

ORDINANCE OF THE WINNEMUCCA INDIAN COLONY COUNCIL**OF THE WINNEMUCCA INDIAN COLONY****WINNEMUCCA, NEVADA****(An Indian Chartered Corporation)****ORDINANCE NO. 401****AN ORDINANCE GOVERNING THE REMOVAL OR EXCLUSION FROM THE WINNEMUCCA INDIAN COLONY OF PERSONS NOT LEGALLY ENTITLED TO RESIDE THEREIN:****BE IT ENACTED BY THE COUNCIL OF THE WINNEMUCCA INDIAN COLONY.**

WHEREAS, the Winnemucca Indian Colony Council is the duly constituted governing body of the Winnemucca Indian Colony, which is duly organized under the provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378); and

WHEREAS, serious law enforcement problems have occurred and continue to occur on the Winnemucca Indian Colony threatening the health, security and general welfare of the members of the tribes as well as other colony residents, making it difficult for the tribal governing body to effectively administer and manage tribal affairs in behalf of the Winnemucca Indian Colony; and

WHEREAS, under authority of Article VI, Section 1 (I) of the Winnemucca Indian Colony Constitution and By-Laws, the Council is empowered to enact ordinances, subject to review by the Secretary of the Interior, providing for the removal or exclusion from the colony of persons not legally entitled to reside therein; and

WHEREAS, the Winnemucca Indian Council deems it necessary and essential to the health, security and general welfare of the Winnemucca Indian Colony and essential to the protection and continued conservation of their land, wildlife and natural resources that there be a comprehensive Expulsion and Exclusion Ordinance immediately adopted and enforced.

NOW, THEREFORE, BE IT RESOLVED that the following Winnemucca Indian Colony Expulsion and Exclusion Ordinance is herewith duly adopted, approved, and shall become effective in

accordance with Section 2, Article VI, Manner of Review, of the Winnemucca Indian Colony Constitution and By-Laws.

BE IT FURTHER RESOLVED that upon such date any earlier ordinance(s), resolution(s), code(s) or other enactment(s) of the Winnemucca Indian Colony Council which shall conflict or be inconsistent with this ordinance shall be deemed superseded by this new ordinance:

SECTION 1. Person(s) Subject to Removal and Exclusion

- A. Except as otherwise expressly provided in subsection B of this section, any non-member of the Winnemucca Indian Colony may be removed and excluded from all or any part of the lands within the exterior boundaries of the Winnemucca Indian Colony, for the reasons stated in Section 2, and according to the procedures listed in Sections 3 through 7.
- B. The provisions of this ordinance may not be invoked to exclude non-members:
- (1) From lands owned by, or held in trust for, the Winnemucca Indian Colony When such non-members are authorized by Federal Treaty, Statute or Administrative regulation to be present on such tribal lands; or
 - (2) From individually owned lands, whether held under trust, restricted fee patent, when such non-members are present thereon with the consent of the individual owner or owners thereof. Provided, however, that such consent will not bar the exclusion of any non-member from such lands if it is determined, in a proceeding authorized under Section 4, that in addition to violation of one or more of the grounds specified in Section 2, such non-member poses a clear and continuing danger to the health or safety of tribal members or property which outweighs the particular interest of the non-member in continued presence; or
 - (3) From access to state highways within the exterior boundaries of the Winnemucca Indian Colony unless it is determined, in a proceeding authorized under Section 4, that in addition to violation of one or more of the grounds specified in Section 2, such non-member poses a clear and continuing danger to the safety of persons or property on such highways which outweighs the particular interest of the non-member in using same.

SECTION 2. Grounds for Exclusion

Non-members of the Winnemucca Indian Colony may be excluded on one or more of the following grounds:

- A. Commission of a crime, as defined by Federal, State or Tribal Law, including violation of State or Tribal traffic regulations.

- B. Unauthorized prospecting.**
- C. Unauthorized trading.**
- D. Unauthorized mining, timber cutting or other activity causing physical loss or damage of any nature to property on the Winnemucca Indian Colony.**
- E. Forcible entry into the home or onto the land of any tribal member without the consent of the occupant or occupants.**
- F. Interference with or photographing of Tribal Ceremonies without permission of the tribal members involved.**
- G. Molestation, desecrating of graves and/or removal of sacred, religious or traditional emblems which are interred with the deceased.**
- H. Commission of frauds, confidence games or usury against tribal members, or inducing such members to enter into grossly unfavorable contract of any nature.**
- I. Recruiting tribal members for off-colony employment without prior permission of the Chairman of the Council and the Superintendent.**
- J. Defrauding any tribal member of just compensation for his or her labor or service of any nature done at the request of the non-member(s).**
- K. Breach of the peace or repeated public drunkenness.**
- L. Contagious disease.**
- M. Entry of and area on the Winnemucca Indian Colony in violation of an order of the Chairman of the Council and the Superintendent designating such areas as closed because of fire hazard or any other reason.**
- N. Removal or attempted removal of any tribal member under the age of 18 from the Winnemucca Indian Colony without prior approval of the Tribal Council, except for the purpose of attending school under a non-sectarian program approved by the Bureau of Indian Affairs. Provided, however, that this ground for exclusion or exclusion or expulsion shall not apply in cases where such a tribal member, under the age of 18, is removed from the Winnemucca Indian Colony by or with the consent of a natural parent, an adopted parent, anyone in locoparentis, a guardian, or a person who has received custody of such child pursuant to a valid court order.**
- O. Conducting missionary activities without prior authorization from the Council.**
- P. Hunting, fishing or trapping without permits required under State and tribal law.**
- Q. Failure or refusal to pay any taxes, rents or other charges justly due the Winnemucca Indian Colony after reasonable notice and opportunity to pay.**
- R. Militant organization(s) or individual(s) which establish, practice or carry forth their organizational policies which cause disunity, violence or friction among members of the Shoshone-Paiute Tribes of the Winnemucca Indian Colony.**

SECTION 3. Notice of Exclusion

- A. The Chairman or Vice-Chairman of the Council shall cause notice to be served personally or by registered mail upon any non-member whenever either of such officers has reasonable grounds to believe that cause may exist for exclusion of such non-member or whenever the Council orders either officer to cause such notice to be served.**
- B. Such notice shall state the ground or grounds, as listed in Section 2, for the proposed exclusion, a brief summary of the facts relied upon to justify the proposed exclusion, and the names and addresses of witnesses whom the tribe will produce to support the proposed exclusion. The notice shall also name a time and place where the non-member may appear before the Council to show cause why he or she should not be excluded from areas of the colony designated in such notice.**
- C. Except as otherwise provided in Section 6 or 7, the notice required under this Section shall be served at least ten (10) days in advance of the hearing provided for in Section 4. Return receipt shall be used in any service by mail and such service shall be complete upon the date of the return receipt.**

SECTION 4. Hearing Procedure: Order of Exclusion

- A. After notice has been served as provided in Section 3, the Council shall hold a hearing to determine whether or not the non-member shall be excluded from areas of the colony designated in such order. Such non-member shall be given an opportunity at such hearing (1) to confront and cross-examine any witnesses relied upon by the tribe to justify the proposed exclusion, (2) to present oral and written evidence in his defense, and (3) to be represented by counsel of his own choice, including a self-retained professional attorney. The Council may, in its discretion, grant the request of a non-member for a continuance in the hearing upon a showing of good cause.**
- B. In all cases where permanent or indefinite exclusion is sought by the tribe, or where the proposed ground for exclusion is violation of Federal, State or Tribal criminal laws and the factual basis therefore is disputed by the non-member, the Council shall find, as a condition to exclusion, that the facts supporting same have been established by clear, unequivocal and convincing evidence. In any other case the facts supporting exclusion shall be found to exist by a mere preponderance of the evidence. Each decision shall be in writing and shall be based only upon the facts and law presented at the hearing.**
- C. After the hearing provided for in this Section, or after the time set for such hearing, if after notice the person proposed for exclusion does not appear, the Council may order such person excluded from all or any part of the colony or it may permit the person to remain upon the colony under such conditions imposed upon continued residence; nothing herein, however, shall prevent exclusion for an indefinite period of time if a final order so provides.**

SECTION 5. Enforcement of Exclusion Order

If any person ordered excluded for any part of the Winnemucca Indian Colony does not promptly obey the order, the Chairman of the Council shall refer the case to the Superintendent for appropriate action, or he may refer the matter directly to the United States Attorney. If at a reasonable time after reference to the Superintendent or the United States Attorney, no effective action has been taken to enforce the exclusion order, the Chairman may refer the matter to the General Council of the tribe, who shall take any legal action he deems necessary or proper, or the Chairman may direct the tribal police to use reasonable force in effecting the exclusion order.

SECTION 6. Forcible Removal in Emergencies Prior to Exclusion Hearing

- A. In cases involving immediate danger to the life, health or property of the Shoshone-Paiute Winnemucca Indian Colony or any of its members, and where any delay would result in irreparable damage, the Chairman, or in his absence the Vice-Chairman, with the concurrence of the Superintendent, any order any Bureau of Indian Affairs, or Tribal Police to remove a non-member bodily from all or any part of the Winnemucca Indian Colony prior to the exclusion hearing provided for in Section 4. The policeman executing such emergency order shall only use as much force as is necessary to effect the removal.
- B. The Chairman shall direct the policeman serving such order to serve also the notice of charges and hearing thereon provided for in Section 3 either at the time of removal of the non-member or as soon after removal as possible. Such notice shall state that the non-member may demand, orally or in writing, that the hearing provided for in Section 4 by held within 24 hours after he receives such notice or at any longer time up to the ten (10) days interval specified in Section 3. Absent such a demand, which may be directed to and shall be acknowledged by the removing police officer, the exclusion hearing may be convened as provided in Section 3.
- C. The notice required in emergency cases under this Section shall notify the non-member of a place on the colony boundary where he or she may re-enter in the company of a Bureau of Indian Affairs or Tribal Policeman for the purpose of attending the hearing required under Section 4. The Chairman shall order such a policeman to accompany such person while he is on colony coming to and leaving the hearing.

SECTION 7. Procedure Upon Arrest for Violation of Federal, State or Tribal Laws, Including Traffic Offenses.

The Tribal Laws of the Shoshone-Paiute Tribes of the Winnemucca Indian Colony, States of Nevada and Idaho, and Federal Laws will be applicable in all procedures of arrest.

- A. Any other Section of this ordinance notwithstanding, duly authorized Bureau of Indian Affairs and/or Tribal Police shall be privileged for purposes of this ordinance to stop and detain, without prior legal process from the Council or Tribal Court, any non-member within the exterior boundaries of the Winnemucca Indian Colony when they have reasonable cause to believe that such non-member has committed or is about to commit any offense specified in Section 2(A) (i.e., any crime as defined by Federal, State or Tribal Law, including traffic offenses).**
- B. The detention thus privileged shall be effected for the sole purpose of issuing a uniform written citation, approved by the Council and containing the requirements as to notice of grounds for exclusion and a hearing thereon in Section 3.**
- C. Nothing in this Section shall be construed to authorize such policeman, for purposes of this ordinance, to effect the removal of such detained non-member from any part of the reservation without first securing the order required under Section 6. Such policeman may detain a non-member, however, under this Section for a reasonable period of time in order to seek an emergency removal order under Section 6.**

CERTIFICATION

The foregoing ordinance was on _____, _____ duly adopted by a vote of four (4) **FOR and NONE (0) AGAINST BY** the Shoshone-Paiute Council pursuant to the authority vested in it by Article VI, Section 1 (D) of the Constitution and By-Laws of the Shoshone-Paiute Tribes of the Winnemucca Indian Colony.

/s/ _____ **Chairman**

/s/ _____ **Acting Secretary**