



**RESOLUTION OF THE GOVERNING BODY OF THE
THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD INDIAN RESERVATION**

A Resolution entitled: Adoption of a Civil Exclusion and Removal Code

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and By-Laws pursuant to said Act; and

WHEREAS, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

WHEREAS, Article III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and

WHEREAS, Article VI, Section 5 (l) of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council has the power to adopt resolutions regulating the procedure of the Tribal Business Council and other Tribal agencies; and

WHEREAS, Article I of the Constitution of the Three Affiliated Tribes provides that the jurisdiction of the Three Affiliated Tribes of the Fort Berthold Reservation shall extend to all persons and all lands, including lands held in fee, within the exterior boundaries of the Fort Berthold Reservation as defined by the Act of March 3, 1891 (26 Stat. 1032); to all lands added to the Fort Berthold Reservation by Executive Order of June 17, 1892; and to such other persons and lands as may hereafter come within the jurisdiction of the Three Affiliated Tribes, except as otherwise provided by law. (As amended by Amendment No. VIII, approved by the Secretary of the Interior's delegate on March 11, 1985.)

WHEREAS, Article VI, Section 3 of the Constitution of the Three Affiliated Tribes provides that the people of the Fort Berthold Reservation hereby grant to the Tribal Business Council of the Three Affiliated Tribes all necessary sovereign authority – legislative and judicial – for the purpose of exercising the jurisdiction granted by the People in Article I of this Constitution. Further, the People hereby authorize the Tribal Business Council to delegate to the Tribal Court such judicial power and authority as may be necessary to realize the jurisdiction granted by the People in Article I of this Constitution.

WHEREAS, Indian Tribes have the inherent authority under federal law to exclude and remove *non-enrolled* certain individuals from their reservations and the Tribal Business Council possesses that authority pursuant to the terms of the Tribes' Constitution; and





CIVIL EXCLUSION AND REMOVAL

TABLE OF CONTENTS

2A-1-1	Declaration of Policy
2A-1-2	Authority
2A-1-3	Jurisdiction
2A-1-4	Definitions
2A-1-5	Application
2A-1-6	Grounds for Exclusion
2A-1-7	Procedures for Exclusion
2A-1-8	Criminal Penalties
2A-1-9	Civil Penalties
2A-1-10	Severability
2A-1-11	Immunity
2A-1-12	Sovereign Immunity
2A-1-13	Effective Date

2A-1-1 Declaration of Policy.

The Tribal Business Council of the Three Affiliated Tribes finds that certain types of conduct by persons within the Reservation endanger the health, safety, and welfare of the Tribes and may threaten the political integrity and the economic security of the Tribes. As a sovereign nation, the Tribes have the inherent power to exclude persons from the Fort Berthold Reservation, limited by certain provisions within the Tribes' Constitution and by various acts of Congress. The purpose of the Civil Exclusion and Removal Ordinance is to protect the integrity and security of the Tribes as a whole, enrolled tribal members, and the community.

2A-1-2 Authority.

This Ordinance is adopted pursuant to Articles I, III, and VI of the Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation.

2A-1-3 Jurisdiction.

The provisions of this Ordinance shall apply to all persons and property within the territorial jurisdiction of the Tribes to the fullest extent authorized by federal law.

2A-1-4 Definitions.

Where a term is not defined in this section, it shall be given its ordinary meaning, unless otherwise defined in this Ordinance. Terms used in this section shall have the following meaning, except where the context indicates otherwise:

- (a) "Enrolled Tribal Member" means a person who is enrolled as a member of the Tribes;
- (b) "Non-member" means a person who is not enrolled as a member of the Tribe;
- (c) "Person" means any individual, firm, corporation, public or private entity;

(d) "Public Right-of-Way" means any lawful right-of-way within the exterior boundaries of the Reservation that is open to public access as a matter of federal law;

(e) "Reservation" means the Fort Berthold Reservation; and

(f) "Tribal Prosecutor" shall mean the person responsible for presentation of evidence on behalf of the Tribes at hearings on exclusion before the District Court.

2A-1-5 Application.

(a) Non-members.

Pursuant to the provisions of this Ordinance, any non-member may be temporarily or permanently excluded and removed from all or any portion of the Reservation, except property owned in fee by the non-member and public rights-of-way.

(b) Enrolled Tribal Members.

Pursuant to the provisions of this Ordinance, any member may be temporarily or permanently excluded and removed from all or any portion of the Reservation, except property owned in fee by the member and public rights-of-way.

(c) Authority of the Fort Berthold District Court.

The Fort Berthold District Court is hereby authorized to adjudicate exclusion hearings, as provided herein, and to enforce all provisions of this Ordinance. Nothing herein shall be construed to limit the authority of the District Court, upon its own initiative or upon motion by the Tribal Prosecutor, to issue an Order of Exclusion under other existing provisions of tribal law.

2A-1-6 Grounds for Exclusion.

Any person may be excluded and removed from the Reservation for commission of one (1) or more of the following acts within the Reservation:

- (1) Conviction of a crime of violence;
- (2) Engaging in gang activity which threatens the safety and security of residents of the Reservation;
- (3) Engaging in threatening, harassing, violent, or disorderly conduct which threatens the health, safety, and welfare of any person within the Reservation;
- (4) Stalking any individual residing within the Reservation;
- (5) Physically, mentally, emotionally, or sexually abusing an elderly person or a child residing within the Reservation;
- (6) Being a habitual criminal;

- (7) Destroying or vandalizing tribal or personal property;
- (8) Committing an act of domestic abuse against any person who resides within the Reservation; or
- (9) Repeated failure to obey an order of the District Court.

2A-1-7 Procedures for Exclusion.

(a) Complaint.

The Tribal Business Council, the Department of Public Safety, the Attorney General, or any enrolled tribal member, may make a complaint for exclusion of a non-member. Forms for such complaints shall be kept by the Fort Berthold District Court.

(1) A complaint for exclusion shall provide a brief statement of the grounds for exclusion and shall be signed by the complaining witness and shall be filed with the Fort Berthold District Court.

(2) The Tribal Prosecutor shall review such complaint and if he/she has reason to believe that cause may exist for exclusion, the Tribal Prosecutor shall initiate exclusion procedures and petition the Tribal Court to serve notice upon the person.

(b) Notice

Upon receipt of the complaint and petition, the Fort Berthold District Court shall then promptly cause notice to be served personally or by registered mail upon the person named in the complaint and upon the complaining party:

(1) The notice shall state the reason for the proposed exclusion and shall state a time and place at which the person shall appear before the District Court to show cause why he/she should not be excluded from the Reservation;

(2) The hearing shall not be scheduled less than ten (10) days after the time of service or mailing; provided that if the District Court shall have reasonable cause to believe that an emergency exists, and the notice so states, the District Court may issue an *ex parte* Temporary Exclusion Order and shall schedule a hearing as soon as practicable.

(c) Exclusion Hearing

After notice to the person named in the complaint, the Fort Berthold District Court shall hold a hearing to decide whether the person shall be excluded from the Reservation:

(1) Except as specifically provided herein, the Judicial Procedure, Civil Code shall apply to an exclusion hearing;

(2) The complaining party shall be given an opportunity to present testimony, including any witnesses or other evidence, in support of the complaint;

(3) The person shall be given an opportunity to present his/her defense at the hearing, and may be represented by counsel at his/her own expense;

(4) The District Court may, in its discretion, grant a continuance of the hearing on request by either the complaining party or the person, or upon its own motion;

(5) After the hearing, or at the time set for the hearing if the person does not appear, the District Court, upon a finding of just cause, may order that the non-member be temporarily or permanently excluded from the Reservation, or may permit the person to remain upon the Reservation on such conditions as the District Court sees fit to impose. Conditions which the District Court may impose in an Order of Exclusion may include, but shall not be limited to:

(A) Payment of taxes, interest, and penalties owed to the Tribes, as determined by the District Court, including reasonable court costs and attorneys' costs and fees; and/or

(B) Payment of restitution and/or damages to any enrolled tribal member or to the Tribes; and/or

(C) Payment of a civil penalty and/or performance of community service. The civil penalty levied and paid under any Order of Exclusion shall not be a criminal fine and shall be for the purpose of compensating for injury to the Tribe, enrolled tribal members and the tribal community, including defraying the costs of enforcing the provisions of this Ordinance.

(d) Term of Exclusion Order

An Order of Exclusion shall remain in force until revoked by the Fort Berthold District Court unless the Order specifically provides otherwise.

(e) Writ of Exclusion and Removal

If any person ordered excluded from the Reservation by the Fort Berthold District Court does not promptly obey the Order of Exclusion the District Court shall issue a Writ of Exclusion which shall order any tribal law enforcement officer to:

(1) Remove the person and any of his property from the Reservation at the person's expense;

(2) Prevent the re-entry of the person onto the Reservation;

(3) The law enforcement officer executing the Writ shall use only so much force as is necessary to effect the removal or prevent the re-entry; and

(4) The Tribal Prosecutor or the District Court may also refer the matter to the United States Attorney for prosecution of any federal crime committed.

(f) Emergency Exclusion and Removal

In cases involving immediate danger to the health, safety, welfare, life or property of the Tribes or any enrolled tribal member, and where delay is likely to result in irreparable damage, the Fort Berthold District Court may, upon its own initiative or upon request by the Tribal Prosecutor, issue an Emergency Writ of Exclusion which shall order any tribal law enforcement officer to remove the person and any of his property from the Reservation:

(1) The law enforcement officer executing the Emergency Writ of Exclusion shall use only so much force as is necessary to effect the removal;

(2) If the service of the notice has not already been made on the person, the District Court shall cause the law enforcement officer to serve the notice upon the person at the time of removal or as soon after the removal as possible. An Emergency Writ of Exclusion shall remain in force until the hearing provided for subsection (c) has been held.

(g) Finality of Exclusion Order

An Order of Exclusion by the Fort Berthold District Court shall be final. Any person excluded by an order of the District Court may apply to the District Court to have the order modified or vacated at such time as the order provides, or if the order makes no such provision, after one year. Final Orders may be appealed to the Fort Berthold Court of Appeals pursuant to the Rules of Appellate Procedure, provided an Order of Exclusion shall not be stayed pending appeal.

2A-1-8 Criminal Penalties.

Any Indian that knowingly violates an order of exclusion issued pursuant to this Chapter shall be deemed guilty of an offense and may be subjected to a fine not to exceed \$5,000 and jail term not to exceed one (1) year.

2A-1-9 Civil Penalties.

Any person that knowingly violates an order of exclusion issued pursuant to this Chapter commits a civil infraction punishable by a fine not to exceed \$500. The trial of any such infraction shall be by the court without a jury, and the prosecution shall have the burden of proving the alleged infraction by a preponderance of the evidence. There shall be no appeal from a judgment involving such an infraction.

2A-1-10 Severability.

If any provision of this Ordinance or its application is held to be invalid, the remainder of the Ordinance, or the application of the provision to other persons, or circumstances, is not affected.

2A-1-11 Immunity.

A law enforcement officer may not be held criminally or civilly liable in carrying out the provisions of this Ordinance, provided the officer acts reasonably and in good faith.

2A-1-12 Sovereign Immunity.

Nothing in this Ordinance shall be interpreted as waiving the sovereign immunity of the Tribes.

2A-1-13 Effective Date.

The provisions of this Ordinance relating to exclusion shall be effective upon the date of resolution approving and adopting the same by the Fort Berthold Tribal Business Council.



WHEREAS, The Tribal Business Council finds that it is necessary and appropriate to adopt an Exclusion and removal Code for the Three Affiliated Tribes.

NOW THEREFORE BE IT RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes hereby adopts the Civil Exclusion and Removal Code attached hereto as Attachment 1; and

BE IT FURTHER RESOLVED, that this Ordinance shall be adopted and codified into the Three Affiliated Tribes Tribal Civil Code.

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 10th day of June, 2011, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman [x] Voting. [] Not Voting.

Dated this 10th day of June, 2011.

ATTEST:

[Signature]
Tribal Secretary V. Judy Brugh
Tribal Business Council
Three Affiliated Tribes

[Signature]
Tribal Chairman Tex G. Hall
Tribal Business Council
Three Affiliated Tribes

