

CHAPTER 12  
EXPULSION AND EXCLUSION

12-1 PURPOSE

12-1.01 The purpose of this chapter is to provide procedures for expelling or excluding from the Reservation of the Kootenai Tribe of Idaho persons deemed by authorized tribal government officials to be undesirable.

12-2 PERSONS WHO MAY BE EXPELLED OR EXCLUDED

12-2.01 Any person or persons authorized by federal law to be present thereon, may be excluded from the lands of the Tribe for a period set by the Court upon a finding one or more of the following grounds:

(1) Commission of a crime as defined by tribal, state, or federal law, especially those laws concerning alcohol and controlled substances.

(2) Immoral conduct as defined by tribal, state, or federal law.

(3) Breach of the peace, or repeated public intoxication.

(4) Unlawful forcible entry into any home on the Kootenai Reservation.

(5) Committing fraud, confidence games, or usury against the people of the Kootenai Reservation inducing them to enter into grossly unfavorable agreements of any nature.

(6) Defrauding any enrolled Kootenai tribal member of just compensation for his or her labor or services of any nature done at the request of the nonmember.

(7) Unauthorized prospecting.

(8) Unauthorized mining, timber cutting, or other activity causing physical loss or damage to any tribal resource.

(9) Unauthorized trading or peddling within the boundaries of the Reservation.

(10) Entering upon any area of the Kootenai Reservation designated closed by the

Kootenai Tribal Council or the federal government for whatever lawful purpose.

(11) Removing or attempting to remove any minor member of the Kootenai Tribe from the Kootenai Reservation without proper authority.

(12) Interfering with or disrupting Tribal Council or General Council meetings or other duly authorized meetings.

12-3 PETITION AND NOTICE OF INTENT TO EXCLUDE

12-3.01 Where there appears to be reasonable grounds to believe that cause exists to exclude a person or persons from the Kootenai Reservation, the Kootenai Tribal Council shall pass a resolution stating the name(s) of the person or persons to be excluded and the reasons for the exclusion. The resolution shall direct a member of the Kootenai Tribal Council to petition the Kootenai Tribal Court or Court of Indian Offenses, as the case may be, for an Order of Exclusion.

12-3.02 Upon the filing of the petition, the tribal judge shall issue a notice to the person or persons named to appear before the Court at a time to show cause why an order excluding him or her from the Reservation should not be issued. The notice shall state the reason for the proposed exclusion. Notice shall be served personally upon the person or persons to be excluded in the same manner as personal service is obtained in civil cases.

12-3.03 A hearing shall be held not less than three (3) days nor more than seven (7) days after service of the notice. The hearing may be held in less than three (3) days if the Court has reasonable cause to believe that an emergency exists. In such cases a hearing may be held after twenty-four (24) hours from the time of service, provided the notice to the person gives the time and date of such hearing.

12-4 HEARING

12-4.01 At the hearing, any member of the Council may be present and one member of

Council, or the Prosecuting Attorney shall represent the Council before the Court. The Council shall call such witnesses and present such evidence as it deems appropriate to support its petition for exclusion.

12-4.02 The person proposed to be excluded shall be given an opportunity to present his or her defense and may be represented by counsel at his or her expense. The opportunity to cross examine all witnesses shall be provided.

12-4.03 The hearing shall be closed to the public at the request of any party.

12-4.04 After the hearing, or after the time set for such hearing if, having received notice, the person proposed for exclusion fails to appear, the Court may order such person excluded from all or any part of the Reservation, or may permit the person to remain upon the Reservation under such conditions as the Court shall impose. An order for exclusion shall be in writing and set forth the findings of the Court and the specific grounds for exclusion. Any orders of exclusion shall be permanent unless the order provides otherwise.

#### 12-5 APPEAL

12-5.01 Any person aggrieved by the decision of the Tribal Court or Court of Indian Offenses shall have the right to appeal such decision as is provided in Chapter 2, Section 2-9.

#### 12-6 ENFORCEMENT

12-6.01 Any person excluded from the Kootenai Reservation by an order of the Kootenai Tribal Court or Court of Indian Offenses, who does not promptly obey the order voluntarily, shall immediately be escorted outside the Reservation boundaries by law enforcement officers with authority to do so. The officer executing such order shall use only such force as is necessary to effect removal.

#### 12-7 FEDERAL ENFORCEMENT

12-7.01 The Kootenai Tribal Court or Court of Indian Offenses, at its discretion, may refer an exclusion case to the Superintendent of the appropriate Bureau of Indian Affairs agency or to the United States Attorney for appropriate action.

#### 12-8 PHYSICAL REMOVAL OF TRESPASSERS

12-8.01 In cases involving immediate danger to life, health, morals, or property of the Tribe, or any tribal members, and where delay may result in irreparable damage to any of those interests, a Kootenai tribal law enforcement officer may bodily remove a person not entitled to be on such property. Only such force as is necessary to effect removal shall be used by the officer.

#### 12-9 REENTRY FOR HEARING

12-9.01 In all cases where exclusion or expulsion under this chapter has occurred, and the person affected is entitled to, and requests, a hearing on appeal, or has a civil matter under section 12-5 of this chapter pending, the judge of the Tribal Court or Court of Indian Offenses will notify the party of a place on the Reservation boundary where he or she may reenter in the company of a tribal law enforcement officer for the purpose of attending the hearing or appeal or making any other appearance required before the Tribal Court. The judge shall order an officer to accompany the person while he or she is on the Reservation coming to and leaving from the hearing or appeal.

#### 12-10 EXCLUSION NOT IN LIEU OF CIVIL PENALTIES

12-10.01 Nothing in this chapter shall prohibit the imposition of any civil fine or other lawful penalty upon any person subject to exclusion hereunder and any civil penalty imposed shall be in addition to any exclusion ordered pursuant to this chapter.

#### 12-11 CRIMINAL ENFORCEMENT OF EXCLUSION ORDER

12-11.01 (1) Any Indian who violates an Exclusion Order shall be guilty of an offense and upon conviction shall be sentenced to jail for not more than one year and/or may be fined not more than five thousand dollars (\$5,000.00).

(2) Any Indian who knowingly or willingly aids or abets an individual in violating an Exclusion Order shall be guilty of an offense and upon conviction sentenced to jail for not more than one year and/or may be fined not more than five-thousand dollars (\$5,000.00).

12-11.02 (1) Any non-Indian who violates an Exclusion Order shall be subject to civil penalty in an amount not more than five thousand dollars (\$5,000.00). The Tribal Prosecutor shall also request the United States Attorney or State prosecuting attorney to prosecute the individual for trespass or any other crime which may be charged against the individual. Any Non-Indian who violates an Exclusion Order shall automatically have his or her Exclusion Order extended for an additional one-year period.

(2) Any non-Indian who knowingly or willingly aids or abets an individual in violating an Exclusion Order shall be subject to civil penalty in an amount not to exceed five thousand dollars (\$5,000.00). The Tribal Prosecutor shall also request the United States Attorney or State prosecuting attorney to prosecute the individual for trespass or any other crime which may be charged against the individual.