

**JAMESTOWN S'KALLAM TRIBE
TRIBAL CODE
TITLE 36 – EXCLUSION CODE**

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Section 36.01.01 Purpose

This Title is enacted to provide a process for the Jamestown S'Klallam Tribe ("Tribe") to exercise its authority and duty to protect the peace, health, safety, welfare, property, and cultural identity of Tribal citizens. The Tribe's inherent sovereign power to remove and exclude citizens and non-citizens from the reservation provides the Tribe with a means to protect the Tribe and the Tribal community.

Section 36.01.02 Jurisdiction

The Jamestown S'Klallam Tribal Court ("Tribal Court") shall have jurisdiction over all matters arising under this Title. All means necessary to exercise that jurisdiction are delegated to the Tribal Court. In the exercise of jurisdiction under this Title, if a course of proceeding is not specified, any suitable process may be adopted by the Tribal Court in keeping with the spirit of the laws of the Tribe.

Section 36.01.03 Who May Be Excluded

Any individual person may be removed and excluded from the territories of the Tribe.

Section 36.01.04 Civil Remedy

An Exclusion Order is a discrete civil remedy that is neither dependent upon, nor necessarily connected with, any criminal remedy.

The intent of exclusion is not to punish persons but is to protect the Tribe and Tribal community by providing the Tribe with a means of civil regulation of the community's internal order.

Section 36.01.05 Definitions

The following terms, when used in this Title, shall have the meaning set forth in this section:

- A. "Child" is any person under the age of eighteen (18) years.
- B. "Exclusion" is an order denying entry onto property that is under the jurisdiction of the Tribe, including fee land.
- C. "Natural Resources" include, but are not limited to, fish, wildlife, shellfish, timber, water, and minerals.
- D. "Person" includes individuals, organizations, and business entities.

- E. “Proper authority” is either: 1) a court order recognized as valid by the Tribal Court or Tribal Council; or 2) permission to remove a child, granted by a parent or other person who has lawful authority to give such permission.
- F. “Removal” is the physical removal of a person from the territory of the Tribe.
- G. “Tribal Council” is the duly constituted governing body of the Jamestown S’Klallam Tribe.
- H. “Territory of the Tribe” is all lands held in trust or subject to a restriction against alienation by the United States for the benefit of the Jamestown S’Klallam Tribe, and all other lands owned by the Tribe.
- I. “Tribal Community” includes enrolled citizens of the Tribe and residents of Tribal lands.
- J. “Tribal Court” is the Jamestown S’Klallam Tribal Court established under the laws of the Tribe.
- K. “Tribal Law Enforcement” is any person or agency authorized by the Tribal Council to enforce this Title.
- L. “Working days” shall include Monday through Friday of each week but excluding Saturday and Sunday and excluding any "legal holiday" as that is defined in Federal Rules of Civil Procedure 6(a) and other applicable federal law.

Section 36.01.06 Severability

If any portion of this Title or its application to any person or circumstance is held invalid, the remainder of this Title or its application of the provision to other persons or circumstances shall not be affected.

Section 36.01.07 Sovereign Immunity

Nothing in this Title shall be construed as a waiver of the sovereign immunity of the Tribe, the Tribal Council and other Tribal officials, agents, and employees.

Chapter 36.02
Grounds for Removal and Exclusion

Sections:

Section 36.02.01 Grounds for Removal and Exclusion

Section 36.02.01 Grounds for Removal and Exclusion

- A. Any individual subject to this Title may be removed and excluded from the territories of the Tribe for any of the following reasons:
1. Current status as a person convicted, by a court of competent jurisdiction, of a) molesting a child or b) of abusive sexual contact of a minor;
 2. Current status as a person convicted, by a court of competent jurisdiction, of: a) a sex offense involving a minor, and/or b) found to be a level two or three sex offender, as those terms are defined under state or federal law, or c) within one of the last ten years, conviction as a level one sex offender, as that term is defined under State or Federal Law;
 3. Violation of the terms of their parole or probation from any jurisdiction;
 4. a) Violation of the terms of their sentence after a conviction, by court of competent jurisdiction, b) violation of terms of any sexual offense registration requirement, c) violation or failure to comply with any court-mandated sex treatment program, or d) violation of the terms of any civil commitment law, if such a violation could cause harm or threaten to cause harm to any child; or
 5. Commission of any crime(s) under Tribal, Federal, State or Foreign laws, whether or not the person may be prosecuted by the Tribe.
- B. Nothing in this Title shall act to grant jurisdiction over the Tribe, its citizens, or its lands to any local jurisdiction, state or the Federal Government.

Chapter 36.03
Exclusion Hearing; Notice

Sections:

Section 36.03.01 Petition for Exclusion - Who May File

Section 36.03.02 Petition-Contents

Section 36.03.03 Notice of Hearing - Content

Section 36.03.04 Notice of Hearing - Service

Section 36.03.05 Defective Petition

Section 36.03.06 Time of Hearing

Section 36.03.07 Conduct of Hearing

Section 36.03.08 Standard for Decision

Section 36.03.09 Order of Exclusion

Section 36.03.10 Order of Exclusion - Service

Section 36.03.11 Continuance - Failure to Appear

Section 36.03.12 Order of Exclusion - Enforcement

Section 36.03.13 Duration of Exclusion Order

Section 36.03.01 Petition for Exclusion - Who May File

- A. The Tribal Council by a unanimous vote from every elected member of the Council, shall have exclusive authority through its representative or the Tribal Prosecutor, to submit a Petition for Exclusion to the Tribal Court. The Tribal Council may pursue a petition for exclusion if there are reasonable grounds to believe that there is a basis for exclusion under Section 36.02.01, above. Nothing herein shall act to require the Tribal Council to submit a petition or limit its discretion to do so.
- B. Any Tribal citizen, a Jamestown S'Klallam Tribal Public Safety & Natural Resources Police Officer, or other Tribally authorized law enforcement officials, may file a written request to the Tribal Council for the removal or exclusion of any individual who is subject to this Title. A person requesting that the Tribal Council file a petition for exclusion is not a party to the exclusion proceeding but may be called as a witness.

Section 36.03.02 Petition - Content

A Petition for Exclusion from the Tribal Council shall include:

- A. The name of the person to be removed or excluded;
- B. A cite to the specific grounds, from Section 36.02.01, above, for the removal or exclusion;
- C. The factual basis for the request; and
- D. The signature of the Chair of the Tribal Council or authorized designate.

Section 36.03.03 Notice of Hearing - Content

The Notice of Hearing shall include:

- A. The date, time, and place of the hearing;

- B. A statement that the person may be represented by counsel, at their own expense;
- C. A statement that the person may present testimony of witnesses and other evidence on his or her behalf;
- D. A copy of the Exclusion Petition; and
- E. A statement that failure to attend the hearing may result in an Order of Permanent or Temporary Exclusion or Removal.

Section 36.03.04 Notice of Hearing - Service

If the Court finds that the Exclusion Petition meets the requirements of Section 36.03.02, above, and probable cause exists for excluding the person, it shall cause a Notice of Hearing to be served on the respondent. Service of the Notice of Exclusion Hearing shall be made by Tribal Public Safety & Natural Resource Officers, or by any person at least eighteen (18) years old and not a party to the case. If personal service fails, the order may be served by certified mail, return receipt requested, to the person's last known address. The process server shall return an Affidavit of Service to the Court.

Section 36.03.05 Defective Petition

Court finds that the petition does not meet the requirements of Section 36.03.02, above, it shall dismiss the petition without prejudice and shall cause notice to be served on the petitioner stating the manner in which the petition was defective.

Section 36.03.06 Time of Hearing

The hearing shall be held not less than thirty (30) working days and not more than sixty (60) calendar days after personal service, mailing, or posting of the notice, unless continued for good cause. Notwithstanding anything in Tribal law to the contrary, if notice is posted it shall be posted in three prominent and public locations within Tribal Lands on a public board or notice location that is designed to be seen by citizens of the community. One of the three places the notice shall be posted shall include the Tribal Administration Building.

Section 36.03.07 Conduct of Hearing

- A. The petitioner and respondent shall have an opportunity to present witnesses and other evidence. All evidence that is necessary and relevant to decide the case is admissible. Witnesses may be subpoenaed for either party upon request.
- B. Failure of the Court subpoena power to obtain witness' presence shall not be a cause to dismiss the petition.
- C. The parties may be represented by counsel at their own expense.

Section 36.03.08 Standard for Decision

The Court may enter an Order of Removal or Exclusion if, based on the evidence presented, the Court is persuaded by clear and convincing evidence that:

- A. The person or entity committed an act or omission which falls within one or more grounds for exclusion under Section 36.02.01, above; and

- B. That removal or exclusion is necessary to protect the health, safety, or welfare of the community.

Section 36.03.09 Order of Exclusion

The Court may orally advise the parties of its decision at the hearing or may issue a written opinion no later than five (5) working days from the date of the hearing. In either case, the Court shall prepare a written order and cause it to be served on both parties.

A written Order of Exclusion shall include:

- A. The grounds for the decision;
- B. The date and time the individual or entity must remove themselves from the territory of the Tribe;
- C. The duration the order is to be in effect;
- D. A statement that any return to the territory of the Tribe, in violation of the Order of Exclusion, constitutes trespass and may be referred for prosecution to the Tribe's Prosecuting Attorney;
- E. Whether the Tribal Public Safety & Natural Resource Officers are requested to supervise the removal of the person, and any personal property they may have, from the territory of the Tribe;
- F. Any circumstances under which the person may be permitted to return to the territory of the Tribe. For example, conditions and reasons for a return may include payments of restitution, evidence of rehabilitation, visitation with children, visitation during certain times only, Tribal Court appearances, and a limited time to return to pick up personal property; and
- G. A date by which the Tribal Court will review the order and circumstances, or conditions attached, if the individual or entity requests a review, pursuant to provisions of Section 36.04.01, below.

Section 36.03.10 Order of Exclusion - Service

An Order of Exclusion shall be personally served on the respondent, if the respondent resides within the jurisdiction of the Tribe. Service shall be made in the manner specified in Section 36.03.04, above.

Section 36.03.11 Continuance - Failure to Appear

The Court may, in its sole discretion, grant a continuance of the hearing, upon request. If the respondent fails to appear at the time set for a hearing, after proper notice of the hearing has been given, the Court may enter an Order of Exclusion. The order shall be served on the parties in the manner provided in this Title and shall contain the information required under Section 36.03.09, above.

A respondent excluded, after their failure to appear, may request a hearing to explain the reasons for the failure to appear. If the Court finds the respondent's failure to appear was for good cause, it shall reschedule a full hearing on the matter of exclusion.

Section 36.03.12 Order of Exclusion - Enforcement

The Court may request that Tribal Law Enforcement supervise the removal of the respondent pursuant to an Order of Exclusion. The person may be allowed by court order to gather any personal property from the jurisdiction of the Tribe, prior to removal. If the respondent fails to voluntarily remove themselves, with the time limit stated in the order, Tribal Law Enforcement may physically remove them. Tribal Law Enforcement shall use only so much force as is reasonable to accomplish the removal.

Section 36.03.12 Duration of Exclusion Order

The Exclusion Order shall remain in effect until modified or revoked by the Tribal Court following a hearing properly requested under Section 36.04.01, below or, if applicable, until the time provided on the Order itself. In the absence of a provision in the order indicating otherwise, the term of exclusion shall be presumed to be permanent, subject to a right to seek reconsideration at any time under Section 36.04.02, below.

Chapter 36.04 Review Hearing

Sections:

Section 36.04.01 Request for Hearing to Review Final Exclusion Order

Section 36.04.02 Hearing to Review or Reconsider Final Exclusion Order

Section 36.04.03 Hearing Decision on Request for Review or Reconsideration

Section 36.04.01 Request for Hearing to Review Final Exclusion Order

The person subject to an Exclusion Order may request a hearing before the Tribal Court to reconsider the order and circumstances or conditions attached. The request for a hearing must be made within the time limits stated on the order and in accordance with any conditions specified in the order itself. If the request is deficient in any material way, the Tribal Court shall so notify the person within ten (10) working days of receipt of the request.

The requests shall:

- A. Be in writing;
- B. Be signed before a Notary Public;
- C. State an address where the Tribal Court shall mail all notices and documents associated with the hearing;
- D. Explain the factual circumstances which support reconsideration of the order;
- E. State the changes to the order that they are seeking as a result of this hearing; and
- F. Be mailed to the Tribal Court, with a copy served upon the Chair of the Tribal Council. If the Tribal Chair receives a copy of the request for a hearing, they shall notify the Tribal Council and receive direction on how to proceed.

Section 36.04.02 Hearing to Review or Reconsider Final Exclusion Order

- A. The Tribal Court shall cause a notice to be mailed to the person and to the Tribal Council within ten (10) working days of receiving a proper and complete request for a hearing for reconsideration of an Exclusion Order, advising the person of the date, time, and place of the hearing. The hearing shall be scheduled for a date that is within forty (40) working days of the date the notice is mailed by the Court.
- B. Any individual excluded under this Title shall have the right to file a Request for a Hearing to demonstrate that they should have the Order of Exclusion removed. Grounds for reconsideration of the Order of Exclusion shall include clearing and convincing proof that the individual is not a threat to the Tribal Community and that their status has materially changed since the original hearing such that the grounds for the original order is no longer applicable.
- C. An individual shall have a right to seek reconsideration of the original Order of Exclusion at any time notwithstanding that the appeal time of the original order has expired.

Section 36.04.03 Hearing Decision on Request for Review or Reconsideration

The decisions of the Tribal Court, following a hearing on a request for Review or Reconsideration of an Exclusion Order, shall be in writing and mailed to the address provided by the person within fifteen (15) working days of the hearing.

Chapter 36.05 Emergency Removal

Sections:

Section 36.05.01 Emergency Removals-Grounds

Section 36.05.02 Notice of Opportunity to Request Hearing

Section 36.05.03 Hearings on Emergency Removals

Section 36.05.01 Emergency Removals-Grounds

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

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

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

If such an Order is issued, a hearing on the order shall be held on the next available date at the Tribal Court upon notice to the individual excluded. The Court may, at the time of that hearing, rule on the Tribe's request to extend the emergency exclusion for a longer period of time. The Tribal Court shall apply the standards for the hearing under Section 36.03.07, above.

Section 36.05.02 Notice of Opportunity to Request Hearing

The Tribal Court shall cause a Notice of the Opportunity to Request a Hearing to be sent as soon as reasonable and practicable to the person removed, by certified mail, return receipt requested. The notice shall state:

- A. The grounds for removal;
- B. A statement that the person may request a hearing before the Tribal Court within five (5) working days of service of the notice. The hearing shall be scheduled no later than forty (40) working days from the date the person requests a hearing; and
- C. A statement that failure to request a hearing within the time limit prescribed may result in a Permanent Order of Exclusion being entered.

Section 36.05.03 Hearings on Emergency Removals

Hearings following an emergency removal shall be conducted consistent with: Section 36.03.07 Conduct of Hearings, Section 36.03.08 Standard for Decision, Section 36.03.09 Order of Exclusion, Section

36.03.11 Continuance; Failure to Appear, and Section 36.03.12 Order of Exclusion - Enforcement of this Title.

Chapter 36.06 Appeal

Sections:

Section 36.06.01 Who May Appeal Exclusion Order

Section 36.06.02 Rules for Appeal

Section 36.06.03 Exceptional Rules for Re-Consideration of Exclusion Order

Section 36.06.01 Who May Appeal Exclusion Order

Any person subject to an exclusion or removal order, issued by the Tribal Court, may appeal the final order to the Tribe's Court of Appeals.

Section 36.06.02 Rules for Appeal

Appeals under this Title shall be governed by Title 16 - Appellate Process, of the Tribal Code.

Section 36.06.03 Exceptional Rules for Re-Consideration of Exclusion Order

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

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

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

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

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

Chapter 36.07
Codification and Amendments

Sections:

Section 36.07.01 Codification

Section 36.07.02 Amendments

Section 36.07.01 Codification

Title 36 Exclusion Code was approved and adopted by the Tribal Council, as a new title to the Tribal Code, on November 12, 2019, by Resolution #59-19.

Section 36.07.02 Amendments

(Reserved)