

CHAPTER 20
ABORIGINAL RIGHTS

20-1 GENERAL POLICY

20-1.01 Minimum Regulation. The Council hereby declares it to be the policy of the Kootenai Tribe of Idaho to allow all members of the Kootenai Tribes and Bands to exercise tribal aboriginal hunting, fishing and gathering rights free of unnecessary regulations. This ordinance is set forth only to establish a policy of prohibiting the exercise of aboriginal rights in manner inconsistent with the historical traditions of the Kootenai Tribe.

20-2 ONLY MEMBERS MAY EXERCISE ABORIGINAL RIGHTS

20-2.01 Non-members Prohibited. Except as set forth in 20-2.02, It shall be unlawful for any person who is not a member of the Kootenai Tribe of Idaho or other recognized band of Kootenai Indians to exercise or in any way participate in the exercise of the aboriginal hunting, fishing and gathering rights of the Tribe.

20-2.02 Non-member's Lawful Participation. It shall not be unlawful for a spouse, child, father-in-law or mother-in-law of a member, or the child of a spouse of a member, to accompany a tribal member in the exercise of aboriginal rights provided the exercise is intended for the subsistence uses of the family of the member. Participation may include the actual taking of game or other resources provided the quantity does not exceed amounts needed for subsistence or amounts that reasonably can and will be distributed to tribal members.

20-3 SALE OF RIGHTS PROHIBITED

20-3.01 Guide Services, other Activities Prohibited. It shall be unlawful for any person to act as a guide or to otherwise provide services related to the exercise of aboriginal rights, whether or not for value received, to any person who is not a member.

20-3.02 Sale of Game or Other Items. It shall be unlawful for any person to sell, barter or exchange for any value any game, parts of game, fish or parts of fish or any other animals or parts of animals or any item or materials obtained in the exercise of aboriginal rights, provided nothing herein shall prohibit the exchange between tribal members of items taken in the exercise of aboriginal rights for

use in traditional and customary ways of the Kootenai Tribe.

20-4 JURISDICTION OF COUNCIL

20-4.01 Hearings Before Council. Due to the highly sensitive nature of the exercise of aboriginal rights, allegations of violations of this chapter shall be presented only to the Council and only the Council shall decide whether a member should be charged and the matter heard. If a hearing is to be held, the person alleged to have violated this ordinance shall be given at least ten (10) days notice of the date, time and place of the hearing and shall be granted the opportunity to present a defense. All hearings shall be held before the Council under such rules as it may adopt, provided the hearing may not violate the provisions of the Indian Civil Rights Act.

20-4.02 Findings and Penalties. Upon a determination by the Council that a violation of this chapter has occurred, the Council shall set forth the reasons for its finding in writing and shall impose such penalty as it deems appropriate to the offense. The penalty shall include the forfeiture of all game, fish or other items illegally taken or any money or items received in violation of this ordinance and, in addition, may include a fine not to exceed five hundred dollars (\$500) and the loss of the privileges of exercising aboriginal rights for such time as is set by the Council.

20-5 APPEALS

20-5.01 Right to Appeal and Limited Scope of Appeal. Any party against whom a finding is made by the Council shall have the right to appeal under the appellate procedures established by this Code as though the Council's determination was a judgment of the Tribal Court. The right to appeal is limited to issues related to violations of the Indian Civil Rights Act and, upon a finding of such a violation, the remedy to be granted by the court is limited solely to the power to remand the case back to the Council for a new hearing.