

TITLE 28

BANISHMENT

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## TITLE 28

### BANISHMENT

#### Chapter 28.01 General Provisions

##### 28.01.01 Purpose

The Port Gamble S'Klallam Reservation was acquired by purchase, under the provisions of Section 5 of the Indian Reorganization Act, and proclaimed on June 16, 1938 to be an Indian reservation "...for the benefit and use of the Port Gamble Band of Clallam Indians..." The land was subsequently paid for in full by the Port Gamble S'Klallam Tribe.

This Title is enacted to provide a process to the Port Gamble S'Klallam Tribe for the exercise of its authority and duty to protect the peace, health, safety, welfare, property and cultural identity of the Port Gamble S'Klallam Tribe. The Tribe's inherent sovereign power to remove and banish its own tribal members from the reservation provides the Tribe with a means to protect the Port Gamble S'Klallam Tribe and the reservation community. The Port Gamble S'Klallam Tribe's Constitution gives the General Council and the Tribal Council the authority to banish tribal members under Article III, Section 5 (H) and Article IV, Section 3 (E).

[HIST: Title 28, The Banishment Code, was approved by Tribal Council Resolution 15-A 029 on April 13, 2015. The PGST Constitution, Article IV, Section 3 (E), states that the Tribal Council may "prescribe and enforce the conditions upon which a tribal member would be banished on a temporary or permanent basis from the Tribe's land, provided that any permanent banishment shall be imposed only upon approval of a majority vote of the General Council." Title 28 was created in order establish a legal mechanism and process for banishment to occur under the PGST Constitution. Prior to approving Resolution 15-A-029, Tribal Council held a Public Hearing on March 9, 2015, and brought Title 28 to the General Council meeting on March 28, 2015, in order for the PGST community to discuss the issue and the new Title.]

##### 28.01.02 Jurisdiction

The Port Gamble S'Klallam Tribal Council shall have jurisdiction over all matters arising under this Title. If, in the exercise of its jurisdiction under this Title a course of proceeding is not specified, any suitable process may be adopted by the Tribal Council, in keeping with the spirit of the laws of the Tribe.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

##### 28.01.03 Who May Be Banished

Any person who is a member of the Port Gamble S'Klallam Tribe may be removed and banished from the territory of the Port Gamble

S'Klallam Tribe. Any person who is not a member of the Port Gamble S'Klallam Tribe may be removed and excluded from the territory of the Port Gamble S'Klallam Tribe under Title 22 of this code.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

#### 28.01.04 Civil Remedy

A banishment order is a discrete civil remedy, which is neither dependent upon nor necessarily connected with any criminal remedy.

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

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

#### 28.01.05 Definitions

The following terms when used in this chapter shall have the meaning set forth in this section.

- a) Banishment is an order denying entry onto property, which is under the jurisdiction of the Port Gamble S'Klallam Tribe.
- b) Eligible voters are members of the Port Gamble S'Klallam Tribe who are eighteen (18) years of age or older.
- c) Majority vote is a quorum as defined in Article III, Section 4 of the Constitution of the Port Gamble S'Klallam Tribe.
- d) Port Gamble S'Klallam General Council or General Council is the duly constituted governing body of the Port Gamble S'Klallam Tribe composed of all eligible voters.
- e) Port Gamble S'Klallam Tribal Council or Tribal Council is the duly constituted governing body of the Port Gamble S'Klallam Tribe delegated by the Port Gamble S'Klallam General Council to conduct and regulate the business of and act on behalf of the Port Gamble S'Klallam Tribe.
- f) Port Gamble S'Klallam Tribal Community consists of enrolled members of the Port Gamble S'Klallam Tribe, residents of the Port Gamble S'Klallam Reservation and residents of land owned by the Port Gamble S'Klallam Tribe.
- g) Removal is the physical removal of a person from the territory of the Port Gamble S'Klallam Tribe.

- h) Territory of the Port Gamble S'Klallam Tribe is all lands held in trust or subject to a restriction against alienation by the United States for the benefit of the Port Gamble S'Klallam Tribe and all lands owned by the Port Gamble S'Klallam Tribe.
- i) Tribal Court is the Community Court of the Port Gamble S'Klallam Tribe.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

#### 28.01.06 Severability

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

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

#### 28.01.07 Sovereign Immunity

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

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

#### 28.01.08 Liberal Construction

This chapter shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

### **Chapter 28.02 Grounds for Removal and Banishment**

#### 28.02.01 Grounds for Removal and Banishment

Any person subject to this Title may be removed and banished from the territory of the Port Gamble S'Klallam Tribe for any of the following reasons:

- a) Committing an act, which violates the laws of the Port Gamble S'Klallam Tribe whether or not the Tribe has jurisdiction to prosecute the person for the act.
- b) Any act which violates the criminal laws of the State of Washington or of the United States of America, whether or not the person may be prosecuted by the State or United States.

- c) Repeated harassment of members of the Port Gamble S'Klallam Tribe tribal officials, tribal employees, community members, or persons who are on contract with the Tribe.
- d) Doing or attempting to do any act upon the reservation which unlawfully threatens the peace, health, safety, welfare, property, or cultural identity of the Tribe and the tribal community.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

### **Chapter 28.03 Banishment Notice and Process**

#### 28.03.01 Petition for Banishment – Who May File

Any tribal member, or Port Gamble S'Klallam police officer, may file a written petition to the Port Gamble S'Klallam Tribal Council requesting the initiation of the banishment process of any person subject to this Title.

The person filing the petition is not a party to a banishment proceeding, but both the Tribal Council and the General Council may call the person to be a witness.

The Tribal Council may initiate banishment proceedings by preparing its own petition.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

#### 28.03.02 Petition – Contents

A petition shall include:

- a) The name of the person to be banished;
- b) The specific grounds, under Section 28.02.01, for banishment;
- c) The factual basis for the request; and
- d) The signature of the petitioner.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

#### 28.03.03 Tribal Council's Consideration of Petition for Banishment

The Tribal Council has the enumerated power under Article IV, Section 3, of the PGST Constitution to prescribe and enforce the conditions upon which a tribal member may be banished on a temporary or permanent basis from the Tribe's land. The Tribal Council shall have exclusive authority to determine whether to act on a petition for banishment. The Tribal Council may, at its discretion,

forward a petition for banishment to the General Council for a decision by majority vote.

The Tribal Council may pursue a petition for banishment if:

- a) The petition meets the requirements for a petition under Section 28.03.02; and
- b) The banishment petition sets forth circumstances that the Tribal Council considers pose a sufficiently serious threat to the peace, health, safety, welfare, property, or cultural identity of the Tribe and the tribal community.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

#### 28.03.04 Notice of Opportunity for Hearing – Content

If the Tribal Council chooses to hear or pursue a banishment petition, the Tribal Council shall ensure that the person named in the banishment petition is served notice as provided in Section 28.03.05. The notice shall include:

- a) The name of the person to be banished;
- b) The specific grounds, under Section 28.02.01, for banishment;
- c) The factual basis for the request; and
- d) A statement that the person may request a hearing before the Port Gamble S'Klallam Tribal Council within thirty (30) calendar days of service of the notice to contest his or her banishment from the reservation.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

#### 28.03.05 Notice of Opportunity for Hearing – Service

Service of the notice shall be made by Tribal Police or by any person at least eighteen (18) years old and not a party to the petition for banishment. If personal service fails, the order may be served by certified mail, return receipt requested, to the person's last known address. If this fails, service may be made by posting the notice on the person's last known residence if the person resides within the territory of the Port Gamble S'Klallam Tribe. If the person does not reside within the territory of the Port Gamble S'Klallam Tribe, the order may be served by certified mail, return receipt requested, and by posting the notice at two prominent locations on the Port Gamble S'Klallam reservation.

The process server shall return an affidavit of service to the Tribal

Council.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

28.03.06 Time of Hearing – Notice

If the Tribal Council receives a timely request for a hearing, it shall schedule a hearing to be held not less than ten (10) working days and not more than sixty (60) calendar days after the request for hearing is received.

A notice of hearing advising the person of the date, time, and place of the hearing shall be served in the same manner as a notice of opportunity for hearing under Section 28.03.05. The notice shall include a statement with the following information:

- a) The person may be represented by counsel, and if the person cannot afford counsel the Tribe shall provide counsel to the person at his or her request;
- b) The person may present witness testimony and other evidence on his or her behalf and may cross-examine witnesses; and
- c) Failure to attend the hearing may result in Tribal Council forwarding the petition for banishment to the General Council for a final vote.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

28.03.07 Conduct of Hearing – Tribal Council

The person named in the petition shall have the right to:

- 1) Present witnesses and other evidence;
- 2) Cross-examine witness; and
- 3) Be represented by counsel. If the person cannot afford counsel, the Tribe shall provide counsel to the person at his or her request.

The Tribal Council may compel the appearance of witnesses and presentation of evidence. All evidence, which is necessary and relevant to decide the matter, is admissible. The Tribal Council may be represented by counsel, at the Tribe's own expense. Hearings may be conducted by conference call, if requested by either the Tribal Council or the person named in the petition.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]



#### 28.03.08 Continuance – Failure to Appear

The Tribal Council may, in its discretion, re-schedule a hearing in order to have all compelling witness testimony and evidence presented. The Tribal Council may, in its discretion, grant a continuance of the hearing upon the person's request. If the person fails to appear at the time set for a hearing, after proper notice of the hearing has been given, the Tribal Council may forward a petition for banishment to the General Council and cause notice to be served to the party as provided in this chapter.

Pending a General Council vote on banishment, a person who failed to appear at the Tribal Council hearing may petition the Tribal Council for a rescheduled hearing. The petition must be in writing and shall fully explain the reasons for the failure to appear. If the Tribal Council finds the person's failure to appear was for good cause, it shall reschedule a full hearing on the matter of banishment.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

#### 28.03.09 Standard for Decision

The Tribal Council may forward a petition for banishment to the General Council if, based on the evidence presented, the Tribal Council is reasonably certain that:

- a) The person committed an act or omission which falls within one or more grounds for banishment; and
- b) That banishment is necessary to protect the peace, health, safety, welfare, property, or cultural identity of the community.

The Tribal Council shall issue a written decision informing the person of its decision no later than five (5) working days from the date of the hearing.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

#### 28.03.10 General Council Vote

The General Council has the power under Article III, Section 5, of the PGST Constitution to decide by majority vote whether to banish a tribal member. The General Council may, in its discretion, call one (1) person to be a witness on behalf of the party who filed the petition for banishment, and the General Council may, in its discretion, call one (1) person to be a witness on behalf of the person named in the petition for banishment.

If the General Council decides by majority vote to enforce a banishment order, the order must meet the requirements for an order under Section 28.03.11.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

#### 28.03.11 Order of Banishment

If the General Council decides by a majority vote to enforce a banishment order, the Tribal Council shall prepare a written order and cause it to be served on the party. Written orders for banishment shall include:

- a) The grounds for the decision;
- b) The date and time the person must remove himself or herself, if applicable;
- c) Whether the order is permanent or temporary, and if temporary the duration the order is to be in effect;
- d) A statement that any return to the territory of the Port Gamble S'Klallam Tribe in violation of the order of banishment constitutes trespass and may be referred for prosecution to the appropriate jurisdiction,
- e) Whether the Tribal Police are requested to supervise the removal of the person and any belongings the person may have within the territory of the Port Gamble S'Klallam Tribe,
- f) Any circumstances under which the person may be permitted to return. For example, payments of restitution, practice of treaty rights, serious life-threatening family illness, participating in court proceedings, evidence of rehabilitation, visitation of children, funerals, visitation during certain times only, and a limited time to return to pick up belongings;
- g) Any conditions that the person must fulfill before requesting a review of the order by the Tribal Council under 28.05.01; and
- h) A date by which the Tribal Council may review the order and circumstances or conditions attached, if the person requests a review; or the circumstances under which the Tribal Council may consider a review, such as those set out in subsection (f).

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

#### 28.03.12 Order of Banishment – Service

An order for banishment shall be served on the person as provided in

Section 28.03.05.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

28.03.13 Order of Banishment – Enforcement

After a majority General Council vote to enforce a banishment order, if the Tribal Council makes the request, the Tribal Police shall supervise the removal of the banished person and his or her belongings. If the order of banishment does not specify whether supervision is necessary, the Tribal Police may, at their discretion, supervise the removal of the banished person and his or her belongings. If the person has been given the option to voluntarily remove himself within a time limit stated in the order, and fails to do so, Tribal Police may physically remove the person. Tribal Police shall use only so much force as is reasonable to accomplish the removal.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

28.03.14 Duration of Banishment Order

A banishment order shall remain in effect until modified or revoked by the Tribal Council following a hearing properly requested under Section 28.05.01 or, if applicable, until the time noted on the order itself.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

28.03.15 Notice of Banishment to Community

A notice that a person has been banished, along with a statement that harboring a banished person is a crime, shall be posted for the duration of the order at the Police Department and the Tribal Center. Such notices shall also be posted for at least three weeks at the Tribe's Housing Authority building, tribal store, and in two other prominent locations on the reservation and shall be published for at least three weeks in the Community Memo or equivalent publication.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

**Chapter 28.04 Appeal**

28.04.01 Who May Appeal A Petition For Banishment

After the Tribal Council decides to forward a petition for banishment to the General Council, and pending a General Council vote on a petition for banishment, the person subject to the possible banishment order may appeal the Tribal Council's decision to the Port Gamble S'Klallam Tribal Court.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

#### 28.04.02 Grounds For Appeal

The Port Gamble S'Klallam Tribal Court may review a Tribal Council decision to forward a petition for banishment to the General Council solely for the purpose of determining whether the procedural requirements of the following sections were followed:

- a) 28.03.04 Notice of Opportunity for Hearing – Content
- b) 28.03.05 Notice of Opportunity for Hearing – Service
- c) 28.03.06 Time of Hearing – Notice
- d) 28.03.07 Conduct of Hearing – Tribal Council
- e) 28.03.08 Continuance – Failure to Appear
- f) 28.03.09 Standard for Decision (only on grounds of notice of decision)

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

#### 28.04.03 Rules for Appeal of Procedure

The Tribal Court may use the appellate procedures set out in Title 7 of the Port Gamble S'Klallam Law and Order Code as a guide. Pursuant to the inherent authority of the Port Gamble S'Klallam Tribal Court, the Court may adopt such other procedures as are necessary to conduct the appeal, in keeping with the spirit of Port Gamble S'Klallam law.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

#### 28.04.04 Standard of Review

If the Court finds that the Tribal Council did not follow one or more of the procedural requirements in any section listed in Section 28.04.02, it shall order the matter remanded to the Tribal Council.

If the Court finds that the Tribal Council met all the procedural requirements in the sections listed in Section 28.04.02, the Court shall affirm the decision of the Tribal Council.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

#### 28.04.05 Remand to Tribal Council

The Court shall state in a remand order the specific provisions of the sections that were not followed and the steps that the Tribal Council shall take to ensure the requirements of the chapter are met.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

## **Chapter 28.05 Review Hearings**

### 28.05.01 Request for Review of an Order of Banishment

A banished person, upon fulfillment of any conditions set out in an order of banishment under 28.03.11 (g) and after the date specified in the order of banishment under 28.03.11 (h), may petition the Tribal Council to lift the order of banishment, in whole or in part, to allow re-entry onto property that is within the jurisdiction of the Port Gamble S'Klallam Tribe.

The banished person must make the request that the Tribal Council review the order of banishment within the time limits stated on the order and in accordance with any conditions specified in the order itself. The request shall:

- a) Be in writing;
- b) Be signed before a notary public;
- c) State an address where the Tribal Council shall mail all notices and documents associated with the review;
- d) Explain the factual circumstances, which support reconsideration of the order of banishment; and
- e) Be mailed to the Port Gamble S'Klallam Tribal Council at the Tribe's regular business address.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

### 28.05.02 Hearing to Review or Reconsider An Order of Banishment

The Tribal Council shall decide, based primarily on the written materials presented, whether to grant a request for review or reconsideration of an order of banishment. The Tribal Council, in its sole discretion may require the person to appear before it in person or by telephone to provide testimony on why the request should be granted, and shall provide notice of the time and date this testimony will be taken. If the request is deficient in any material way, the Tribal Council shall so notify the person.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]

### 28.05.03 Decision

The decision of the Tribal Council on a review or reconsideration of an order of banishment shall be in writing and mailed to the address

provided by the person within fifteen (15) business days of the Tribal Council's decision.

[HIST: Source - Resolution No. 15-A-029, passed 4/13/15.]