

CHAPTER 4-4 EXCLUSION AND REMOVAL

§4-4-1 Definitions

(a) "Exclusion and removal" means the temporary or permanent banishment or expulsion of an individual from within the boundaries of the Nez Perce Reservation.

(b) "Fraud" means a false representation of a matter of fact by words, conduct, false or misleading allegations, or by concealment of a fact which should have been disclosed which is intended to and does in fact deceive another to his legal injury or detriment.

§4-4-2 Persons Subject to Exclusion and Removal

All persons except those authorized by federal law to be present on tribal land and persons with interests in real property on the reservation may be excluded or removed from the Nez Perce Reservation.

§4-4-3 Grounds for Exclusion and Removal

In addition to any remedy or penalty provided by this code, a person subject to removal and exclusion under this chapter may be subject to a civil proceeding for exclusion or removal from the Nez Perce Reservation upon any one or more of the following grounds:

(a) doing or attempting to do any act upon the reservation which unlawfully threatens the peace, health, safety, morals or general welfare of the tribe, its members, or other persons;

(b) any act causing serious physical loss or damage of any nature to the property of the tribe or any reservation resident;

(c) entering an area in violation of any order of the Nez Perce Tribal Executive Committee designating such area as closed;

(d) failing or refusing to pay any taxes, rents or other charges justly due the Nez Perce Tribe or any entity of the tribe, after reasonable notice and an opportunity to pay, unless such charges or fees are related to an interest in real property;

(e) mining, prospecting, cutting timber or vegetation or other use, abuse, taking of or damage to tribal property without authorization;

(f) committing a fraud;

(g) trading or conducting business within the reservation in violation of tribal law;

(h) hunting, fishing or trapping without lawful authority or permission or in violation of tribal or federal law;

(i) disturbing or excavating items, sites or locations of religious, historic or scientific significance without the authority of the tribe or in violation of tribal or federal law; or

- (j) failing to obey an order of the Tribal Court.

§4-4-4 Proceedings for Exclusion

The prosecutor may bring an exclusion action pursuant to this chapter on behalf of the tribe by filing a complaint in Tribal Court. Before filing a complaint, the prosecutor shall cause any proposed exclusion and removal under this chapter to be investigated sufficiently to determine whether, in his discretion, an exclusion action shall be filed on behalf of the tribe. The filing of a complaint under this chapter shall constitute a civil cause of action.

§4-4-5 Hearing on Exclusion and Removal

(a) Upon the filing of a complaint for exclusion, the tribal prosecutor shall promptly cause notice and a copy of the complaint to be served personally or by registered mail upon the respondent. The notice shall state the time and place at which a tribal court hearing will be held on the complaint and that the respondent may appear with counsel, if he desires, and present evidence in his own behalf.

(b) The burden of proof shall be upon the tribal prosecutor to prove by a preponderance of the evidence that the respondent committed one or more of the acts set forth in this chapter. If the respondent is found to have committed such act(s), the Court shall issue an order of exclusion and removal which shall include the duration of the exclusion. If the respondent is not present at such hearing or if a decision is not rendered until after the hearing, appropriate notice shall be served on the respondent in the manner provided above informing him of the action of the Tribal Court and such notice shall include a copy of any order or exclusion and/or removal.

§4-4-6 Appeals

Any person upon whom an order of exclusion and removal is issued under this chapter may appeal such order to the Nez Perce Court of Appeals as provided by this code.

§4-4-7 Enforcement of Orders of Exclusion and Removal

If any person ordered excluded from the Nez Perce Reservation under this title does not obey such order, the Tribal Court shall issue one or more of the following orders:

- (a) direct any tribal police officer to remove the respondent from the reservation or portions of the reservation covered by the exclusion order at the respondent's expense;
- (b) direct any tribal police officer to prevent the respondent from reentry onto any reservation lands covered by the exclusion order for so long as the order remains in effect;
- (c) find the respondent in contempt.

§4-4-8 Emergency Exclusion and Removal Without Prior Hearing (adopted 10/12-13/99)

(a) Whenever the Tribal Court finds that there is an immediate need to order the exclusion and/or removal of a person from the Nez Perce Reservation and that the granting of notice and opportunity to be heard to such persons prior to making such order would cause a delay seriously detrimental to the interests of the Tribe, its members, or the other residents of the reservation, the Tribal Court shall immediately order such exclusion and/or removal and provide the notice and opportunity for review of such decision outlined below.

(b) Whenever the exclusion and/or removal of a person is ordered without a prior hearing as provided herein, the person shall be served with a notice of such action. Such notice shall state the nature and extent of the exclusion and/or removal so ordered, shall state the reasons why no prior hearing was held, shall inform the person that once he has complied with the order, he may immediately petition the Tribal Court for a hearing to reconsider the order, that he may be represented by counsel at his own expense at the hearing and present evidence in his own defense, and shall inform him that his compliance with such order shall be enforced by Tribal Law Enforcement Officers. A copy of the order shall be served with the notice and such service may be accomplished by personal service or, if personal service is not reasonably possible, by mailing to the person by United States registered mail, return receipt requested, at his last known address.

(c) Upon receipt of a petition for a hearing as provided in § 4-4-8(b), the Tribal Court shall schedule a hearing to allow the person to present evidence. Such hearing shall be held within ten business days of receipt of the petition, provided, however, that the order of exclusion and/or removal shall remain in force pending hearing and a decision thereon, except for the limited purpose of attending a hearing.

(d) The Tribal court shall, as a result of such hearing, either affirm, modify or rescind its previous order, and shall give the person notice of such decision in the same manner as provided for service of the notice in § 4-4-8(b).

(e) Nothing in this Section shall in any way limit Tribal Law Enforcement's authority to detain and eject any non-Indian offender.