

**TITLE 12**  
**LUMMI NATION CODE OF LAWS**  
**EXCLUSION CODE**

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**TITLE 12  
LUMMI NATION CODE OF LAWS  
EXCLUSION CODE**

**Chapter 12.01 Purpose**

**12.01.010 Purpose**

(a) In the customs and traditions of the Lummi People, individuals who posed a threat to the community were sometimes banished and excluded from Lummi Territory. The Lummi Nation, as a Sovereign and a People, has an inherent right to govern their land and territory. This right was acknowledged in the 1855 Treaty of Point Elliot, particularly Article 2, which acknowledged the Nation's authority to exclude individuals from within its territorial boundaries. In addition to the authority acknowledged in the 1855 Treaty, the Lummi Constitution entrusts to the Lummi Indian Business Council (LIBC), as the governing body of the Lummi Nation, the duty and authority to safeguard and promote Lummi culture and identity, as well as the peace, safety, morals and general welfare of the Lummi People. Based on the foregoing, this Code shall be liberally construed in the spirit of, and pursuant to, Lummi custom and tradition, the 1855 Treaty of Point Elliot, and the Lummi Constitution.

(b) The fundamental purposes of this Exclusion Code are two-fold: the first is to protect the health, safety, and welfare of the Lummi Nation and the Lummi Reservation community; the second is to provide the person to be excluded with the motivation and means to seek treatment and rehabilitation so that their conduct may no longer be a threat to the health, safety, and welfare of the Lummi Nation.

**Chapter 12.02 Exclusion and Grounds Thereof**

**12.02.010 Who May Be Excluded**

Any individual who is shown by clear and convincing evidence to threaten the health, safety or welfare of the Lummi Nation by engaging in any of the conduct listed in LCL 12.02.020 may be excluded from the Lummi Reservation.

**12.02.020 Grounds for Exclusion**

Conduct, whether or not criminally charged, that would constitute a felony crime, as defined by Tribal, federal, or state laws, shall be considered in determining whether an individual is a threat to the health, safety, or welfare of the Lummi Nation, and may be grounds for entry of an order of exclusion. Conduct, whether or not criminally charged, that would constitute one of the following crimes, or a crime including the same elements committed in another jurisdiction, is presumed to threaten the health, safety, or welfare of the Lummi Nation:

(a) A felony drug offense, including a Class A or B offense under Chapter 5.09A, of this code. For the purposes of this subsection, "drug offense" shall be liberally interpreted and shall mean the participation at any stage of the manufacture, sale, importation, or delivery process.

(b) A felony sex offense, including a Class A or B offense under Chapter 5.09C of this code.

(c) A felony offense involving the use of a dangerous weapon.

(d) Assault and Battery in the First or Second Degree;

(e) Homicide;

(f) Residential Burglary when the person knows at time of entry that persons are in the home;

(g) Aggravated Abduction;

(h) Arson that is manifestly dangerous to any human life;

(i) Aggravated Stalking;

(j) Robbery while armed with a dangerous weapon;

(k) Extortion involving a threat of violence; or

(l) An offense for being a felon in possession of a firearm.

### **Chapter 12.03 Exclusion Proceedings**

#### **12.03.010 A Proceeding Seeking Exclusion Shall Be Brought in the Name of the Lummi Nation**

(a) Only the Lummi Nation shall have the authority to seek the exclusion of an individual from the Lummi Reservation boundaries.

(b) The term “Tribal Prosecutor,” as used in this code, means an attorney in the Office of Reservation Attorney who has been designated by the Reservation Attorney to handle the matter.

#### **12.03.020 Exclusion Committee**

(a) A civil petition seeking exclusion must be authorized by the Exclusion Committee on behalf of the Lummi Nation. The committee shall be comprised of the Lummi Nation Chief of Police; a member of the Law and Justice Commission selected by the Commission; a councilmember of the LIBC selected by the council; and four or more “at large” individuals designated by the LIBC, who must be community members living on the reservation. The council may replace an “at large” committee member in its discretion. The majority of a quorum of the committee may carry out the committee’s business, but a majority of all the committee members must authorize any commencement of an exclusion proceeding. The Tribal Prosecutor shall attend the meetings to provide consultation, but is not a voting member of the Committee.

(b) Among the factors considered by the committee in determining whether to file an exclusion petition, and the priority in filing a petition, may be the following:

- (1) The nature and gravity of the conduct that brings the person within the scope of this title;
- (2) The period of time that has passed since the last criminal conduct.

(3) The extent of damage the person has caused to the community and the injury to persons;

(4) The size and scope of any criminal operation, and the person’s involvement as a leader of the operation;

(5) The person’s membership and rank in any crime organization, including a gang;

(6) The person’s past record of criminal conduct;

(7) The person’s current location;

(8) The extent of the person’s contacts with the community;

(9) The current level of fear in the community;

(10) A prior designation by the LIBC or Enrollment Committee as a person to exclude;

(11) The person’s efforts to rehabilitate; and

(12) Like treatment of persons with comparable factors.

The committee’s evaluation and weighting of factors leading to its decision whether to file an exclusion petition is not reviewable by the Court during an exclusion proceeding.

(c) It is the policy of the LIBC that the meetings of the committee are not open to the public and that the names of persons being considered for exclusion will not be made public unless and until a petition is filed. The LIBC wishes to foster a free and open discussion by the committee and to protect the character of persons who may be discussed during committee meetings, but are not selected for exclusion proceedings.

(d) To assist in its decision-making, the committee may request information from individuals having knowledge about a person, community members, and other LIBC departments and agencies.

(e) The committee shall select a chairperson from among its members. The Lummi Nation Chief of Police shall act as the contact for the committee, assist in organizing meetings, and maintain any records. The records shall be maintained as confidential.

(f) The committee shall periodically report their activity to the LIBC to keep the Council informed about their work. Additional procedures may be adopted by the LIBC governing how the committee evaluates and proceeds on exclusion matters.

**12.03.025 Exclusion Hearing Community Panel**

(a) The LIBC shall appoint a pool of 12 community members to participate in Exclusion Hearing Community Panels. From this pool, the Exclusion Committee will designate five available and eligible persons to participate in a Exclusion Hearing Community Panel for an individual case, as provided in LCL 12.03.030(d). If less than five members of the pool are willing and able to participate in an Exclusion Hearing Panel, the number on the panel may be reduced to three.

(b) To be eligible to be in the pool for Community Hearing Panels, the person must

- (1) be an enrolled member of the Lummi Nation who is living on the Lummi Reservation or is actively and substantially involved in activities taking place on the Lummi Reservation;
- (2) be a respected member of the community;
- (3) possess a thorough knowledge of Lummi cultural values and practices; and
- (4) have no prior history of felony criminal acts; no history of any criminal acts within the previous five years, and no pending criminal charges; the person must consent to a background investigation.

(c) The members of the Community Hearing Panel pool shall be resources for persons who are working toward the requirements to re-enter the reservation to provide advice. An excluded

person may request a meeting with the pool by contacting the chair of the Exclusion Committee. The excluded person may obtain permission for a temporary and limited entry for the purpose of attending the meeting under LCL 12.03.060(e).

**12.03.028 Participation on the Exclusion Committee and the Exclusion Hearing Community Pool**

(a) The LIBC shall appoint the “at large” members of the Exclusion Committee and the members of the Exclusion Hearing Community Pool for a term of up to three years, and may reappoint members after the term expires.

(b) The person’s membership is terminated, and the LIBC shall appoint a substitute member, if

- (1) A member is absent for three consecutive meetings;
- (2) A member of the Exclusion Community Hearing Pool, who is designated to consider an individual matter under LCL 12.03.025, fails to appear at the trial for reasons other than an unanticipated emergency or sudden illness; or
- (3) The member participates in a matter while knowing that the person has a conflict under (d) of this section.

(c) Members of the Exclusion Committee and the Exclusion Hearing Community Pool shall:

- (1) take an oath upon appointment to carry out their duties in compliance with this code; and
- (2) maintain confidentiality of those matters that come before them except as necessary to carry out their responsibilities.

(d) No person may participate as an Exclusion Committee member, or as Exclusion Hearing Community Panel member, in a matter involving a person being considered for exclusion, in the following circumstances:

- (1) is directly related as that term is defined

in LCL 29.01.020(b)(1);

(2) is living, or has lived within the past, in the same household; or

(3) for other reasons, cannot be fair and impartial in considering the particular matter.

(e) Training shall be provided to members of the Exclusion Committee and the Exclusion Hearing Community Pool on the procedures and standards established in this code, and their responsibilities under the code.

### **12.03.030 Procedures**

(a) An exclusion proceeding shall be commenced by filing a petition in the Court, after the petition has been authorized by the Exclusion Committee pursuant to LCL 12.03.020. The proceeding shall be a civil action under Titles 1, 3, and 4 of the Lummi Code of Laws. Petitions seeking exclusion shall be filed and served according to the rules for filing and serving civil complaints. Trial by jury shall not be available in an exclusion proceeding.

(b) The court may issue an emergency order excluding a person pending further proceedings, under the procedure set out in LCL 3.04.010, upon a showing of a serious and immediate risk of harm to the health, safety, or welfare of the Lummi Nation if the person is allowed to enter or remain within the reservation.

(c) A copy of a transcript, abstract, statement on plea of guilty signed by the defendant, or judgment, kept by the Lummi Nation or obtained by the Lummi Nation from another jurisdiction, may be admitted as evidence in a hearing before the Court and shall be prima facie evidence that the person committed the offense. If the person denies the offense, he shall have the burden of proving that such fact is untrue.

(d) An Exclusion Hearing Community Panel selected in accordance with LCL 12.03.025 shall sit with the judge at the trial on the exclusion petition, and hear the evidence involving the person sought to be excluded.

(e) If the judge determines that the Lummi Nation has met the burden to show that the person is subject to exclusion, the panel members will then meet to determine:

(1) any conditions for readmission to be set in addition to those set out in LCL 12.03.040(b); and under LCL 12.03.050(d); and

(2) Any additional conditions of re-admission to be set under LCL 12.03.050(d) once a person re-enters the reservation after a period of exclusion.

The panel may also determine that the person can be placed on a Contingent Order of Exclusion in accordance with LCL 12.03.040(c), under requirements and restrictions it sets, rather than an Order of Exclusion under LCL 12.03.040(a) – (b).

(f) In setting conditions under this Chapter, the Exclusion Hearing Community Panel shall use its knowledge of the community and of Lummi cultural values and practices, so that the conditions are culturally appropriate to assist in the healing of the person and the community.

(g) If at least three members of a panel cannot be convened for the trial, the trial shall proceed before the judge, but a panel of at least three members shall be convened if the judge finds a person is subject to exclusion, and shall listen to the recording of the proceedings. The panel may request further evidence or argument from the parties. The meeting of the panel shall be closed, except that if the panel takes additional evidence or argument from the parties, such proceedings shall be open to the public. An interim order of exclusion shall be entered pending the final determination of the panel under this subsection.

### **12.03.040 Orders of Exclusion**

(a) Except as otherwise provided in the Order of Exclusion or this title, an Order of Exclusion prohibits the excluded person from entering within the exterior boundaries of the Reservation, being employed by the Lummi

Business Council or any of its agencies or businesses, entering into a contract to provide services to the Lummi Business Council or any of its agencies or businesses, and participating in the Tribe's natural resources Treaty rights.

(b) An Order of Exclusion shall contain provisions allowing the excluded person, upon fulfillment of the conditions set by the Exclusion Hearing Community Panel and set under this section, to petition the court under LCL 12.03.050(b) – (d) to lift the order of exclusion, in whole or in part, to allow re-entry to the Reservation. The conditions shall be relevant to the rehabilitation of the person so that they may no longer be a threat to the health, safety, or welfare of the Lummi Nation. At a minimum, the conditions must include that at the time of readmission, the person has

(1) committed no criminal law violation for which the maximum criminal penalty could be more than 90 days in jail, or which is a violent offense, for the most recent five years; time that the excluded person is incarcerated will not count towards the five years, except that incarceration may be counted during the first two years of the five years if during that time the person participates in all appropriate treatment programs available at the facility and has committed no violations of the prison rules;

(2) successfully completed any conditions of probation imposed by any jurisdiction and been discharged from the criminal justice system;

(3) for persons for whom substance abuse was a factor in the conduct that lead to exclusion, obtained a substance abuse evaluation from an accredited treatment provider within the prior three years, complied with the recommendations, and been able to document being clean and sober for the immediately previous two years through random supervised drug testing;

(4) for sex offenders, has obtained a sexual deviancy evaluation from an accredited treatment provider and has been complying

with treatment recommendations for at least three years, and

(A) has successfully completed treatment, or

(B) the treatment provider submits a statement that the person is currently in treatment but is no longer at substantial risk of committing a new sexual offense; and

(5) obtained other evaluations and treatment as determined by the Exclusion Hearing Community Panel that would address contributing factors that led to the offenses that caused the exclusion.

(c) Upon a finding that a contingent order can be entered that will protect the health, safety, and welfare of the Lummi Nation, the Exclusion Hearing Community Panel may authorize a Contingent Order of Exclusion that allows the person to remain within the Reservation under requirements and restrictions established by the Exclusion Hearing Community Panel and imposed under the order to safeguard the health, safety, and welfare of the Lummi Nation. At a minimum, the conditions must include those set forth in LCL 12.03.050(d). A Contingent Order of Exclusion may also restrict an individual's access to certain areas of the Lummi Reservation or participation in activities conducted on the Reservation. If the court finds by a preponderance of evidence that the person has not complied with a requirement or restriction imposed in the Contingent Order of Exclusion, it shall convert the contingent order to an Order of Exclusion under LCL 12.03.040(a) of this section. Upon fulfillment of the requirements imposed by a contingent order, the person may petition the court to lift the Contingent Order of Exclusion or a restriction in the contingent order using the procedure set out in LCL 12.03.050(b) – (c).

### **12.03.050 Re-Entry onto Reservation after Fulfillment of Conditions**

(a) The LIBC shall designate a person or department to have responsibility for coordinating with excluded persons who seek re-entry onto the reservation and to provide

guidance as to the steps those persons must take to comply with the conditions for re-entry.

(b) The excluded person, upon fulfillment of conditions set out in the Order of Exclusion, may petition the court to lift the Order of Exclusion, in whole or in part, to allow re-entry to the Reservation. The excluded person shall file the petition with the court and provide a copy to the Lummi Nation Prosecutor. The petition must advise how the excluded person has complied with each of the conditions set by the court. The person must provide the prosecutor with authorization for the prosecutor to obtain records and consult with the excluded person's probation officers, treatment providers, and drug and alcohol testers.

(c) The prosecutor shall consult with the Exclusion Committee regarding the petition filed under (b) of this section, and the results of the investigation into the excluded person's compliance with the conditions for readmission. The Exclusion Committee shall direct the prosecutor whether to oppose the petition in whole or in part, and whether to recommend additional conditions on the person after re-entry. Any opposition to the petition shall be filed with the Court within ten business days of the filing of the petition, except that the Court shall grant additional time if needed to investigate the excluded person's compliance with the conditions for readmission. If the prosecutor files an opposition to the petition, the court shall set a hearing at which time the excluded person has the burden of proving compliance with the conditions for re-entry.

(d) In an order allowing re-entry under (b) and (c) of this section, the court shall set conditions with which the person must comply after authorized re-entry to the Reservation so that the ongoing health, safety, and welfare of the Lummi Nation can be preserved. At a minimum, the court shall place the following conditions on the person after re-entry:

(1) may not commit any new criminal law violation for which the maximum criminal penalty could be more than 90 days in jail, or which is a violent offense;

(2) must report at least one time per month to the Lummi Probation Office

(3) may not be knowingly present where drugs are being illegally used or sold;

(4) must abstain from alcohols and non-prescribed drugs and submit to testing;

(5) must be employed or otherwise constructively occupying the person's time;

(6) must continue to comply with any treatment recommendations for treatment that was required as a part of re-entry; and

(7) must perform 100 hours of Community Work Service a year.

After five years during which the person is authorized to re-enter the Reservation, and upon the recommendation of the Exclusion Committee, the Court may remove the conditions. Proof by a preponderance of evidence that the person has violated a condition of re-entry shall be the basis for reissuance of the order of exclusion.

### **12.03.060 Temporary Re-Entry onto Reservation**

(a) Notwithstanding other provisions in this title, a person may be authorized to make a temporary and limited re-entry onto the reservation under the procedures and conditions of this section.

(b) At the time that the Exclusion Hearing Community Panel enters its determinations under LCL 12.03.030, the panel may specify a specific event or purpose for which the excluded person is authorized to make a temporary and limited re-entry to the Reservation. The panel may also determine that the excluded person shall not be eligible to re-enter the reservation under the provisions of (c) – (e) of this section.

(c) Except as restricted under (b) of this section, and under the conditions set out in (h) of this section, an excluded person is permitted to re-enter the reservation for the funeral, burial service, and burning ceremony

of a directly related family member. For the purpose of this subsection, “directly related” means a parent, child, spouse, domestic partner, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin. The excluded person shall submit to the Court for approval the name of a community member who would be designated to take responsibility for the excluded person’s compliance with the conditions of the re-entry. Before approving the designated person, the Court shall advise the Tribal Prosecutor of the request and provide an opportunity for response or opposition. As feasible, the tribal prosecutor shall consult with available members of the Exclusion Committee in making that response.

(d) Except as restricted under (b) of this section, and under the conditions set out in (h) of this section, an excluded person is permitted to re-enter the reservation as necessary for the purpose of obtaining services at the Lummi Health Clinic that are not available from other Indian Health Service – funded medical providers. Unless other procedures for the re-entry have been approved under other provisions of this section, the excluded person shall make advance arrangements with the Lummi Nation Police Department to be escorted on and off the reservation for the designated appointment time.

(e) An excluded person may petition for temporary and limited re-entry for purposes other than those authorized under (b) - (d) of this section by filing the petition with the court at least five days before the requested time of re-entry and providing a copy to the Lummi Nation Prosecutor, except that the person may file the petition at least 24 hours before a funeral of a person not listed in (c) of this section. The petition must specify the necessity for re-entry and include all necessary details and documentation to allow review of the petition on the written documents alone. The petition shall include the name of a community member who would be designated to take responsibility for the excluded person’s compliance with the conditions of the re-entry. The Lummi Nation Prosecutor shall provide the petition to the Exclusion Committee for its response. The

Exclusion Committee shall consider whether the excluded person’s interests in temporary and limited re-entry outweigh the interests of the Lummi Nation in preventing the re-entry. If the Exclusion Committee determines that re-entry is appropriate, it shall determine whether to approve the designated person and it may recommend conditions on the re-entry including, but not limited to, escort onto the Reservation and limitations on contact with certain persons while present on the Reservation. Within five days of the filing of the petition, the Tribal Prosecutor shall advise the Court of the Exclusion Committee’s response to the petition, except that the prosecutor shall respond as quickly as possible to a request to attend a funeral. The Tribal Court shall enter an order adopting the Exclusion Committee’s recommendation, unless it finds by clear and convincing evidence that the recommendation should not be followed because it is arbitrary and capricious.

(f) A community member who is designated under this section to take responsibility for the excluded person’s compliance with the conditions of the re-entry shall sign a sworn document accepting that responsibility. The person shall agree to contact the Lummi Nation Police Department immediately upon the excluded person’s violation of the conditions of re-entry.

(g) An excluded person who owns non-trust real property may access the property under the conditions set in (h) of this section. This subsection does not permit access to real property acquired after the Petition for Exclusion was filed.

(h) An excluded person who is authorized under this section to make a temporary and limited re-entry to the reservation:

- (1) shall provide notice to the Lummi Nation Police Department of the temporary re-entry, and the hours during which the person shall be present;
- (2) shall use the most direct available route to the person’s authorized destination;
- (3) may only remain on the reservation for

the necessary time needed for the authorized purpose;

(4) shall not use alcohol or an illegal substance on the reservation; and

(5) shall not commit a crime while on the reservation.

(i) The Lummi Nation Police Department shall immediately remove the excluded person from the reservation if that person violates a condition of re-entry. A person who violates a condition of re-entry immediately loses authorization for the re-entry and may be charged and booked for Violation of an Exclusion Order under LCL 5.07.075, as well as any other crimes that may have been committed.

#### **Chapter 12.04 Enforcement**

##### **12.04.010 Enforcement of Orders of Exclusion**

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(a) A violation of an exclusion order violates the sovereignty of the Lummi Nation and its right to determine who is allowed within its territorial borders. An order of exclusion is entered for the purpose of safeguarding and promoting the health safety, and welfare of the Lummi Nation and the Lummi Reservation Community. Any violation, even if short in duration, is a serious violation of this purpose and the sovereignty of the Lummi Nation.

(b) An excluded person may be immediately removed by a law enforcement officer if the person is found within the exterior boundaries of the Lummi Nation, and may be charged with the criminal offense of Violation of an Exclusion Order, LCL 5.07.075. For those persons who are not within the criminal jurisdiction of the Lummi Tribal Court, violations of exclusion orders shall be referred as criminal trespass to the jurisdiction with prosecuting authority.

(c) A person who assists or encourages an excluded person to enter or remain on the reservation, or to violate a condition of an authorized re-entry for a temporary and limited purpose, may be criminally charged with aiding and abetting the offense of

Violation of an Exclusion Order.

##### **12.04.020 Dissemination of Orders of Exclusion**

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The name and photo of a person under an exclusion order or a contingent order, and the terms of the order, shall be disseminated in the community; disseminated to the Northwest Indian College, Silver Reef Casino, LIBC agencies, LIBC businesses, and LIBC contractors; and published in the Squol Quol. The Lummi Nation Police Department is authorized to obtain the photo from any source, including booking photos and records of the Enrollment Department. The tribe shall also publish and disseminate information about the lifting of the order and any conditions that may have been placed on re-entry.

#### **Chapter 12.05 Severability**

##### **12.05.010 Severability**

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The invalidity of any section, clause, sentence or provision of this Code shall not affect the validity of any part of this Code which can be given effect without such invalid part or parts.

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