

The first page of all documents presented for filing shall be in the following form:

(a) In the space commencing with line 1, to the left of the center of the page, single spaced, the name, the office address, or if none, the residence address, and telephone number of the attorney/lay counsel for the party in whose behalf the

paper is presented, or of the party if he is appearing pro se. Should a party be without an address or telephone, the document shall set forth an address or telephone where the party may be contacted.

(b) The space between lines 1 and 7 on the right of the center page shall be left blank for the use of the clerk.

(c) On or below line 8, place the title of the Court.

(d) To the right of, and opposite the title, place the number of the case. Counsel shall, upon the initial filing of any pleading, request and receive a case number which must appear on all subsequent filings in the appropriate location.

### **2-3. Time.**

Unless otherwise stated with the Comprehensive Code of Justice or these rules, the time within which an act is required to be done by these rules shall be computed as provided in Rule 6 of the Federal Rules of Civil Procedure. Where service is by mail, the time shall be extended as provided in Rule 6(e) of the Federal Rules. Except as otherwise provided by the Comprehensive Code of Justice, including but not limited to 8 CCOJ 401(c), days shall mean business days. Business days shall not include Saturdays, Sundays or holidays as determined by the Tribal Executive Board.

### **2-4. Copies to be furnished to Clerk.**

Parties shall promptly furnish to the clerk upon demand all necessary copies of any pleading, judgment or order, or other matter filed of record in a cause so as to permit the clerk to comply with the notice and service provisions of any applicable statute or rule. All copies so furnished shall be legible copies.

### **2-5. Official Tribal Court Citation.**

The official citation to be used with regard to Tribal Court matters and documents shall be \_\_\_\_ CCOJ \_\_\_\_ . ie. 1 CCOJ 109.

## **Rule 3. The Clerk.**

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**3-1. Location and Hours.**

Offices of the clerk shall be maintained in Poplar, Montana. The court complex shall be open to the public between the hours of 8:00 a.m. and 4:30 p.m. The public may transact court business between the hours of 9:00 a.m. and 3:30 p.m., Monday through Thursday.

**3-2. Filing by the Clerk.**

The clerk shall file all papers presented for filing upon payment of proper fees. It shall be the duty of the clerk to forward all papers to the clerk's office of the assignable division. All original papers shall be filed with the clerk and not the judge.

**3-3. Custody of Records and Release.**

No record or paper belonging to the files of the Court shall be taken from the custody of the clerk. Copies of records or papers may be obtained by a person who has legal standing (i.e. any party or counsel of record to an action) at a rate specified by the Court. Copies are to be made only by a Court clerk upon request of parties or counsel of record

**3-4. Custody of Exhibits and Release.**

(a) **Custody:** Every exhibit placed on file shall be held in the custody of the clerk. If there is good reason why the original should be retained, upon application, the Court may order a copy filed in its place.

(b) **Disposal:** Upon filing of a stipulation waiving the right to an appeal, and to a rehearing or a new trial, or after judgment has become final, any party may withdraw any exhibit which he has filed, unless some other party or witness files notice with the clerk that he is entitled to the exhibit, in which case the clerk shall not deliver the exhibit, except with the consent of both the party who filed it and the claimant, until the court has determined the person entitled to it. If exhibits are not withdrawn within thirty (30) days after the

judgment has become final, the clerk may dispose of them within a reasonable time after notice to the party offering the exhibit of the clerk's intention to do so.

**Rule 4. Photographing, Television, Broadcasting.**

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**4-1.**

The taking of photographs in the courtroom or its environs in connection with any judicial proceeding, including any person participating in a judicial proceeding, or the broadcasting of judicial proceedings by radio, television or other means is prohibited.

As used herein, "Judicial Proceeding" means: any trial, hearing, or ceremonial occasion in any Court; "courtroom" of a Tribal Court means the foyer, witness room, and all spaces behind the double doors containing the courtroom.

**4-2. Release of Information.**

It is the duty of the attorney or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be private, if there is a reasonable likelihood that dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

**4-3. Special Order.**

In a case that evidently will be greatly publicized, the Court, on motion of either party, or at its own discretion, may issue a special order governing any activities or conduct the trial judge believes appropriate for regulation, to insure a fair and impartial jury.

**Chapter 2. Civil Rules**

**Rule 5. Civil Proceedings.**

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Interrogatories and Request for Admissions. .6  
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**5-1. Electronic Filing Not Allowed.**

Documents may not be transmitted by use of telefacsimile (fax) equipment or any other electronic means for filing with the Court.

**5-2. Filing of Pleadings Requiring Leave of Court.**

Upon the filing of a motion for leave to file an amended complaint or answer, a complaint in intervention, or other pleading requiring leave of court to file, the movant shall file with the motion a copy of the proposed pleading or amendments and lodge the original with the clerk of court. If leave to file is granted, the clerk shall promptly file the original.

**5-3. Documents of Discovery.**

(a) Depositions upon oral examinations and interrogatories, requests for admissions, and answers and responses shall not be routinely filed (See F.R.Civ.P. 5(d)). However, when any motion is filed relating to discovery, the parties filing the motion shall at the same time attach to the motion all of the documents relevant to the motion if the documents have not been previously filed.

(b) Proof of service of a notice to take a deposition shall continue to be filed in conformance with F.R. Civ.P. 45(d)(1).

**5-4. Filing of Briefs.**

All briefs shall be filed with the clerk of court who shall deliver them to the judge. Copies shall be made of all cases cited in briefs and shall be filed as an attachment to the brief.

**5-5. Answers and Objections to Interrogatories and Request for Admissions.**

Answers and objections to interrogatories pursuant to Rule 33 of the F.R.Civ.P. and responses

and objections to requests for admissions pursuant to Rule 36 of the F.R.Civ.P. shall identify and quote each interrogatory or request for admission in full immediately preceding the statement of any answer or objection.

**5-6. Demand for Jury Trial.**

When a demand for a jury trial is incorporated in a pleading, counsel are requested to so indicate in the title of the pleading.

**5-7. Disqualification of Judges.**

Title 2 CCOJ 307, sets forth the grounds for disqualification of judges. As a matter of procedure, a party taking action to disqualify a judge shall submit a motion for disqualification stating applicable reasons in an attached affidavit, to the judge who is the subject of the motion. The moving party shall submit a copy of the pleadings pursuant to these Rules to the opposing party and a hearing shall be held not less than ten (10) days from the date of filing. The subject judge shall, upon good cause showing, disqualify himself from the case. If good cause is not shown, the motion shall be denied. The denial of the motion for disqualification shall be appealable to the Chief Judge by indicating at the time of denial the intent to appeal. The appeal shall be filed and served on the adverse party within five (5) working days of the denial. All proceedings shall be stayed pending a disposition of a properly filed appeal. If the Chief Judge is a subject of the motion to disqualify, upon denial of the motion, an appeal may be taken to an associate judge of the Tribal Court, in compliance with any procedures set forth above.

**Rule 6. Service of Process and Papers.**

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**6-1. Issuance and Service of Process.**

The issuance and service of process shall be in conformity with the Tribal Rules of Civil Procedure, 8 CCOJ. The issuance of process, the clerk shall deliver it to counsel for the party securing the process. It is the duty of counsel to cause the

process to be served in the manner required by law without unreasonable delay.

**6-2. Service of Papers.**

All papers required to be served shall be served in conformity with Title 8 CCOJ and the Tribal Rules of Civil Procedure. Where service is permitted to be made upon counsel, such service shall be on all counsel of record and the parties, unless otherwise ordered by the Court. (Atchico v. Deherrera, FPCA #429)

**6-3. Proof of Service.**

Proof of service of all papers required or permitted to be served, other than those for which a particular method of proof is prescribed in the Tribal Rules of Civil Procedure, shall be filed in the clerk's office promptly and in any event before action is to be taken by the Court or the parties. The proof shall show the day, place and manner of service and may be by written acknowledgment of service, by certificate of a member of the Bar of this Court, by affidavit of the person who served the papers, or by any other proof satisfactory to the Court. If an affidavit of mailing or of service is attached to the original pleading, it shall be attached underneath the pleading so the character of the pleading is easily discernible. Failure to make the proof of service required by this subdivision does not affect the validity of service. The Court may at any time allow proof of service to be amended or supplied unless it clearly appears that to do so would result in material prejudice to the substantial rights of any party.

**Rule 7. Motions-Notice and Objections-Extensions.**

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**7-1. Motions.**

Upon serving and filing a motion, or within five (5) days thereafter, the moving party shall serve and file a brief. The adverse party shall have ten (10) days after receipt of the motion and brief

within which to serve and file an answer brief. Upon the filing of briefs, the motion shall be deemed made and submitted and taken under advisement by the Court, unless the Court orders oral arguments on the motion. The Court may, in its own discretion, order oral arguments on its own motion, or upon an application contained in the brief of either party. Failure to file briefs within the prescribed time may subject any motion to summary ruling. Failure to file a brief by the moving party shall be deemed an admission that, in the opinion of the counsel, the motion is without merit, and, failure to file a brief by the adverse party shall be deemed an admission that, in the opinion of counsel, the motion is well taken.

**7-2. Extension of Time.**

Extensions of time to further plead, file briefs or continue a hearing on a motion may be granted by order of the Court upon written application which shall note that opposing counsel has been contacted concerning the extension or continuance, and whether opposing counsel objects to the motion. All requests for extension of time or continuance shall be accompanied by an appropriate form of order with sufficient copies for the clerk to mail to adverse parties.

**7-3. Hearing on Motions.**

(a) Within the respective divisions, hearings on motions shall be set at such time and place as has been approved by the Court. The Court may order or conduct a hearing on a motion if the Court believes a hearing would be beneficial, or upon a timely written request of either party.

(b) It is incumbent upon the moving party to assure that a filed motion is set on the law and motion calendar as established by Rule 1-6. If the Court does not rule on a properly filed motion within thirty (30) days, the motion shall be deemed denied, unless this time limit is waived by the Court.



**7-4. Informal Matters.**

All informal matters not appearing on the Court's calendar, except matters requiring immediate attention of the Court, must be presented when the Court convenes in the morning, or after the noon recess. All informal matters shall be accompanied by a proposed order if the action requested requires an order of the Court.

**Rule 8. Guardian Ad Litem.**

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**8-1. Procedure for the Appointment of Guardian Ad Litem.**

Guardians ad litem may be appointed ex parte, at any time upon the presentation to the Court of a sworn petition showing a proper case for the appointment pursuant to 9 CCOJ 303A and 29 CCOJ 505.

**8-2. Who May Be Guardian Ad Litem.**

No person shall be appointed guardian ad litem who has an interest adverse to that of the child or incompetent, or who is connected in business with the adverse party or with the attorney or counsel of the adverse party, or who has not sufficient pecuniary ability to answer to the child or incompetent for any damage or injury which may be sustained by the child or incompetent for his negligence or misconduct in the case.

**8-3. Bond of Guardian Ad Litem.**

No bond shall ordinarily be necessary from a guardian ad litem, provided, that no such guardian shall receive any money until he has filed with the clerk a bond in an amount to be fixed by the judge, with at least two sureties, to be approved by the judge, conditioned for the faithful performance of his duties as guardian ad litem. If he shall not desire to receive any such money or property, it shall be paid or delivered to the clerk of court, or to such person as may be directed by the Court or judge, with like effect as if paid or delivered to the guardian ad litem.

**Rule 9. Pretrial Proceedings – Civil.**

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**9-1. Pretrial Calendar.**

Following the 8 CCOJ 103 hearing, the matter may be placed on a pretrial calendar

**9-2. Notice of Preliminary Pretrial Conference.**

Immediately upon placing the case upon the pretrial calendar, the clerk will mail to each attorney of record a notice in substantially the following form:

Pursuant to 8 CCOJ 103 and Rule 9 of this Court, the attorneys for all parties are directed to attend a Preliminary Pretrial Conference at \_\_\_ o'clock, \_\_.M. on the \_\_ day of \_\_\_\_\_, 20\_\_, at the Tribal courtroom in the city of Poplar, Montana, for the purpose of setting dates for the completion of discovery, submission of motions, and a trial date. At the request of the presiding judge, the parties may be required to ascertain the issues, stipulate facts not in dispute and otherwise simplify the issues.

**9-3. Conduct of the Preliminary Pretrial Conference.**

The parties shall be prepared orally, or in writing on request of the presiding judge, to :

- (a) Discuss any problems of Tribal jurisdiction. This discussion should be complete enough to permit a ruling by the Court on any jurisdictional question;
- (b) Discuss the contentions of the parties and outline the legal theories upon which the action or defense is based;

(c) Discuss the law problems which are believed to be of importance, and suggest any problems which should be decided by the Court in advance of trial;

(d) Suggest any contemplated amendments to the pleadings;

(e) Discuss any problems of discovery. The parties should be prepared at the time of the Preliminary Pretrial Conference to:

(1) Indicate in a general way the course of the discovery. The parties should be ready to advise the Court and opposing counsel of the general nature of any requests for admission or answers to interrogatories they intend to file, the documents they wish to inspect and the names of the witnesses they intend to depose and the method and place of taking depositions. The parties shall be ready to indicate what documents will be produced without the requirements of a motion to produce. (It is thought that by a free and frank disclosure of all intended discovery on the necessary motions, requests and objections may be avoided.)

(2) Suggest a timetable for the accomplishment of the various steps on the discovery process for each discovery matter;

(3) Suggest a date when discovery will be completed.

#### **9-4. Use of Deposition Testimony.**

(a) A party shall underline the parts of every deposition that he proposes to offer or read at trial. Depositions must be purged of all repetitious and irrelevant questions and answers, all objections that have been abandoned, and all irrelevant colloquy between the attorneys. A copy of the deposition so purged should be served on the opposing party later than five (5) days before the Final Pretrial Conference. At or before the Final Pretrial Conference, the opposing party shall set forth his objections to those parts of the depositions sought to be read or deleted, and he shall underline additional parts of the deposition that he proposes to read or offer; objections and additions shall be served on opposing counsel before the Final Pretrial Conference. All objections not waived and all problems that are unresolved shall

be presented to the Court for decision no later than the Final Pretrial Conference. Any objections and argument made during a deposition and, if sustained, the question, answer and ruling, will not be read or referred to during the reading of the deposition or at any time during the trial in the presence of the jury.

(b) In a non-jury trial case, if a party proposes to read or offer more than 25 pages of the deposition testimony of any witness, he shall summarize that part. The summary shall be prepared in narrative-prose form and shall contain deposition page references. (Quotations may be used sparingly.) A copy of the summary should be served on the opposing party not later than five (5) days before the Final Pretrial Conference. Objections to the summary that the parties are unable to resolve shall be submitted to the Court at the Final Pretrial Conference.

(c) This rule shall not apply to depositions used to refresh recollection, as an admission against interest, or for impeachment.

(d) The Court may allow deposition testimony that does not conform to this rule.

#### **9-5. Pretrial Conference.**

A Pretrial Conference shall be held, at the Courts discretion, to discuss and determine the contents of the Final Pretrial Order and any issues that were not agreed to at the Preliminary Pretrial Conference. In addition, attorneys shall submit and be prepared to argue proposed jury instructions. Requests for jury instructions shall be presented to the Court and served upon each adverse party ten (10) days prior to the Pretrial Conference. Each requested instruction shall be numbered and written on a separate page, together with a citation of authorities supporting the proposition of law stated in the instruction. Each party shall provide one original and two copies attached to each instruction. The Pretrial Conference shall be attended by the attorneys who will be trying the case.

#### **9-6. Final Pretrial Order.**

(a) It shall be the duty of the plaintiff's attorney to prepare a Final Pretrial Order in accordance

with the requirements of this rule. If the plaintiffs attorney believes that counsel for the other parties are unreasonably refusing to cooperate in the preparation of such order, the Court shall be advised and appropriate orders will be made. In those cases where the costs of preparing a Final Pretrial Order would be substantial, the parties may, if they cannot agree upon an apportionment of costs, request the Court for assistance in the solution of the problem.

(b) The Final Pretrial Order shall contain:

(1) **Statement of Jurisdiction:** Fort Peck Tribal jurisdiction is invoked on the following grounds: (include a concise statement of the facts required to confer Tribal jurisdiction.)

(2) **Agreed Facts:** The following facts are true and require no proof: (disclose all relevant facts admitted by the pleadings, by answers to requests for admission, answers to interrogatories, and any other facts on which the parties may be able to agree.)

(3) **Contentions of the Parties:** The theory of the plaintiff's case should be disclosed. For example, if the plaintiff relies on alternative theories such as negligence, strict liability and warranty, it should be clearly stated. If the defendant has alternative theories of defense, they should be stated. Plaintiff should also set out in detail the items of damages that are claimed.

(4) **Law Problems:** The parties shall specify the law problems in the case, and may request the Court to make rulings in advance of trial.

(5) **Exhibits:** At the Pretrial Conference, all exhibits that the parties intend to introduce shall be exchanged and identified by numbers for the plaintiff and letters for the defendant. An exhibit sheet furnished by the clerk of court shall be completed, with sufficient copies for the parties and two for the Court. At the time of the conference the parties shall state their objections to any exhibits in writing, particularly specifying whether authenticity of the exhibit is admitted or denied. Objections not specified on the exhibit sheet will be deemed waived. Except for good cause shown, exhibits not identified on the exhibit sheet will not be received in evidence. Exhibits to be used for impeachment purposes only may be placed in

a sealed envelope, marked and filed with the remainder of the exhibits. An exhibit admissible in a party's case-in-chief is not an exhibit for impeachment purposes only. The envelopes shall be opened only on order of the Court. The exhibits identified on the exhibit sheet shall be transmitted to the clerk with the Final Pretrial Order.

(6) **Witnesses:** Each party shall identify by name and address the witnesses it intends to call at the trial. Such identification shall not make the party identifying the witness responsible for his appearance. If an order has been made requiring the parties to exchange narratives of the testimony of expert witnesses, the narratives shall be exchanged at the time of the Pretrial Conference. The records and statistics relied on by the expert witnesses shall be identified, and a time and place agreed to by the parties for the examination of records and statistics. The Final Pretrial Order shall show the extent of compliance with this subsection.

(7) **Fruits of Discovery:** There shall be attached to the Final Pretrial Order all those portions of deposition upon oral examination and interrogatories, requests for admissions and answers and responses that the parties intend to introduce into evidence. Any objections to the use of the above documents shall be stated and, if not stated, shall be deemed waived. (Because this rule relates to filing and is designed to consolidate in one place all of the fruits of discovery, and because there can be no surprise element involved, the Court shall be liberal in permitting the amendment of the Pretrial Order to include any material not originally listed.)

(8) **Length of Trial:** The Final Pretrial Order shall contain an estimate of the length of time it will take to try the action.

(c) **Submission of Final Pretrial Order:** When the Pretrial Conference has been completed, the parties shall submit to the clerk of court the proposed Final Pretrial Order or such portions of it as they have been able to agree upon. If the order is not completed, the parties shall indicate the areas of disagreement and the reasons for lack of agreement. If there is no agreement a further Pretrial Conference may be held

by order of the Court to resolve the remaining differences. Any party may request a further Pretrial Conference.

**9-7. Final Pretrial Conference.**

A Final Pretrial Conference may be held at a time designated by the Court. If a time is not designated, the presiding judge has determined that a Final Pretrial Conference is unnecessary. The Final Pretrial Conference shall be attended by the attorneys who will be trying the case. The Court may sign the Final Pretrial Order at the Final Pretrial Conference, or at any other time deemed appropriate by the Court.

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**10-1. Judgements entered only on Direction of Court.**

Upon a general verdict, and in all cases tried by the Court without a jury, except when the Court directs that a party recover only money or costs or that all relief be denied, the Court will give direction as to the entry of judgment, and no judgment shall be entered by the clerk until such directions are given. In the case provided for by this rule, the prevailing party shall within ten (10) days, unless additional time is granted by the Court, prepare and submit to the clerk of the court a draft of the judgment and serve a copy upon each other party. Each other party shall then have ten (10) days within in which to serve and file objections to the form of the proposed judgment. When the time for objections has expired, the clerk shall deliver the proposed judgment, together with all objections to the judge.

**10-2. Findings and Conclusions, Preparation after Decision.**

The Court may, after decision, request the prevailing party to prepare findings of fact and conclusions of law in accordance with the decision. The findings, unless otherwise ordered, shall be submitted, served and objected to within the schedule provided for in Rule 10-1.

**10-3. Preparation of Judgement or Findings and Conclusions upon Failure of Prevailing Party to Do So.**

If a prevailing party fails within ten (10) days, or any additional time granted, to prepare orders of judgments required by Rule 10-1, or the findings of fact and conclusions of law required by Rule 10- 2, any other party may do so.

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**11-1. Setting of Cases for Trial.**

At each term in the respective division of the Court, the judge to whom each division is assigned will set for trial all causes then at issue. Causes coming to issue during the term may be set in the discretion of the Court upon the application of all parties.

**11-2. Notification of Parties.**

Whenever any case is set for trial, the clerk of court shall promptly notify the parties and their attorneys of record, or if representation is pro se, directly to that party.

**11-3. Continuances.**

In granting an application for continuance, the Court may impose costs and conditions. A motion to postpone or continue a trial on the grounds of absence of a witness or evidence shall be made upon affidavit showing the nature and materiality of the expected testimony or evidence, and that diligent effort was timely made to secure the witness or the evidence, and that reasonable grounds exist for the production of the witness or evidence

if postponement or continuances granted. If the testimony or the evidence would be admissible during the trial, and the adverse party stipulates that it shall be considered as actually given during the trial, there shall be no postponement or continuance unless, in the opinion of the Court, a trial without the witness or evidence would work an injustice on the moving party.

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**Appendix 3 - Rules of Procedure in the Court of Appeals**

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**Rule 1. Scope of Rules**

These rules govern procedures in appeals to the Fort Peck Court of Appeals from the Fort Peck Tribal Courts. When these rules provide for a making of a motion or application in the Tribal Court, the procedure for making such motion or application shall be in accordance with the practice of the Tribal Court and the Fort Peck Comprehensive Code of Justice. These rules shall not be considered to extend or limit the jurisdiction of the Fort Peck Court of Appeals as established by the Fort Peck Comprehensive Code of Justice and any other applicable law. These rules may be cited as the Fort Peck Rules of Appellate Procedure (FPRAP).

**Rule 2. Suspension of Rules**

In the interest of judicial economy and efficiency, or for other good cause shown, the Fort Peck Court of Appeals may, except as otherwise provided in the Fort Peck Comprehensive Code of Justice, or applicable Federal Statute, suspend the requirements or provisions of any of these rules in a particular case, on application of a party, or on its own motion, and may order proceedings in accordance with its direction.

**Rule 3. Filing and Service of Documents**

All documents, whether a Notice of Appeal, Motion, Application or other moving paper or pleading, permitted or required to be presented to the Fort Peck Court of Appeals, shall be filed with the Clerk. The party shall file the original and 4

copies with the Clerk. At the time of such filing, the moving papers, pleading or other documents to be filed, shall be accompanied by a Proof of Service showing that a copy thereof, along with all supporting papers, have been served on all parties of record. Proof of service shall be sworn to by declaration or affidavit and appended to the moving papers and shall catalog the documents that were served, the names of the parties upon whom the documents were served, the address at which service was made, and the manner in which service was completed. If service is made by US Mail, a statement as to the time, date, and place that the declarant or affiant placed the documents into the US Mails and the manner in which the envelope or package was addressed.

**(AMENDED AS PER RESOLUTION NO. 27-1040-2014-08; DATED 8/25/2014)**

#### **Rule 4. Ex parte Communications with Justices of the Court of Appeals**

Ex parte communication with Justices of the Court of Appeals is strictly prohibited except if initiated by a Justice of the Court when time constraints are such that communication by other means is not practicable and then only for the limited purpose of communicating the time and place of a hearing, or decision of the Court, regarding a Motion or Application for Stay or Injunction pending appeal.

#### **Rule 5. Stay or Injunction Pending Appeal**

Application for a stay of the judgment or order of the Tribal Court pending appeal, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must be made in the first instance in the Tribal Court. A motion for such relief may be made to the Court of Appeals, however, the motion shall show that application to the Tribal Court for the relief sought has been denied, or that the Tribal Court had failed to afford the relief which the applicant requested, within a reasonable period of time. The motion shall also show the reason or the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements

or copies thereof. With the motion shall be filed such parts of the record as are relevant. The motion shall be filed with the Clerk of the Court of Appeals and normally will be considered en blanc by the Court of Appeals, however, the application may be decided by any two Justices of the Court.

#### **Rule 6. Interlocutory Appeals**

An interlocutory appeal is defined as an appeal from a final order of the Tribal Court which involves an issue of law consistent with a violation of due process adversely affecting the outcome of a trial in the merits, regardless of whether the final order includes a full determination on the merits. Where the violation of due process is a denial of constitutional rights afforded under the Indian Civil Rights Act (25 U.S.C. 1301 et. seq.) Or there are other important constitutional issues at stake, and the outcome of the trial would be altered in such a manner as to cause irreparable harm to the aggrieved party, an extraordinary writ and/or interlocutory appeal to the Fort Peck Court of Appeals is appropriate. Interlocutory Appeals are appeals on procedural matters touching on due process issues and do not touch upon or concern the merits of the case pending. Notice and service of moving papers, pleadings, briefs, or other documents regarding an Interlocutory Appeal shall be filed in the same manner as other appeals, and in full compliance with the rules contained herein, except that time shall be considered of the essence and processing and deliberation shall be accomplished expeditiously, so as to not disrupt the timely prosecution of trial on the merits in the Tribal Court.

#### **Rule 7. Continuances and Postponements**

Continuances and postponements are disfavored and will not be granted in the absence of a showing of good cause. Requests for continuances and postponements must be made in writing, stating the factual or legal basis for the request and must be filed no later than two weeks prior to the date at issue. In the event of sickness or injury involving a party or attorney, the two weeks filing requirement may be waived upon Motion. Requests for continuance based upon

calendar conflicts are disfavored and will be considered only if accompanied by an affidavit stating that the appearance of the party or attorney is critical to the outcome of both the scheduled hearing in this Court and the event in conflict and that no other qualified person is available to attend either of the calendared events in conflict.

**Rule 8. No Legal Advice by Clerks or Employees of the Court**

No Clerk or employee of the Appeals Court is authorized to give legal advice. Statements made by said Clerk or other employee shall be limited to receiving and filing documents, required or permitted to be filed in the Fort Peck Court of Appeals, and insuring that all such documents presented to be filed, comply with all existing Rules of Appellate Procedure and the Fort Peck Comprehensive Code of Justice. Litigants and/or their attorneys, shall not rely on any statement made by said Clerk or other employee unless such statement is made within the permitted scope of their duties contained therein.

**Rule 9. Motion for Reconsideration**

The Fort Peck Court of Appeals will entertain Motions for Reconsideration of any order, decision, or opinion, issued by the Court, provided that the Motion is made within the 20 days of issuance of the order, decision, or opinion. The Motion must be based upon new and relevant case or statutory law not previously considered by the Court, or new and material facts (e.g. juror misconduct, etc.) which were fraudulently withheld or could not have been reasonably known to the aggrieved litigant and/or their attorney during the pendency of the appeal proceedings.

**Rule 10. Schedule of the Court of Appeals**

The decision to accept a criminal case for review will be made within 30 working days of when the notice of appeal is filed. The decision to accept a civil case for review will be made with 30 working days of when the petition for review is filed. Appeals will be decided within 120 working days of the notice of appeal or petition for review. The Fort Peck Court of Appeals will meet

on the third Monday of January, April, July and October. Telephonic hearings will be considered upon request. Extensions of the established schedule may be necessary when the transcript is not available.

**(AMENDED AS PER RESOLUTION NO. 1449-2010-12, DATED 12/13/2010.)**

The defendant in a criminal case shall have an appeal as of right from a judgment of conviction. 2 CCOJ 205(a). Therefore the Tribes/prosecutor do not respond to the notice of appeal/petition for review. In civil cases, a party may appeal. The appeal is not automatically granted as in criminal cases. The notice of appeal must be answered by the other party within 15 working days. Then the Court of Appeals decides whether to grant the petition for review. Therefore, more time is need to process a civil notice of appeal than a criminal notice of appeal. 2 CCOJ 207 In civil cases, a party may request the trial court to stay the judgment. 8 CCOJ 308. If that stay is denied, the party may request the Court of Appeals to stay the trial court judgment. 2 CCOJ 207(e). The forms to request a stay of judgment are included in the packet of forms that are given to people who wish to file a notice of appeal/petition for review.



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807 Court Avenue - P.O. Box 1027  
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**Appendix 4 – Code of Ethics for Court Clerks**

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**Canon 1. A Clerk Should Uphold the Integrity and Independence of the Judiciary and of the Clerk’s Office.**

An independent and honorable judiciary is indispensable to justice in any society. A Clerk should observe, and impart to the court staff, high standards of conduct so that the integrity and independence of the judiciary may be preserved and the Clerk's office may reflect a devotion to serving the public. The provisions of this Code should be construed and applied to further that objective. The standards of this Code shall not affect or preclude other standards which may be promulgated by order of the court.

**Canon 2. A Clerk Should Avoid Impropriety and the Appearance of Impropriety In All Activities.**

(A) A Clerk should not engage in any activities which would put into question the propriety of conduct in carrying out the duties. A Clerk should not allow family, social, or other relationships to influence official conduct or judgement. The Clerk should not lend the prestige of the Clerk's office to advance the private interests of others; nor should the Clerk convey or others be permitted to convey the impression that they are in a special position to influence the Clerk.

(B) Neither a Clerk nor family member residing in the household should accept a gift, bequest, favor or loan from any person whose interests have come or are likely to come before the Clerk, or

from any other person under circumstances which might reasonably be regarded as influencing the performance of the duties of the office. The Clerk shall report the value of any gift or bequest, other than from a relative by blood, marriage, or custom, in the same manner compensation is reported under Canon 6C.

(C) A Clerk should abstain from public comment about a pending or impending proceeding in court, and should, require similar abstention on the part of court staff. The Clerk should never disclose to any person any confidential information received in the course of official business, nor should such information be employed for personal gain.

(D) A Clerk should avoid favoritism, unfairness, or nepotism in connection with the hiring, discharge, or treatment of subordinate staff.

(E) A Clerk should never influence or attempt to influence the assignment of cases, or preform any discretionary or ministerial function of the court in a manner which improperly favors any litigant or attorney, nor imply that a court clerk is in position to do so.

(F) A Clerk should not practice law.

### **Canon 3. A Clerk Should Perform the Duties of the Clerk's Office Impartially and Diligently.**

The official duties of a Clerk take precedence over all other activities. The official duties include all duties of the Clerk's office prescribed by law or by order of the Court. In performance of these duties, the following standards apply:

(A) A Clerk should respect and comply with the law and should act at all times in a manner that promotes public confidence on the integrity and impartiality of the judiciary and the Clerk's office.

(B) A Clerk should be faithful to the highest standards of the profession and maintain professional competence in it. A Clerk should be patient, dignified, courteous, and fair to all persons dealt with in an official capacity, and should require similar conduct of subordinate staff and others subject to direction and control of the Clerk. The Clerk should diligently discharge the

responsibilities of the office. The Clerk should bear in mind obligations to the general public as well as the legal profession. The Clerk should treat fairly and courteously lay persons who desire to file suits pro se to examine the court's public records.

### **Canon 4. A Clerk May Engage in Activities to Improve The Law, The Legal System, and The Administration of Justice.**

A Clerk, subject to the proper performance of official duties, may engage in the following quasi-official activities:

(A) The Clerk may speak, write, lecture, teach, and participate in other activities concerning court management, the legal system, and the administration of justice.

(B) The Clerk may promote the development of professional organizations and foster the interchange of technical information and experience with others in the profession. The Clerk should be available to the public at large for speaking engagements and public appearances designed to enhance the public's knowledge of the operation of the court system.

### **Canon 5. A Clerk Should Regulate All Extra-Official Activities to Minimize the Risk of Conflict of Interest With Official Duties.**

(A) **Avocational Activities.** A Clerk may write, lecture, teach, and speak on subjects unrelated to the profession, and may engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the office, interfere with the performance of official duties, or adversely reflect on the operation and dignity of the court.

(B) **Civic and Charitable Activities.** A Clerk may participate in civic and charitable activities that do not detract from the dignity of the office or interfere with the performance of official duties. A Clerk may serve as an officer, director, trustee or advisor of a civic or charitable organization and solicit funds for any such organization, subject to the following limitations:

(1) The Clerk should not use or permit the use of the prestige of the Clerk's office in the solicitation of funds.

(2) The Clerk should not solicit subordinate staff to contribute to or participate in any civic or charitable activity, but may call their attention to a general civic or charitable fundraising campaign.

(3) The Clerk should not solicit funds from lawyers or persons likely to come before the Clerk's office or the court served.

(C) **Financial Activities.** Without the express permission of the Court, a Clerk may not carry on financial and business dealing, including service as a fiduciary. Such permission shall not be granted in any case where the activity would tend to reflect adversely or impartiality, interfere with the proper performance of official duties, exploit official position, or be involved in frequent transactions with lawyers or persons likely to come before the Clerk's office or the court served.

**Canon 6. A Clerk Should Regularly File Reports of Compensation Received For Quasi-Official and Extra-Official Activities.**

A Clerk may receive compensation and reimbursement of expenses for quasi-official and extra-official activities permitted by this Code, if the source of such payments does not influence or give the appearance of influencing the Clerk in the performance of official duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(A) **Compensation.** Compensation should not exceed a reasonable amount nor should it exceed that normally received by others for the same activity.

(B) **Expense Reimbursement.** Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by a clerk or spouse, where appropriate to the occasion. Any payment in excess of such an amount is compensation.

(C) **Public Reports.** A Clerk should make and file such reports as may be prescribed by Tribal Law or by the Rules of Court.

**Canon 7. A Clerk Should Refrain From Partisan Political Activity.**

(A) **Partisan Political Activity.** A Clerk should refrain from partisan political activity:

(1) Should not act as a leader or hold office in a political organization;

(2) Should not make speeches for or publicly endorse a political organization, candidate, or event;

(3) Should not solicit funds for or contribute to a political organization, candidate, or event;

(4) Should not become a candidate for a political office;

(5) Should not otherwise actively engage in partisan political activities.

(B) **Nonpartisan Political Activity.** A Clerk may engage in nonpartisan political activity that does not tend to reflect adversely on the dignity of the Court or the Clerk's office, or interfere with the proper performance of official duties.

**COMPLIANCE WITH THE CODE OF CONDUCT FOR CLERKS OF COURT**

All clerks of court and deputy clerks should comply with this Code and shall make and file the reports of Canon 6C.

**EFFECTIVE DATE OF COMPLIANCE**

A person to whom this Code becomes applicable should arrange all personal and official affairs as soon as reasonably possible to comply with it and should do so in any event within the period of one year.

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**Appendix 5 – Code of Ethics for Attorneys and Lay Counselors**

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**Canon 1. Competence.**

An attorney shall provide competent representation to a client. Competent legal representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. As employed in this Code, the term "attorney" includes lay counselors.

**Canon 2. Scope of Representation.**

An attorney shall abide by a client's wishes concerning the goals of legal representation and shall consult with the client concerning the means of pursuing those goals. Attorneys should not pursue legal goals without their client's approval, nor should they assist a client in criminal or fraudulent activity.

**Canon 3. Diligence.**

An attorney shall act with reasonable diligence and promptness in representing a client. Unless the client agrees to modify the scope of representation, the attorney shall complete all matters undertaken on the client's behalf.

**Canon 4. Communication.**

An attorney shall keep a client well informed and shall respond promptly to requests for information. An attorney must fulfill reasonable client requests for information in order to help the client make intelligent decisions about his or her case.

**Canon 5. Fees.**

(1) An attorney's fees shall be reasonable. The determination of reasonable fees should include the following consideration:

(a) The experience and ability of the attorney providing the legal services;

(b) The time and skill involved in performing the service; and

(c) The fee customarily charged on the Fort Peck Reservation and surrounding communities for similar services.

(2) A fee may be contingent on the outcome of the representation. A contingent fee agreement should however, be in writing and state the method by which it shall be calculated. An attorney

shall not enter into a fee arrangement contingent upon securing a divorce or upon the amount of support or property settlement thereof. Neither shall an attorney enter into a contingent fee arrangement for the representation of a defendant in a criminal case.

(3) Representation should not be denied people because they are unable to pay for legal services. The legal profession encourages provision of legal services at no fee or at a substantially reduced fee in these circumstances.

**Canon 6. Confidentiality of Information.**

An attorney shall not reveal information communicated by a client. However, an attorney may reveal information to the extent that attorney reasonably believes necessary to prevent a client from committing a criminal act likely to result in death or serious bodily harm. An attorney may also reveal information necessary to allegations in any proceedings concerning the attorney's representation of a client. An attorney, lay counselor, prosecutor or public defender shall not discuss any case, open or closed, with any member of the Fort Peck legislative or executive branches of government, except when a discussion is solicited by the legislative or executive branches of government. Attempts to discuss or discussion with said individuals shall result in sanctions, including disbarment, by the Fort Peck Tribal Court.

**(AMENDED AS PER RESOLUTION NO. 26-1602-2012-11; DATED 11/14/2012.)**

**Canon 7. Conflict of Interest.**

(1) An attorney should not represent a client if that representation will be adverse to the interests of another client, or if the attorney's own interests conflict with those of a client, unless:

(a) The attorney reasonably believes the representation will not adversely affect his or her ability to represent each client fully and competently; and

(b) Each client consents after disclosure and consultation. Examples of conflict of interest between clients include: representing opposing parties in litigation, representing more than one de-

fendant in a criminal case, and representing a client against a party who is a client in another case, even if the two cases are unrelated. Examples of conflicts of interest between a lawyer and client include: entering into any business transaction with a client, and acquiring any financial interest adverse to the client.

(2) An attorney who had formerly represented a client shall not thereafter represent another client in a related matter in which that client's interests are adverse to the interests of the former client, unless the former client consents after consultation.

(3) An attorney shall not represent a client in a matter in which that attorney served as a judge or arbitrator without the consent of all parties to the proceeding.

#### **Canon 8. Client under Disability.**

When an attorney believes a client is incapable of acting in his or her own interest the attorney shall seek the appointment of a guardian for the client. Otherwise, the attorney shall as far as practicable maintain a normal attorney-client relationship with the client.

#### **Canon 9. Safekeeping Property.**

A client's property held by an attorney in connection with representation of that client shall be kept separate from the attorney's own property. Funds shall also be kept in separate accounts.

#### **Canon 10. Declining or Terminating Representation.**

(1) An attorney shall terminate representation if a client requests that the attorney engage in illegal or fraudulent conduct or conduct that violates the Fort Peck Code of Ethics.

(2) An attorney may withdraw from representing a client if withdrawal can be accomplished without adversely affecting the client's interests, or if:

(a) The client fails substantially to meet an obligation to the attorney regarding the attorney's services and the client has been notified that the attorney will withdraw if the obligation is not met;

(b) The representation will result in an unreasonable financial burden on the attorney or has been made unreasonably difficult by the client; or

(c) Other good cause for withdrawal exists. When the attorney is representing the client in a Court matter, withdrawal can only be accomplished upon motion to the Court. When ordered by a court of the Fort Peck Reservation to continue representation, an attorney shall do so despite good cause for terminating the representation. If termination of representation is granted, an attorney shall take reasonable steps to protect the client's interests. Such steps include giving reasonable notice and time to appoint new counsel, and surrendering papers and property to which the client is entitled.

#### **Canon 11. Advice and Meritorious Claims.**

When representing a client an attorney shall give candid advice based on his or her best professional judgment. An attorney shall not raise or controvert issues without a substantial basis for doing so.

#### **Canon 12. Expediting Litigation.**

An attorney shall make reasonable effort to expedite litigation consistent with a client's interests. An attorney shall not engage in delay tactics designed solely to frustrate the opposing party's attempt to obtain a legal remedy.

#### **Canon 13. Honesty toward The Fort Peck Courts.**

An attorney shall act with honesty toward the Fort Peck Courts. An attorney shall not knowingly make false statements to the Courts or knowingly offer false evidence. Nor shall an attorney fail to disclose significant legal authority directly adverse to his or her client's position.

#### **Canon 14. Fairness to Opposing Party.**

An attorney shall act in a manner fair to the opposing party. In order that fair access to evidence be maintained, an attorney shall not:

(a) Destroy or conceal evidence, including documents or other materials of possible evidentiary value;

(b) Falsify existing evidence or create new evidence; or

(c) Influence a witness to give false or misleading testimony.

**Canon 15. Impartiality and Decorum of The Fort Peck Courts.**

An attorney shall not attempt to influence a judge or juror sitting on his or her case other than through authorized legal means. An attorney shall not privately confer with a judge concerning any case before that judge. Nor shall an attorney meet with a juror or prospective juror in a case that attorney is handling.

**Canon 16. Conduct Before The Fort Peck Courts.**

An attorney shall act with respect and courtesy toward the Fort Peck Courts. This requires that an attorney comply with rules established by the Court for courtroom demeanor and procedure.

**Canon 17. Attorney as Witness.**

An attorney shall not act as an advocate at a trial in which the attorney is likely to be a necessary witness except where:

(a) The testimony relates to an uncontested issue;

(b) The testimony relates to the nature and value of legal services rendered in the case; or

(c) Disqualification of the attorney would substantially burden the client.

**Canon 18. Special Responsibilities of a Prosecutor.**

Tribal prosecutors shall uphold their special responsibilities. It is a tribal prosecutor's duty to ensure that a defendant in a criminal case is accorded justice as prescribed by the criminal procedure of the Fort Peck Code of Justice. In order to carry out this responsibility a tribal prosecutor shall:

(a) Not prosecute a charge the prosecutor knows is not supported by probable cause;

(b) Make efforts to ensure that the accused has the opportunity to obtain counsel;

(c) Not attempt to obtain waivers of important pre-trial rights from an unrepresented accused;

(d) Disclose to the defense all evidence and information known to the prosecutor tending to negate and mitigate the guilt of the accused;

(e) Exercise care to prevent other persons associated with the prosecutor in a criminal case from talking publicly about the case prior to trial.

**Canon 19. Communication with Person Represented By Counsel.**

When representing a client, an attorney shall not communicate about that representation with a party the attorney knows to be represented by another attorney in the same proceedings, unless the attorney has the consent of the other attorney.

**Canon 20. Communications Concerning an Attorney's Services.**

An attorney shall not make false or misleading statements about his or her services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or is likely to create unreasonable expectations about the results an attorney can achieve.

**Canon 21. Soliciting Clients.**

An attorney shall not solicit employment from a prospective client through direct communications. Apart from family members, it is unethical for an attorney to contact in person, by phone or mail, prospective clients for the purpose of persuading them to accept legal assistance. This does not include mailings to persons not known to require legal services and which give general information about the attorney's services. An attorney may advertise through public media such as telephone directories, newspapers, and television.

**(APPROVED BY THE FORT PECK TRIBAL EXECUTIVE BOARD PER RESOLUTION NO.2982- 87-8, DATED 08/10/87.)**

**Canon 22. Rule of Court for Handling Complaints against Attorneys and Lay Advocates.**

(1) The initial complaint must be written and submitted to the Tribal Court Administrator.

The Tribal Court Administrator will review the complaint and request that the complaining party submit an affidavit to support the complaint.

(2) The Tribal Court Administrator will forward the complaint to the respondent attorney/lay advocate and request a response within 10 working days.

(3) The Tribal Court Administrator will forward the written complaint, affidavit and response to the Tribal attorney for review.

(4) The Tribal attorney will investigate the complaint. If the Tribal attorney decides that the allegations lack probable cause, the complaint will be dismissed. If the Tribal attorney decides that there is probable cause, a hearing will be set. The Tribal attorney or his designee within the prosecutor's office, as long as there is no conflict between the parties, will prosecute the complaint, with all parties present, at a hearing before the Chief Judge.

(5) If the Chief Judge initiated the complaint, the judge with the most seniority as a tribal court judge will preside at the hearing.

(6) If the complaint is filed against the Tribal attorney, the Chief Prosecutor will investigate the complaint to determine if probable cause exists. If probable cause exists, the Chief Prosecutor or her designee will prosecute the complaint.

(7) A final decision by the Chief Judge can be appealed to the Fort Peck Court of Appeals.

**(AS PER RESOLUTION NOS. 25-2176-2011-05; DATED 05/23/2011; 27-1631-2015-03, DATED 3/9/2015.)**



**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Appendix 6 – Fort Peck Tribal Court Code of Judicial Conduct**

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**Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary.**

Independent and honorable judges are indispensable to justice on the Fort Peck Reservation. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of all judges may be preserved. The provisions of this Code should be construed and applied to further that objective. As employed in this Code, the term "judge" also includes justices.

**Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities.**

(A) A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the honesty and impartiality of the Fort Peck judges.

(B) A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should adhere strictly to Section 307, Title 2, Comprehensive Code of Justice, governing disqualification of judges. He should not use his position as judge to advance the private interests of others; nor should he give, or permit others to give, the impression that they are in a special position to influence him.

**Canon 3. A Judge Should Perform the Duties of His Office Impartially and Diligently.**

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

(A) Responsibilities in deciding cases.

(1) A judge should be faithful to the law and maintain sufficient knowledge of the Code

and relevant state and federal law. He should be unswayed by the private interest of particular parties, public outcry for or against a particular ruling, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to plaintiffs and defendants, jurors, witnesses, lawyers, lay advocates, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer or advocate, the full right to be heard under this Code, the Indian Civil Rights Act, and any other relevant source of law. Except as authorized by law, the judge shall not initiate nor accept any written or oral communication concerning a pending case, either from a party to the case or from any other person, without either the agreement or presence of all parties. The judge shall not meet with any party to a case, or accept any communication from a party without either the agreement or presence of all other parties. A judge, however, may obtain the advice of a disinterested expert on law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. These restrictions do not include communications with other judges or with court personnel whose functions it is to aid the judge in carrying out his judicial activities.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about a pending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from explaining for public information the procedures of the court.

**(B) Administrative Responsibilities**

(1) A judge should diligently perform his administrative responsibilities, maintain professional competence in judicial administration, and assist as needed with the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of competence, impartiality, and diligence that apply to him. (3) A judge should take or initiate appropriate disciplinary measures against a lawyer or lay advocate for unprofessional conduct of which the judge may become aware.

**Canon 4. A Judge should regulate His Extra-Judicial Activities to Minimize the Risk of Conflict with His Judicial Duties.**

**(A) Activities of Personal or Recreational Interest.** A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such activities do not interfere with the performance of his judicial duties.

**(B) Civil and Charitable Activities.** A judge may participate in civic and charitable activities that do not reflect adversely upon impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or other members of the Fort Peck Courts.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such organization. He should not be a speaker or guest of honor at an organization's fund-raising events, but he may attend such events.

(3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

**(C) Financial Activities.**

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, or involve him in frequent transactions with lawyers, lay advocates, or other persons likely to come before the Fort Peck Courts.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other money-generating activity including the operation of a business.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. He should divest himself of investments and other financial interests that might require frequent disqualification.

(4) A judge should only accept gifts, bequests, favors, or loans in circumstances where such acceptance would not cause his impartiality to be questioned. Such circumstances include ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants. A judge must not accept a gift, bequest, favor, or loan from anyone who is a party to a case before that judge or who is likely to become such a party in the near future.

**(D) Arbitration.** A judge should not act as an arbitrator or mediator outside the courtroom.

**(E) Practice of Law or Lay Advocacy.** A judge should not practice law or function as a lay advocate.

**(F) Extra Judicial Appointments.** A judge should not accept appointment to a governmental committee, commission, or other position that is

concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, tribe, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

**Canon 5. Compensation Received for Extra-Judicial Activities.**

**(A) Compensation.** Compensation for extra-judicial activities should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

**(B) Expense Reimbursement.** Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

**Canon 6. A Judge Should Refrain From Political Activity Inappropriate To His Judicial Office.**

**(A)** A judge should not:

(1) Act as a leader or hold any office in a political organization;

(2) Make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(3) Solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions.

**(B)** A judge should resign his office when he becomes a candidate in an election for a nonjudicial office.

**(C)** A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

**Canon 7. Compliance with the Code of Judicial Conduct by Part-Time Judges.**

A) Part-Time Judges. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1) Is not required to comply with Canon 4, D, E, and F.

(2) Should not practice law or function as a lay advocate in Tribal Court.

**EFFECTIVE DATE OF COMPLIANCE**

Judges to whom this Code becomes applicable should arrange their affairs as soon as possible to comply with it.

**(APPROVED BY THE FORT PECK TRIBAL EXECUTIVE BOARD APPROVAL PER RESOLUTION NO. 2855-87-7, DATED 07/13/87.)**

**Fort Peck Tribal Court**  
807 Court Avenue - P.O. Box 1027  
Poplar, MT 59255



**Appendix 7 - Rules of Procedure for the Judicial Conduct Commission**

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**Rule 1. Scope of Rules**

(a) *Scope.* These rules apply to all the functions, responsibilities, and proceedings of the Judicial Conduct Commission involving the removal, retirement, suspension, censure, reprimand, and other discipline of judges pursuant to Section 5, Article VII of the Constitution of the Assiniboine and Sioux Tribes, and the provisions of Title 2, Chapter 3, Section 306, of the Comprehensive Code of Justice.

(b) *Purpose.* The purpose of the Judicial Conduct Commission and these rules is to protect the

public from improper conduct or behavior of judges; preserve the integrity of the judicial process; maintain public confidence in the judiciary; create a greater awareness of proper judicial conduct on the part of the judiciary and the public; and provide for the expeditious and fair disposition of complaints of judicial misconduct.

**Rule 2. Organization of the Commission**

(a) The Fort Peck Court of Appeals (FPCA) shall be the Judicial Conduct Commission.

(b) The Chief Justice of the FPCA shall be the Chairperson of the Commission.

(c) The Chief Justice or designee of the Chief Justice shall preside at the meetings of the Commission as well as formal hearings concerning the conduct or disability of a judge.

(d) Any member of the Commission is authorized to administer oaths or affirmations to all witnesses appearing before the Commission.

(e) All records of the Commission shall remain confidential except as hereinafter specified and shall be under the exclusive and continuing control of the Judicial Conduct Commission and its staff. In the conduct of the business of the Commission, including the appointment of an investigator or attorney, to facilitate the coordination of investigations with other agencies, and to avoid duplicative expense relative to the investigation, the Commission is authorized to utilize the same personnel who are involved in an agency investigation of the same factual allegations of misconduct or disability that is before the Commission. The permission of the Chairperson of the Commission is required prior to the release of records to anyone other than Commission members, the Court Administrator and the Chairman of the Fort Peck Tribes.

(f) The records of the Commission shall be maintained in the Court Administrator's office pursuant to these rules.

### **Rule 3. Staff of the Commission**

(a) The Court Administrator shall select a clerk whose duty it shall be to record minutes of the meetings and hearings which shall be a permanent record of the actions of the Commission. The secretary shall be responsible for the custody and safekeeping of all the records of the Commission. The secretary shall promptly furnish to members of the Commission copies of all complaints, notices, answers and other documents filed in connection with proceedings before the Commission.

(b) The Commission may appoint a qualified adult to investigate charges against a judge and to report findings to the Commission, and to otherwise assist the Commission in its inquiry into the conduct or disability of a judge.

(c) The Commission may appoint the Fort Peck Tribal Court Prosecutor (Prosecutor) to marshal and present evidence, to file a formal complaint, and to prosecute a formal complaint before the Commission in its inquiry into the conduct or disability of a judge.

(d) An individual appointed by the Commission under (b) above shall be paid as determined from time to time by the Commission from funds provided for the operation of the Commission.

### **Rule 4. Meeting**

(a) The Commission shall meet 4 times a year or more often as the business of the Commission shall require.

(b) The Chairperson may, and upon the request of another member shall, call a meeting of the Commission. The Chairperson shall give reasonable notice to each member by telephone or other means of the time and place of the meeting.

(c) A quorum for the transaction of business of the Commission shall be 2 members and no action of the Commission shall be valid unless agreed to by no less than 2 members thereof.

(d) Decisions by the Commission to conduct an investigation of a judge, order a judge to submit to a physical examination, proceed against a person for contempt for failing to respond to a subpoena of the Commission, issue a public opinion or statement, hold or dispense with a formal hearing, hear additional evidence, make a report to the Tribal Executive Board (TEB) recommending removal, retirement, or other discipline of a judge, or determine after a formal hearing not to make such a report, shall be made at a meeting of the Commission. Other matters before the Commission may be determined by communication among the members of the Commission, but a report of such action shall be made by the Chairperson at the next meeting of the Commission and entered in the minutes of that meeting.

### **Rule 5. Interested Member of Commission**

In the event a member of the Commission recuses himself or herself from acting in a particular proceeding, the Chairperson may appoint a

sitting judge, a retired judge or a judge from another tribe to act as a member of the Commission to sit and act in the place of the disqualified or recused member.

If the complaint is against a justice of the FPCA, the justice shall recuse himself or herself. If the complaint is against the Chairperson, the next senior justice shall appoint another judge.

#### **Rule 6. Proceedings Confidential**

(a) All papers filed herewith and all proceedings before the Commission shall be confidential while pending before the Commission. A Complaint dismissed by the Commission under Rule 9(e)-(f) is no longer confidential, and a complainant may disclose the complaint and the Commission's response. If an investigation results in formal proceedings, then the record loses its confidential character.

(b) All notices, pleadings and papers mailed to a judge and to other persons pursuant to these Rules shall be marked "personal and confidential."

(c) Every witness in every proceeding under these Rules shall be sworn to tell the truth and not to disclose the existence of the proceeding or the identity of the judge until the proceedings are no longer confidential under these rules. Violation of the confidentiality of proceedings may result in summary dismissal of the complaint.

(d) If a judge voluntarily retires or resigns prior to the institution of formal proceedings, and agrees not to act as a judge at any time in the future, all proceedings against such judge shall terminate, or, in the discretion of the Commission, may be held in abeyance to a date certain determined by the Commission, and the files of the Commission concerning the judge shall remain confidential.

#### **Rule 7. Immunity**

Members of the Commission, investigators, special or appointed counsel, and staff members shall be immune from suit for any conduct in the course of their official duties. All persons referenced above are deemed officers and/or agents of

the Commission for all persons mentioned in these rules

#### **Rule 8. Jurisdiction and Grounds for Discipline**

(a) The Commission shall have jurisdiction over the conduct of all judges, including part-time judges. Jurisdiction of the Commission also extends to conduct that occurred while a judge is in office, or acting as a retired judge, and may include conduct that is not in connection with judicial duties.

(b) Grounds for discipline or removal include, but are not limited to:

(1) Any disability that seriously interferes with the performance of the judge's duty and is or may become permanent;

(2) Willful and persistent failure to perform judicial duties, including consistent failure to make decisions in a timely manner;

(3) Willful misconduct in office;

(4) Impropriety or other conduct prejudicial to the administration of justice that brings the judicial office into disrepute;

(5) Habitual intemperance;

(6) Ex parte communications except as allowed by statute or rule; or

(7) Violation of the provisions of the Code of Judicial Conduct.

(c) The Commission may impose, or recommend to the Tribal Executive Board, the following:

(1) Admonition: A private communication from the Commission to a judge reminding the judge of ethical responsibilities and giving a warning to avoid future misconduct or inappropriate practices. An admonition may be used to give authoritative advice and encouragement or to express disapproval of behavior that suggests the appearance of impropriety even though it meets minimum standards of judicial conduct.

(2) Private Reprimand: A private communication from the Commission to a judge that declares the judge's conduct unacceptable under one of the grounds for judicial discipline but not so serious as to merit a public sanction.

(3) Public Reprimand: A public reprimand administered by the Commission which declares a judge's conduct unacceptable under one of the grounds for judicial discipline but not so serious as to warrant a censure.

(4) Censure: A public declaration by the Commission that a judge is guilty of misconduct that does not require suspension or removal from office. Censure may be ordered in conjunction with other sanctions.

(5) Suspension: A decision by the Commission and ratified by majority vote of the TEB to suspend a judge from office temporarily, with or without pay, for serious misconduct that merits more than censure but less than removal. This sanction is flexible, and there are no restrictions on the length of a suspension.

(6) Removal: A decision by the Commission and ratified by secret ballot of a two-thirds (2/3) majority vote of the TEB, at a meeting at which a quorum was present, to remove a judge from office for serious misconduct.

(7) Permanent Removal: A decision by the Commission and ratified by secret ballot of a two-thirds (2/3) majority vote of the TEB, at a meeting at which a quorum was present, to remove a judge permanently from office for serious misconduct and declares that such person may never again hold a judicial office on the Fort Peck Reservation.

(8) Retirement: A decision by the Commission and ratified by secret ballot of a two-thirds majority vote of the TEB, at a meeting at which a quorum was present, to retire a judge for a disability that seriously interferes with the performance of judicial duties that is or is likely to become permanent.

A decision by the TEB to remove or retire a judge shall be final.

### **Rule 9. Complaints – Initial Investigations**

(a) Written complaints to the Commission shall be submitted substantially as provided on the attached "Form A". Complaints shall be lodged with the Court Administrator.

(b) A written complaint shall not be a prerequisite to initiation of disciplinary proceedings that

the Commission, in its discretion, deems appropriate.

(c) Upon receiving a complaint or otherwise receiving information alleging judicial misconduct or that the Commission should take some action, the Commission may request written comments from the judge with respect to the matters involved as the judge may wish to make, or may request a response from the judge. At the discretion of the Commission, the Commission may conduct an investigation into the conduct or condition of the judge for the purpose of determining whether formal proceedings should be instituted and a hearing held with or without provision of notice or other information to the judge. However, prior to any determination that a formal hearing will be held, the judge shall be sent a copy of the complaint, or a synopsis of the matters to be or that have been investigated, and the judge shall thereafter have reasonable opportunity to provide a statement to the Commission as the judge considers appropriate. The judge may elect to make the statement personally or through counsel, verbally or in writing and the statement may or may not be given under oath. In exercising this right to respond, the judge shall not have the right to call witnesses or to confront or cross-examine the person making the complaint or any person interviewed by the Commission or its duly authorized representative. After notification from the Commission, if the judge does not respond with a reasonable time or within the time fixed by the Commission, the right to make a responsive statement shall be deemed waived.

(d) In making an investigation, the Commission shall have the authority to issue subpoenas for witnesses to appear before the Commission or its representative for the purpose of making a sworn statement and may also issue subpoenas for the production of books, papers and other evidence that may be pertinent to the Commission's inquiry.

(e) Whenever the Commission reaches the conclusion that facts developed upon an initial investigation fail to show any reason for the institution of disciplinary proceedings, the Commission will dismiss the complaint, terminate the inquiry, and



so advise the complainant. At the same time, the complainant shall be informed of the confidentiality provisions of Rule 6. The Commission shall also notify the judge of the Commission's decision.

(f) A complaint may be summarily rejected and dismissed by the Commission if, in the judgment of the Commission, the complaint fails to state adequate grounds for disciplinary proceedings or is a matter for appellate review. The Commission may, but it is not required to, advise the judge of the summary dismissal of the complaint.

(g) After receipt of a complaint or of information indicating that a judge may have engaged in judicial misconduct, or that a judge may be disabled, the Commission, before voting to hold a formal hearing, may delegate to one or more of its members or to the Commission's attorney or investigator, the authority and responsibility to personally and confidentially confer with the judge subject to the inquiry, and to make informal recommendations to the judge or to the judge's attorney concerning the subject matter of the inquiry and a satisfactory disposition thereof. If the judge agrees to the Commission's suggested disposition, the matter may be disposed of on the basis of the agreement reached. If the agreed disposition is to be made public, the Commission shall file a report of such disposition in the office of the Court Administrator and the disposition shall become a matter of public record.

(h) The Commission may at any time entertain and act upon a proposal from a judge for disposition of any matter pending before the Commission concerning such judge. If the proposal is made after the filing of a formal complaint, and is acceptable to the Commission, a report thereof shall be filed in the office of the Court Administrator, and the report shall be a matter of public record.

#### **Rule 10. Formal Complaint**

(a) If, after an initial investigation, a majority of the Commission find grounds to conduct formal proceedings concerning a complaint or other facts brought to the attention of the Commission, the

Commission shall appoint the Prosecutor as provided in Rule 3(c) to file a formal complaint against the judge in the office of the Court Administrator and to prosecute the formal complaint before the Commission.

(b) Upon the filing of a formal complaint, the complaint and all proceedings subsequent to its filing are not considered confidential and shall become a matter of public record.

#### **Rule 11. Procedure on Formal Complaint**

(a) The formal complaint shall state the name(s) of the complainant(s), the nature of the alleged grounds for discipline or request for the judge to be ordered to submit to a physical examination, the time of actions giving rise to alleged wrongdoing and a brief summary of the facts upon which allegations of misconduct are based.

(b) A notice of the filing of the formal complaint together with a copy of the complaint shall be served on the judge. The notice shall advise the judge of the name, address, and telephone number of the Prosecutor and of the right to file a written response with the Court Administrator within 15 working days after the complaint has been served upon the judge.

(c) Service of the notice and a copy of the formal complaint shall be made on the judge by personal service as provided in 8 CCOJ 102. Service of the notice and a copy of the complaint may be acknowledged by the judge or the judge's attorney.

(d) The judge may file a written response to the allegations of the formal complaint within 15 working days after service. Thereafter, the Commission may set a hearing on the complaint. The hearing shall be set no sooner than 30 working days after the time for filing a response has expired or after a response is filed. The hearing shall be set as promptly as possible considering the particular circumstances of the matter.

(e) The Chairperson shall appoint a member of the Commission, who may be the Chairperson, to hear and determine preliminary matters prior to the hearing, set dates, make necessary rulings, make discovery orders, order subpoenas issued, and make such orders necessary to assure the

hearing is conducted promptly and that both the complainant and the responding judge have the opportunity to fully and fairly prepare for the hearing. The orders of the member selected shall have the same force as an order of the Commission unless quashed by a majority of the members thereof.

(f) The responding judge shall, upon request, be provided access to the information upon which the formal complaint is based, including the initial complaint, statements of the complainant, witnesses, and other physical and documentary evidence. The responding judge shall, upon request, be provided with the names and last known address of witnesses who will be called to testify at the hearing together with copies of all evidence the Prosecutor intends to introduce at the hearing. The judge shall, upon request, provide the Prosecutor with the names and addresses of the witnesses the judge intends to call to testify at the hearing, together with copies of all documentary evidence intended to be introduced by the judge at the hearing. Depositions may be taken only upon order of the Commission upon application showing the necessity therefor. Other discovery procedures such as interrogatories, requests for admissions, or requests for production may be undertaken only upon order of the Commission after application and a showing of the necessity therefor.

(g) The clerk for the Commission shall not be required to issue any subpoena except upon direct order of the Commission. Payment of witness fees and mileage shall be as provided for witnesses in a tribal court proceeding.

### **Rule 12. Hearing on Formal Complaint**

(a) At the time and place set for hearing, the Prosecutor shall present the case in support of the charges in the formal complaint.

(b) A verbatim record shall be made of the hearing. The Commission may, in its discretion, order that a transcript of the proceedings be made. When a transcript of the hearing has been prepared at the expense of the Commission, a copy thereof shall, upon request, be available for use by the judge and counsel. The judge shall have

the right, without any order or approval, to have all or any testimony in the proceedings transcribed at the judge's expense.

(c) The Chairperson or designee shall preside at the hearing. The hearing shall be conducted according to the Federal Rules of Evidence.

(d) The responding judge shall appear at the hearing and may, in the judge's discretion, testify at the hearing.

(e) The Prosecutor shall have the burden of proof and shall open and close the evidence. Any misconduct or incapacity alleged against the responding judge must be proven by clear and convincing evidence. The responding judge shall have the right, but is not required, to present evidence in defense of the complaint.

(f) At the conclusion of the hearing, the Commission may order further written arguments or submissions as it deems appropriate, including proposed findings of fact and conclusions of law. Thereafter, the matter shall be deemed submitted for decision, unless the Commission orders otherwise.

(g) Deliberations of the Commission shall be confidential. The Commission shall render its decision, and any recommendation(s) to the TEB, if necessary, in writing. The Commission's decision shall be filed in the office of the Court Administrator and charges dismissed or recommendation(s) transmitted to the TEB, whichever is necessary.

(h) Should less than a majority of the Commission vote affirmatively for the censure, suspension, retirement or removal of a responding judge, the formal complaint shall be dismissed in favor of the judge, who shall be entitled to the costs paid or incurred for subpoenas, witness fees and mileage, and any depositions ordered by the Commission.

### **Rule 13. Interim Disqualification of Judge**

Upon the Commission's filing with the TEB a recommendation that a judge be removed or retired, the judge shall forthwith be disqualified to serve as a judge, without loss of salary, pending

the ratification by the TEB. If a judge is reinstated to office, the terms of the reinstatement shall be as ordered by the TEB.

(APPROVED BY RESOLUTION NO. 28-0393-2016-02, 2/22/16.)

## FORM A

### JUDICIAL CONDUCT COMMISSION

#### FORT PECK TRIBES

##### COMPLAINT

The undersigned being first duly sworn, upon oath, states the following facts showing misconduct on the part of the following named judge:

NAME OF JUDGE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

Based on the attached Judicial Code of Conduct, please cite which Canon(s) you feel the judge has violated and why.

The facts of the above Judge's misconduct or unethical conduct are as follows: (Please state in your own words the misconduct or unethical conduct with information as to when and where the misconduct occurred, and names of other people involved.)

(If more space is needed, you may attach additional sheets to this complaint and mark them a, b, c, etc.)

The names and addresses of other persons who are witnesses to or have information as to the misconduct of the above judge are:

NAME: \_\_\_\_\_ NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ AD-  
DRESS: \_\_\_\_\_  
PHONE NO: \_\_\_\_\_ PHONE  
NO: \_\_\_\_\_

(Names of additional witnesses may be listed on a separate sheet and attached.)

I (have \_\_\_ / have not \_\_\_) contacted the judge in regard to my complaint.

I will furnish additional information to your Commission if requested. If the complaint is investigated, I will cooperate with your Commission and furnish the evidence I have and will testify at any hearing on this complaint.

My full name, address and telephone number is:

NAME \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
PHONE #: \_\_\_\_\_

DATED this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature

SUBSCRIBED AND SWORN TO before me this \_\_\_ day of \_\_\_\_\_, 20\_\_.

(SEAL) \_\_\_\_\_ Notary Public for the State Montana \_\_\_\_\_ Residing \_\_\_\_\_ at \_\_\_\_\_  
My Commission expires \_\_\_\_\_

**RETURN TO:** Rita Weeks, Administrator  
Fort Peck Tribal Court  
P.O. Box 1027  
Poplar, MT 59255